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Accessing justice: The impact of discretion, 'deservedness' and distributive justice on the equitable allocation of policing resources

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journals.sagepub.com/home/crj**Sarah Charman** 

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Abstract

The police are faced with a uniquely important role in the initiation of a process of justice. Through a framework of distributive justice, which examines both processes and outcomes of police encounters and the concrete and symbolic resources at their disposal, this paper seeks to analyse data from three policing projects over a 16-year period. The findings indicate a remarkably consistent story of barriers to justice which preclude the opportunity to access justice or of a satisfactory outcome or indeed any outcome at all. The lack of allocated concrete or symbolic resources was evident in complainants receiving limited time, investigation and voice. This paper argues that there is evidence of an unfair and inequitable distribution of resources to victims and potential victims of crime which is enabled by police discretion, justified by focusing on deservedness and personal choice and encouraged by the cultural language of stigmatisation of people and place.

Keywords

Deservedness, distributive justice, police culture, police discretion, policing victims

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Procedural fairness and access to fairly distributed justice are integral to democratic policing (Bradford and Quinton, 2014). 'Justice' however remains a more contested issue which political philosophy has grappled with for many centuries. There is extensive evidence available to support the relationship between fair treatment and perceptions of police legitimacy (Bradford, 2016). Securing that police legitimacy is now a continually negotiated arena (Jackson and Bradford, 2010). Positive policing actions which focus upon respect, reassurance and fairness are vital to public perceptions of legitimacy (Kleinig, 2008). This focus upon police legitimacy has been closely tied to a surge of interest in procedural justice, behind which the policing literature has wholeheartedly moved its allegiances (McLean, 2020). Thibaut and Walker (1975) were the first to consider the importance of studying the *process* of achieving justice as a crucial factor within the philosophies of justice but this work has expanded rapidly across the discipline (for example in the work of Jackson et al., 2012; Sargeant, 2017; Tyler, 1990, 1994). These developments have witnessed a spotlight upon public perceptions of police legitimacy and the impact of enhanced legitimate policing processes upon public cooperation, satisfaction and compliance. Police effectiveness then becomes closely connected to the perceived fairness of *the encounter* rather than the effectiveness of *the outcome* itself (Sunshine and Tyler, 2003).

However, there is a danger of conflating procedures with justice by focussing too much upon processes (Cropanzano and Ambrose, 2001; Thibaut and Walker, 1975), a danger of conflating the issue of fairness with that of generosity when considering positive outcomes (Lerner and Clayton, 2011) and finally a danger of conflating legitimacy with fairness by focussing too much on the legitimacy of the authority granted to power-holders rather than on the ethical behaviour of those involved (Leibling, 2004). This is particularly relevant for policing as the relationships are already problematised by traditional perceptions of 'good' and 'bad' and 'guilty' and 'innocent' and discussions around fairness remain about power and consent to power rather than the embedding of ethical behaviour in practice. It is perhaps pertinent therefore to revisit a branch of justice which although prominent towards the end of the last century has seen its influence within the field of criminology waning – distributive justice.

The focus for this article therefore is on distributive justice and its application to an examination of whether the policing of citizens is equitably balanced. While the concept of utilitarianism, with its focus upon costs and benefits and the greatest happiness for the greatest amount of people would seem to be a good starting point for an analysis of fairness, we would argue that this is not the case. The reason for this is that the focus for utilitarianism is centred upon the end result of increasing benefits and reducing costs rather than on the fair and equitable *distribution* of these goods and services (Colquitt et al., 2001). It is therefore distributive justice that is the focus here.

Distributive justice is a particularly important debate within the policing organisation as a social institution which exerts coercion over others (Nagel, 2005). The paper seeks to consider this allocation of resources through an examination of police discretion and how, alongside the concept of 'deservedness' and the cultural schemas which influence police actions, this might impact upon different sections of the population. The aim is then to explore the barriers to accessing justice by drawing on qualitative data from three separate policing research projects conducted over a sixteen-year period.

Distributive justice, access to justice and police discretion

John Rawls' *A Theory of Justice* in 1971 was arguably the beginning of intensive debate about the fair and equitable allocation of goods and services. While there is not the space within this article for a full discussion on his conceptualisation of distributive justice, it is necessary to outline Rawls' (1971) two principles of distributive justice. First, the central concern for a discussion of justice is the basic structure of society and its fairness in the distribution of fundamental rights and duties, goods and services. Second, where social and economic inequalities prevail, these are only just if they work to the benefit of the least advantaged in society – this he refers to as the 'difference principle'. Not everything therefore has to be equal, for that would be an impossibility, however, they have to be to everyone's advantage. 'Injustice, then, is simply inequalities that are not to the benefit of all' (Rawls, 1971: 62). There are three areas where equality must be applied—the impartial application of rules by public institutions (the role of the police is central here), all people must be the recipients of equal basic rights and all moral persons (which for Rawls is a very broad interpretation) should be entitled to justice.

The publications of Rawls' book generated much interest and indeed criticism. Rawls himself published *Justice as Fairness: A Restatement* to respond to many of these criticisms (Rawls and Kelly, 2001). While this paper cannot consider these critiques in any depth, there is one line of criticism which is relevant to the policing of citizens. It comes from 'luck egalitarians' such as Dworkin (1981) who argue that we must be careful not to confuse circumstance with choice, and we should not be assumed to have to take responsibility for individuals making 'poor choices' resulting in their disadvantage. This is an important caveat when we are considering these principles of justice under conditions of scarcity. At this juncture, there should be no compulsion to attempt to cover up and amend for these inequalities. Poor choices might result in inequality, according to Dworkin (1981), but this is not necessarily an injustice. Unsurprisingly, these approaches which accept inequalities arising from choice, have their critics who have focused upon the potential for the state abandoning negligent victims and permitting forms of oppression and indignity (Anderson, 1999).

Distributive justice focuses on both the fairness of outcomes and the fairness of the procedures which ultimately led to those outcomes (Colquitt et al., 2001). Distributive justice also focuses on both the *concrete* and *symbolic* allocation of resources. While concrete resources within policing are more visible and measurable manifestations such as tickets or fines, symbolic resources are the more tacit and culturally influenced resources such as respect, voice and dignity (Lerner and Clayton, 2011). The central concern with an analysis of distributive justice within policing is therefore focused upon the fair and equitable allocation of both concrete and symbolic resources across different social groups (Tankebe, 2014). It is for these reasons that distributive justice is a more relevant framework for this article where we are discussing examples of justice and injustice but also crucially examples of an *absence of justice* where a consideration of *outcomes* alone would be futile.

In sum, equality can only be achieved through impartiality and consistency in the application of rules for every person in society— 'justice is infringed whenever equal

liberty is denied without sufficient reason' (Rawls, 1971: 218). However, for Dworkin (1981) justice should be determined by the responsible choices that people make. This closely links to conceptions of 'deservedness'. In considering police perceptions of 'deservedness', writers have pointed to the influence of place, race, income, employment, mental health, gender and age (Avakame and Fyfe, 2001; Koskela et al., 2016; Newburn and Stanko, 1994; Van Oorschot, 2006; Wacquant, 2008). The five central criteria of 'deservingness' were deemed to be control over neediness, level of need, identity (close to 'us'), attitude (likeability) and reciprocity (those who may have 'earned' our support) (Van Oorschot, 2000). The decision over who is deemed to be 'deserving' reflects Christie's (1986) work on the personal characteristics that are required in order to be conferred with the status of victim. Victimisation itself is not a precursor to being assigned the label of victim. The power to define the status of victim instead lies outside of the control of both the victim and outside of the reality of the act itself. Christie (1986) has suggested there are six attributes which contribute to the status of 'ideal victim'—if they are weak, carrying out a 'respectable project' (p. 19), blameless within the context of that offence plus capable enough and convincing enough to make the case known. This is coupled with an offender who is 'big and bad' and importantly, unknown to the victim. The perception that one is 'undeserving' of policing services for whatever reason has the potential to deny the equality that Rawls seeks and to discriminate in ways which affect a person's access to justice.

The potential repercussions of being deemed to be 'undeserving' (and not therefore in receipt of the appropriate allocation of resources as demanded by a model of distributive justice) are that some people can become subject to both a differential level of control and a differential level of support. This has the potential to lead to marginalisation and stigmatisation, the result of which is a lower ranking in the 'hierarchy of being' (Sibley, 1995: 14). 'Deservedness' and subsequent informal under-enforcement policies relate closely to distributive justice principles. Important resources are withheld manifesting itself in an inadequate or weak state response to both law breaking itself and also importantly, victimisation (Natapoff, 2006). Research has consistently shown that the police respond to similar behaviour taking place in different neighbourhoods in different ways (Pearson and Rowe, 2020; Robison, 1936; Warner, 1997). This hypothesis of 'benign neglect' (Liska and Chamlin, 1984: 395) suggests that areas with high percentages of economically marginalised and/or minority ethnic communities receive *less* policing in the form of visible patrols, neighbourhood visits, recording of crime, investigating of crime and number of arrests. Under-enforcement is enabled by two unique characteristics of police work. First, it is enabled by the cultural practices and norms which shape police activity. Second, under-enforcement is enabled and made invisible by the discretionary nature of much policework.

Police discretion in the context of decision making is critical as police officers are given the legitimate authority to act as gatekeepers to the criminal justice system both for victims of crime and offenders. Discretion has been instrumental in delivering policing and is integral to policework and police identity. Officers' professional discretion is linked to individual police professionalism and perceived credibility as a legitimate officer (Williams and Stanko, 2016). However, the individual nature and use of discretion can problematise the assumed objectivity of the application of legal procedures.

Indeed, the often invisible and unchecked nature of police discretion challenges its neutrality and highlights the subjective nature of such practices which are influenced by judgement, interpretation and previous experience (Gelsthorpe and Padfield, 2003; Klockars, 1985). This is particularly key among certain populations when the application of discretion is considered to be used disproportionately or prejudicially (Myhill and Johnson, 2016).

Exercising discretion within decision making processes must be understood alongside an examination of the environmental and cultural context within which the decision is made (Gelsthorpe and Padfield, 2003). The emergence of two common themes within the policing cultures literature are worth considering in the context of police discretion and decision making. First, police officers often rely on their own set of internalised rules or their working rule-book (O'Neill, 2016; Charman, 2017) to guide their actions when dealing with ambiguity. These cultural 'rules' are influenced by the norms of the social groups to which they identify, making the occupational cultures associated with policing so important to discussions of the equality of resource allocation. When police officers make decisions, they are likely to utilise particular schematic knowledge based on previous experiences of any given situated context (Chan, 1997). The second factor is how this knowledge is juxtaposed with the presence of a universal understanding about the police mission and officers' role as enforcers of the law (Manning, 1979; Van Maanen, 1974). Reiner (2010) argues that the application of all knowledge in police decision making is entrenched in a culture of cynicism, suspicion and pessimism.

The research

Three separate research projects were conducted over a time period totalling sixteen years. While the paper draws on data collected over some time, there is mounting evidence that access to justice remains imbalanced and this is despite a plethora of attempted reforms (Leroux and McShane, 2017; Mayor of London: Office for Policing and Crime (MOPAC), 2017 Williams, 2019). The consistency and longevity of the findings enables us to highlight the problematic and complex nature of equality of access to justice. While the authors present these issues in two parts, there is a clear and important narrative which flows from their discrete accounts. This provides some critical insights into the world of police decision making and the impact it has on the distribution of justice.

Study one: Victims' voices

The first piece of research focuses on interviews with rape complainants who made an allegation to the police and subsequently withdrew it. The research was commissioned by the Metropolitan Police Service in England and analysed decisions to withdraw the complaint. Twenty lengthy qualitative interviews with women were undertaken during 2004. The reasons given for withdrawing were complex and multi-faceted and fell into key themes, not all of which can be covered in this paper. However, the issues are not mutually exclusive and when considered in conjunction with police decision making, they offer key insights into the interactive process between complainants, the police and

the ability of these vulnerable women to access justice. These factors related to the application of rape myths and perceptions of the 'ideal victim' within criminal justice agencies (Finch and Munroe, 2006; Jordan, 2004). Hence, actions and decisions made by the police problematise notions of equal justice within this field. The majority of women interviewed had mental health problems and/or issues with drugs and alcohol and/or were assaulted by people they knew. While some of this extends beyond the standard category of vulnerability, these factors plus the nature of their victimisation are more likely to make the case vulnerable to attrition (Williams, Norman and Wünsch, 2009).

Five of the women interviewed said that they reported the rape to the police for reasons of personal validation and a need for official confirmation that the assault had occurred. The power of the legitimisation of rape myths was clear, particularly in terms of how they had impacted on the women's own sense of 'believability'. This was exemplified by Marlene who states:

I needed the police to reaffirm that it had happened because it left me feeling that maybe it hadn't. . . it was about tipping the power balance back a bit. . . It validated my feelings as he took all of that. It was about people around me reaffirming that I hadn't over reacted and I hadn't made it up or put myself in a situation I couldn't get out of. It was sanity versus justice and sanity won.

The problematic and conflicting nature of desired outcomes has been evidenced elsewhere. Jordan (2008) argues that while victims are primarily concerned with validation and the interaction they have with officers, the police are focused more upon outcomes. While there has been some positive work in Canada by Ballucci and Drakes (2021) regarding police officers recognising differing desired outcomes for victims of rape and the contextual and nuanced definitions of 'justice', the incongruity between victim and police perceptions of a satisfactory outcome was clear in this work. Respondents' described how officers involved in investigating the crime were focused on outlining the difficulties of the criminal justice journey for them, often using particular factors about their case to do this. Alison's quote evidences this:

He (the investigating officer) was saying, it is hard to get people convicted and you will be asked all sorts of questions . . . there's hardly any cases you get for date rape . . . that was the final straw for me. When I went into court someone's going to turn around and say well you actually went . . . and he said if you think that is bad, it's going to be pretty bad in court.

While officers need to be cautious about how they relay information to victims of crime they can be criticised for not providing it. Victims' desires to be believed and how they question their own behaviour juxtaposed with police advice strategies can actually confirm a victim's sense of doubt and encourage a withdrawal from the system. Hence, this impacts upon the distribution of justice for some of the most vulnerable victims. As Jackie stated,

He (the officer) was saying how many months it might take or whatever to get to court . . . I appreciated having the information but at the same time it put me off . . . I know you should be honest with people but I think maybe sometimes when people are that vulnerable maybe . . . If

someone had said to me then, without doom mongering, look this is the affect it is going to have on you and this is how much it's going to affect your life . . . actually those few weeks of hideousness, if it helps to resolve it, are worth going through, whereas at the time I just wanted it out of the way.

Similarly, Bridget's decision to withdraw was linked to temporal issues and advice from the specialist officer involved in her case. She reported being raped by a previous partner. The timeliness of the criminal justice process and subsequent threats of violence following her report to the police led to a constant feeling of vulnerability and fear:

It was going to take eighteen months . . . my life was not going to go on and it was going to take a long time . . . I felt that by doing this everything would be finished . . . I'd get my life back and everything would be done. . . it was the easier way out and it was actually a relief.

Three of the women's fears linked to issues of time. Rather than feeling that the officer was offering helpful advice Joanna (who regretted withdrawing her allegation) stated:

It felt like he wanted an easy case, an easy conviction, and that wasn't the way it was going to be so he didn't want it. . . It was too much investigating, too much work and too much time.

The complex issues characterised in many reports of rape (Hohl and Stanko, 2015) problematise simple notions of 'perfect victim and stranger perpetrator'. Nicola was raped by a local man who she had bought an appliance from. Nicola was an alcoholic and chose to conceal certain factors from the officer. There is evidence to suggest that the police can interpret victims who conceal issues as liars (Chambers and Millar, 1983; cited in Jordan, 2004) and alcohol issues affirm police perceptions about victim credibility and victim types (Vik et al., 2020):

I was not 100% honest. My story wasn't accurate. I think this might have been because I was scared . . . She [officer] never said she didn't believe me she was just concerned that they would concentrate on my medical history; she felt I wouldn't have been strong enough to stand up in court . . . when the withdrawal was offered . . . I felt a bit pushed into making a decision . . . I didn't agree afterwards that I wouldn't be strong enough, if I had the right people I would have gone ahead. . . . There is a stigma attached to those with addiction problems. It's all these issues that make things more complicated.

The findings from the research identified a number of complex reasons for victim withdrawal which often resulted from the subtle guidance from the officer involved. Seemingly, based on the application of mythological perceptions of rape this creates questions about individual credibility and disempowers victims. While this research was conducted in 2004, more recent research from MOPAC (2017) and Hohl and Stanko (2015) indicates that victim withdrawal remains one of the most significant factors involved in attrition in rape cases. The research presented in this section however did not capture the voices of officers in this relationship. The next section provides an overview of officers' perspectives on the process of decision making during the investigation of rape.

Study two and three – Officers' voices

This section draws on research data which explored police decision making in two distinct areas—rape investigations and the general provision of policing services within response policing. With the rape investigations (study two), the work was directly influenced by study one due to a recognition that the police voice was absent from the narrative and further, from the wider academic debate concerning attrition in cases of rape (Williams, Norman and Wunsch, 2009). The work involved observations and interviews with forty-eight officers from a range of policing roles. This section draws on the interviews undertaken over two time frames (2004-2005 and 2016-2017) with sexual offences investigation trained officers working within a Crime Investigation Department (CID). With the general provision of policing services within response policing, (study three), the evidence comes from qualitative interviews with new recruits to an English police force. Two cohorts of police constables were interviewed between 2012 and 2017 on four separate occasions and two further cohorts between 2019 and 2020 on two separate occasions. The overall aim of the research on both occasions was to very broadly consider the presenting and changing attitudes, values and beliefs of the new recruits to the police service towards a range of policing issues (Charman, 2017). One striking finding of the original research was the extent to which police officers appeared to adopt a familiar trope towards their perceptions of what they considered to be 'genuine' or 'deserving' victims and their counterpoints. It was used with such consistency and such little cognisance that it was clear that this was part of the lexicon of policing vocabulary that was widely understood and acknowledged within their occupational group (Charman, 2020). However, both of these data sets also need to be considered alongside distributive justice principles and the practices of police discretion in order to more fully understand the *implications* of this artificial delineation between 'deserving' and 'undeserving' victims of crime and between those cases which were deemed worthy of further investigation and those which were not.

The achievement of particular outcomes within policing can facilitate the attainment of individual credibility and legitimacy for officers. How organisations evaluate employees' work tasks can rationalise a certain logic about worthy and valued practice with officers actualising that mission achieving capital by doing so (Acker, 1990). As Sarah, a specialist rape officer states,

We should be commended for what we do regardless of outcome. But is always more about outcome, if we get a good job we get a conviction and we can provide that outcome. It is only then you will be seen as having done a really good job.

This is further complicated by the organisational desire for judicial disposals and officers' knowledge that achieving these desired outcomes will impact on whether the organisation perceives them as legitimate in their role (Williams, 2019). As Bob articulates:

It is a lottery but we are guilty, all of us. If we have two cases and we have one that looks like it might go through then that is the one, we will look to do everything for. Everyone needs to manage their workload so you look at the ones that will go to court'

In addition to decisions about outcomes, decisions were also taken with reference to officers' conceptions about what it meant to be considered an 'ideal' or in their language a 'genuine' victim. 'Genuine' victims of crime would receive high levels of support from the police, the commencement of investigatory activities and crucially, time. Conversely, for those who were not considered to be 'genuine' victims, the discretion that shapes police action allowed them to withhold those policing services. The following quotes from Paul followed by Bob from study two and officers from study three illustrate these widely held views:

If the evidence isn't there you still have to do a lot of work to disprove what she is saying to you. I will always say seventy-five per cent of cases I have dealt with have not been true cases of rape. A handful are genuine and I would walk over hot coals for those victims but the others are just soul destroying.

Most the rapes reported to the police, are rubbish. And when I say rubbish what I mean by that is they are either retaliation or malicious allegations and some are between people who've had sex and then regretted it afterwards . . . you should do something about those allegations and how you deal with those so that more time can be dedicated to the proper victims, the stranger rapes.

A lot of domestic situations I've been to, some of them have been really not really good . . . And you don't have to police by a golden standard. (N10B)

You have to be robust with jobs, you can't investigate everything . . . I had some honest chats with my tutor and saying, 'look, why haven't we dealt with that, that is clearly an assault, and they wanted to make a complaint and there's no action been taken'. And then they've explained it . . . that you just don't investigate it, you can't do that with everything. (Z9)

some of the jobs that we go to we . . . not give our full attention, but, you know, play it down a little bit and not spend as long there as we possibly could or should. (X9)

Reiner's (2010) discussions about 'messy' and 'unworthy' cases often involve vulnerable victims and this is evident in this research. It is also apparent from the complexity of rape complainants' needs outlined above, that welfare and support is required to encourage and maintain engagement through the criminal justice process. The perceived limited value placed on this element of the investigation and the credibility issues raised as a result of the vulnerabilities present juxtaposed with the high levels of allegations creates a conundrum for officers trying to manage this space (Williams, 2019). Jon's statement evidences these complexities:

The jobs which are stranger attacks where they don't know the offender they are the rewarding ones because they reflect good detective work. They don't get the attention because of the other rubbish jobs you are dealing with. We need to assess the jobs coming in so some get put on the back burner when you have to spend a lot of time on the ones going nowhere and the good jobs you want to spend time of you can't.

These quotes clearly reflect notions of 'deservedness' in terms of police resource allocation and the prioritisation of a service to a particular set of case characteristics

and 'ideal victim' types. Through the creation of a crime hierarchy of relevance (Bowling, 1998) the police are able to respond to events subjectively and yet via a style that Wittgenstein (1953) calls a 'family resemblance'—a form of logic to apply within particular police tasks. Relating this to the longevity of the attrition problem is key. The complexity of these allegations fundamentally accord with concepts of 'messy' and, moreover, the archetypal description of a 'non-ideal' or 'ingenuine' victim. Understanding this is central to the exploration of distributive justice within policing as the application of particular frames within the policing context do not simply help officers interpret particular events, they influence outcomes and therefore forms of action taken by officers (Williams, 2019).

The issue of withholding of policing services needs further consideration in order to better appreciate the *implications* of this artificial delineation between 'deserving' and 'undeserving' victims of crime and between those cases which were deemed worthy of further investigation and those which were not. Withholding services took the form of attending the 'incident' for as short a time as possible, being aware of jobs which were 'going nowhere' and was embodied in the culturally resonant language of 'getting rid' of jobs that had been allocated to them:

I literally just go to a job, get rid of it, come and write it up and go home. (D10)

Get rid of it, is what you're told, get rid of the job, get rid of it, sort it out so it's no longer there. Rather than investigating. (Z1)

We often say to the SOIT (specialist officer) what are your feelings around the victim and where do you think they are trying to conceal stuff from us which might hinder the investigation. It doesn't mean we will disbelieve somebody or think oh well this is going nowhere but you get made aware that you are never going to convict the guy at court if you know the victim is a drug user or has been a prostitute. (David, CID)

This decision-making process evolved from a perception from police officers that the potential victims of crime were also people who, on another occasion, may themselves also be perpetrators of crime. Being part of what is referred to as the victim-offender overlap, is well understood as a feature of crime patterns but to these police officers was evidence of *personal choices* that justified the decision to withhold policing services:

a lot of the victims we deal with, one minute they're the suspect as well, so I don't always see them as real victims. (Z7)

both parties are, like, bad people, so a lot of drug related and stuff like that . . . I think they're more inclined to give more attention to people who are genuinely victims of crime . . . whereas, when it's, like, bad person on bad person, I think people get quite annoyed with that. (X9)

it's normally never an angel involved in an incident, there's two bad people and two stories are always different . . . Although they're all victims, the victim might be a drug user or a common thief, and you think, well, I don't really want to give all my time to somebody that I know tomorrow will be committing these offences. (Z9)

At xxxx there were people with alcohol and drug problems. I cannot help think that they are letting themselves in for trouble. You get sort of domesticated street sleepers, little groups of them and they drink together. Then they fall out over money or a bottle of scotch an then they kick off and the thing is they are making an allegation of rape. (Caroline, SOIT)

The cultural knowledge and experience which foregrounds this decision-making has the potential to impact upon the equal distribution of justice resources. This cultural knowledge presents itself through the stigmatisation of both people and place:

the address will go over the radio, the name will go over the radio, and they go, oh, we're back at this address. (N6B)

they're selling it to you on the radio and you're thinking, no, this is just a load of rubbish . . . you just know full well when you walk through the door and the fact that you've been there 100 times before. Because there's certain addresses. (D5)

The typical Croyley job. It is a heroin addict, alcoholic not a desirable member of the community who turns around and says I've been raped. It is someone who lives in a way that is not acceptable to ourselves . . . they have probably had their kids taken away and put in care, social housing if they are lucky. Then they say they have been raped, it is just a typical Croyley rape – everyone has them. (David, CID)

Generally the clientele of [name of city] is quite bad anyway. (Z9)

Such tacit interpretations and judgements around person and place are not unique to policing and are inevitably to be found in all forms of human interaction. In addition, there is also evidence from crime hot spots research that large amounts of calls to police do indeed come from a small amount of places (50% of calls in 3% of places (Sherman et al., 1989). However, from a justice perspective this still raises two important issues. First, that within those multiple calls to police, there will be reports of crime and victimisation which go unheeded. Second, at the point of police attendance at the scene, only they have the ability to grant or deny access to the full force or indeed the full protection of the law. The potential for the unequal distribution of these resources is therefore of vital consideration.

Discussion

The three pieces of work described above, conducted over a 16-year period between 2004 and 2020, highlight a remarkably consistent story of barriers in accessing justice thereby precluding the opportunity for either the initiation of a *process* seeking justice or of a satisfactory *outcome* or indeed any outcome at all. Women withdrawing rape complaints were doing so on the basis of police officer attempts to pursue a very different form of outcome, target-focussed justice, in direct contrast to the justice sought by complainants themselves. Likewise, the lack of voice afforded to those stigmatised by the cultural conceptions of deservedness were equally prohibited from both process and outcome. For Rawls, the central concern of justice was on the fair and equitable distribution

of resources. Scarce or more limited resources should not impact upon this principle. Equality is achieved through the provision of equal basic rights and the impartial application of rules to all 'moral persons' (Rawls, 1971: 504–505). It is important to assess therefore whether the findings discussed above could be considered to comply with these principles of both justice and equality (or at least equal inequality) and whether a focus on distributive justice enables a more complete analysis of those seeking and failing to achieve access to justice.

As discussed earlier in this paper, distributive justice focuses upon both the *concrete* and *symbolic* allocation of resources. This can manifest itself in terms of more quantifiable factors such as time given, investigative resources provided, crime numbers provided and also in the less visible factors such as respect, voice and dignity. The results of the research discussed within this paper point to inequities in the distribution of both concrete and symbolic resources. The most significant of these come in the form of first-limited *time*, second-limited *investigation* and third-limited *voice*.

With fewer police officers and more complex patterns of crime (Charman, 2019), the value of *time* within the resources available to police officers is not insignificant. Response officers describe themselves as 'slaves to the radio' and are under considerable pressure to move from one job to another (Convery et al., 2008). However, the research findings, particularly from study three, indicate that 'time' is being withheld from certain members of the public. As response officers, their role would not be to investigate any alleged offences but to act as the gatekeeper to any further investigation and potentially to charging and prosecution. Therefore, their allocation of time is crucial in this regard. There was a clear distinction made between those cases who were deemed worthy of time and those that were not. Those people where time was not awarded were marked out by their being part of the victim-offender overlap illustrated earlier in this paper.

The second of the scarce resources which are unable to be accessed by all is that of *investigations*. Described above were those who were unable to access the time required to be allocated the further resources to access the justice they may or may not require. The rape complainants discussed in study one and two however were initially provided with time but then withdrew from the process before sufficient investigatory resources had been provided. These complainants were highly invested in the validation of their experiences and the provision of investigatory resources, often irrespective of outcome, is key to that validation. The reasons for the withdrawal of these allegations will be discussed shortly but for now it is sufficient to be aware that complainants of serious sexual offences are dissuaded from taking their allegations further and no investigation ensues.

By restricting the amount of time that is spent in responding to certain calls, police officers are subsequently restricting the ability of certain individuals to be granted a voice in which to air their concerns and subsequently to be able to justify the necessity of state action on their behalf. The third of these resources therefore, this time of *voice*, was a more symbolic resource which was unable to be universally accessed. The silencing of certain marginalised voices through the eradication of jobs or 'getting rid' of jobs as described earlier in this paper exacerbates inequalities and renders incomplete an understanding and appreciation of the impact of marginalisation on their lives. This is demonstrated not only in the silencing of voices but also, as evidenced in study one through the *misunderstanding*, deliberate or otherwise, of the voices of rape

complainants. While the female complainants' experiences of policing might have been enhanced by more confirmatory support and encouragement, police officers were guided more by their focus upon investigative complexity. With officers considering the offences through the organisational lens of outcomes rather than through the victim lens of validation, the voice of the potential victim is unheard and procedural and distributive fairness is unobtainable.

In all of the research findings highlighted in this paper, the concrete and symbolic resources of time, investigation and voice are not enabled. This is not necessarily the result of hostility but potentially indifference. 'Responding' to calls from the public, in a more meaningful way than simply attendance, is a fundamental pillar of democratic policing and as such is a key marker of police legitimacy. The absence of the provision of these resources appears at this stage to highlight a deficit in the equitable distribution of justice. Natapoff (2006) refers to this deprivation of resources as a form of 'social disinvestment' (p. 1729). What is vital to discuss however is not merely the evidence of an absence of these resources but an analysis of how and why this might happen and what the features of policing and policing organisations might be which are enabling, justifying and encouraging the unequal distribution of the resources of justice which contravene the essential neutrality of the rule of law. The theoretical frameworks discussed at the outset of this paper will provide the structure within which to analyse this. We would argue that the unfair and inequitable distribution of police resources to victims and potential victims of crime appears to be *enabled by police discretion, justified by a focus on deservedness and personal choice and encouraged by the cultural language of stigmatisation of people and place.*

The doctrine of distributive justice and the 'difference principle' according to Rawls (1971), demand that where inequalities prevail, justice is only achieved if these inequalities work to everyone's advantage. *Police discretion*, while essential to the delivery of policing services and integral to policing work, is a highly subjective practice influenced by organisational demands and occupational cultures with the potential to damage the legitimate authority of the police. This discretion results in the uneven distribution of resources, the uneven application of the law and ultimately underenforcement (Natapoff, 2006). The decisions which were made about victims and potential victims discussed in this paper were able to be made because of that discretionary power. Police officers are required to interpret the law in relation to the unfolding scenarios they have in front of them and this is achieved through a frame of reference which relies on both individual and organisational memories. This reliance on overlapping similarities or 'family resemblance' (Wittgenstein, 1953) in decision-making has the potential to perpetuate the disadvantage and marginalisation of certain people and certain groups as has been seen through the research evidence in this paper. How this is addressed is fraught with difficulties. While it has been argued that it would be challenging to attempt to more equitably distribute arrests across localities to mitigate against the outcomes of police discretion, (Sekhon, 2011) it would be harder still to imagine the difficulties involved in more equitably distributing the concrete and symbolic resources such as time and voice discussed above.

While police discretion is subject to significant criticism for its lack of accountability and potential to discriminate, police officers are still in a position where they must make

decisions. It is the multi-faceted stimulants for this decision-making which are of interest here. The police officers in study two and three justified their decision making based upon perceptions of 'deservedness'. As discussed earlier, the criteria of deservedness relate to demographic characteristics such as gender, race and age but also include the more subjective criteria of attitude, identity and reciprocity. When officers felt that they were dealing with an 'ideal' victim or in their language a 'genuine victim' who did not know their attacker and where forensic evidence could override the credibility or otherwise of the victim, there was a preference for action. When officers felt that the victim was implicated in the offence through their knowledge of the victim or their own vulnerability, action appeared less likely. Similarly, with study three, officers' impressions of deservedness were heavily influenced by their perceptions about the potential victims of crime and the personal choices that they felt had been made to facilitate their victimisation. These decisions from officers, which often focussed upon the potential victim's lifestyle choices, contributed to their being granted a lower ranking in the hierarchy of victimisation (Charman, 2020). While this differential treatment of victims and potential victims of crime discussed here would not equate with either Rawls' doctrine of distributive justice or his permitted deviance from this doctrine in the form of the 'difference principle' it does provide parallels with the 'luck egalitarians' such as Dworkin (1981) who were discussed earlier in this paper. Dworkin has suggested that institutions, and in this case the police, should not have to take account of disadvantage as a result of choice. Police officer's perceptions of 'deservedness' relate very closely to such conceptions of choice. The issue here is whether and to what extent it is ever justifiable to deny services or deny access to services to those who it is perceived are 'negligent victims'. Attributing individual responsibility to someone's victimisation in this way has the potential to further discriminate in a manner which fundamentally affects access to justice.

Finally, the unfair and inequitable distribution of police resources to victims and potential victims of crime appears to be *encouraged by the cultural language of stigmatisation of people and place*. The tendency to classify and categorise and then to compare is fundamentally associated with identity formation and is strongly linked to the occupational socialisation of the police. This is done by emphasising the behaviours, attitudes and beliefs of themselves which are *perceived* to be fundamental to the essence of their own group in order to enhance their own occupational culture and highlighting the differences between themselves and out-group members. However, it could also be argued to be done by classifying, categorising and comparing different categories of victims. In this highly politically charged arena, it becomes possible to build boundaries between what are considered to be 'ideal' and 'non-ideal' victims of crime. Interviews with police officers about the nature of their work with regard to rape complainants and general response calls have indicated that normative cultural rules provide a useful framework within which to guide their action when dealing with messy, uncertain or ambiguous situations. Officers referred to these jobs as 'rubbish' and 'going nowhere' which would result in 'no action', being 'written off' and 'got rid of'. Significant budgetary cuts to police forces have forced a change in policing practices in terms of responding to incidents (Home Affairs Committee, 2018). However, it is questionable as to whether the impact of these changes have been felt equally across all areas of policing activity and by all members of the public. As suggested earlier, those people who were at the intersection

of victim and offender or those who had associations with offenders themselves were more likely to be accepted as those for whom no action was necessary.

It was not only individual characteristics which contributed to this stigmatisation. Place and neighbourhood also played its part with officers describing certain addresses, neighbourhoods and indeed entire cities as places where a different policing approach was deemed justifiable. Whole communities can therefore come to be characterised as the 'types of people' who are a legitimate target for crime and therefore suffer the 'benign neglect' (Liska and Chamlin, 1984: 395) or even the deliberate neglect of policing institutions. This form of status inequality is not limited to policing but is representative of much wider societal prejudices and disregard. As Natapoff (2006) has argued, underenforcement of criminal activity often operates alongside other public service failures in education, housing and health for example. This status inequality has less outward recognition than say power or economic inequalities but has nonetheless a powerful and malign influence on cultural beliefs about 'difference' in relation to gender, race and class. While there is every indication that further investigations (with scarce resources) in many of these cases might prove to be extremely challenging or entirely futile, there is nonetheless evidence to suggest that cultural schemas of those who are 'in' and those who are 'out', those who are 'deserving' or 'undeserving', those who are 'genuine' or 'ingenuine' are utilised to make those decisions. Those schemas are influenced by the cultural characteristics of frontline police officers with their focus upon cynicism, categorisation and comparison (Charman, 2017). Rawls' principle of justice argues that rules must be applied impartially. This would appear to assume that this is irrespective of the likelihood of any particular outcome. There appears to be a reduced recognition and worth accorded to certain sections of the population and the degree to which they are considered to have as Proctor (1995) has said 'lives worth living' (p. 170).

Conclusion

This paper would argue therefore that there is evidence of an unfair and inequitable distribution of police resources to victims and potential victims of crime which is *enabled by police discretion, justified by a focus on deservedness and personal choice and encouraged by the cultural language of stigmatisation of people and place*. This cultural language, as is the case for the language of occupational identities, is cemented, strengthened and replicated by its members to the extent that other voices are less likely to be heard. Driven by organisational pressures, a model of outcome focused 'justice' then becomes the only credible route to navigate. With an 'outcome' seemingly out of reach, there is no process initiated and no action taken. Complainants seeking another form of justice, such as validation or 'voice' which could be enabled by the provision of the concrete and symbolic resources at the hands of police officers, find that these resources are withheld. Rawls' difference principle stresses that where inequality prevails, justice is only achievable if these inequalities work to the benefit of the least advantaged. With no apparent benefits in the unequal distribution of police resources, those people who are unable to find the required support for the initiation of police action find that they forgo justice. They do so because their disadvantage is not natural but avoidably influenced by cultural and structural decision-making. What is required is that attention is cast upon

this phenomenon and a broader understanding of what ‘justice’ might be in terms of access to concrete and symbolic resources rather than a focus upon official legal processes and sanctions. By neglecting the potential destructiveness of ‘inaction’ within policing, the focus upon inequalities and inconsistencies in the ‘system’ remain only on those who have gained access to that system and therefore are overly concentrated on overenforcement rather than underenforcement. As Natapoff (2006) has argued, ‘this type of underenforcement deprives residents of personal and economic security, rendering calls to the police futile or even dangerous and victimhood a routine fact of life’ (pp. 1717–1718). These victims and potential victims of crime are therefore denied access to both the processes and the outcomes that are an essential part of a just distribution of resources.

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