Justifying ‘Justice’:
Tracing the Cultural Politics of Punishment in
the Wake of the 2011 English ‘Riots’

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Declaration of Authorship

I Chloe Peacock hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed: Date: 13th August 2020
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Taking the English ‘riots’ of August 2011 as a lens, this thesis explores how criminal justice professionals make sense of the punitive system within which they work. Though the four nights of unrest precipitated by the Metropolitan Police force’s killing of Mark Duggan in Tottenham have attracted a vast amount of sociological and criminological analysis, relatively little critical academic attention has been paid to the criminal justice reaction that followed.

The thesis draws on qualitative interviews with prosecutors, sentencers, defence lawyers and policymakers who were responsible for designing and delivering the swift and strikingly severe response, characterised by extraordinarily harsh practices at each stage of the process. It applies a critical discourse analysis approach to professionals’ accounts, identifying the imaginations and narratives that allow them to variously rationalise, normalise and problematise this vindictive response to the disturbances.

The thesis contends that agnosis, disavowal, denial and obfuscation are vital to justifying ‘justice’. The analysis shows how four interlocking and overlapping elements enable professionals to frame the punishment of rioters as proportionate, necessary and fair: forgetting England’s long history of unrest and ignoring or dismissing Duggan’s killing, distorting the demographics of ‘the rioters’, summoning a highly selective notion of public opinion, and obscuring the racialised and classed harms that prisons perpetuate.

The thesis offers insight into the cultural politics of punishment in the contemporary conjuncture, highlighting the common sense ideas that sustain the criminal justice system from within. It suggests that a delimited, decontextualised and depoliticised notion of crime, racialised and classed discourses of criminality, an imagination of a monolithically punitive public, and strategic ignorance of the harms of punishment are integral to legitimising a violent and inherently racist and class-based system, both in the wake of the ‘riots’ and in their longer aftermath.
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Chapter 1

Introduction: ‘Riots’ and revenge

This is criminality, pure and simple, and it has to be confronted and defeated… you will feel the full force of the law, and if you are old enough to commit these crimes you are old enough to face the punishment.

Prime Minister David Cameron, 9th August 2011

The outcome of the criminal justice system in relation to the riots was… an oppressive law and order policy which impacted on particular communities in disproportionate ways. So we basically re-enacted Mark Duggan in a different format.

Sadie, Defence Barrister, London, 2018

We got it right… Everyone I’ve talked to was pleased that they did what they did.

Leonard, District Judge, London, 2018

The criminal justice response to the ‘riots’ of August 2011 – four nights of civil unrest across the country, sparked by the Metropolitan police force’s brutal killing of 29-year-old Mark Duggan in Tottenham, North London – was startling in its severity. With the disturbances quickly and decisively depoliticised in much media and political discourse, dismissed as simply ‘looting, violence, vandalising and thieving’ (Cameron, 2011a), the

1 ‘Riot’ is a problematic term that I use apprehensively. Since the eighteenth century, defining a set of events as riots has had important ideological implications for how they are understood, interpreted and reacted to. With ‘riots’ conveying connections to violence and illegitimacy (Clover, 2016; Keith, 1993), critical commentators have framed the events of August 2011 in alternative terms which foreground their political context and meaning: as civil unrest (Mckenzie, 2013), uprising (Trott, 2014), insurrection (Darcus Howe, 2011, cited in Gough and Glenton, 2011), counter-conduct (Sokhi-Bulley, 2016) or protest against a racist and oppressive police force and wider political system (Akram, 2014). However, ‘the riots’ has become the most widely used and recognised term for the events, and in this thesis I engage critically with it, asking how the meanings it carries have been variously reproduced and contested (see especially Chapter 4).
criminal justice system responded accordingly with an extraordinary backlash, characterised by exceptionally harsh practices at each stage of the criminal process, from arrest, prosecution and remand to sentencing; overwhelmingly targeting working-class and racialised young people.

Though the disturbances themselves have been the subject of a huge amount of academic analysis and commentary, attracting explanations and interpretations from every conceivable discipline and theoretical standpoint (as I discuss in Chapter 2), this punitive backlash has received relatively little critical attention. This response, I contend, is vitally important and warrants further sociological inquiry. The punishment of the ‘rioters’, I argue, reveals more about the contemporary cultural, political and ideological moment than about the disturbances themselves.

The thesis addresses three research questions:

1. How did the criminal justice system respond to the ‘riots’ of August 2011?
2. What are the moral claims, shared understandings, narratives and imaginations that legitimised, normalised and naturalised this response?
3. What does this reveal about the cultural and ideological processes by which the criminal justice system sustains itself?

In answering these questions, I investigate how a set of shared imaginations and narratives of the ‘riots’, the ‘rioters’, the criminal justice system and society worked to underpin and legitimise the vindictive criminal justice response to the unrest and the starkly racialised and class-based state violence that it exemplifies. In doing so I explore how the disturbances came to act as a powerful ‘ideological conductor’ (Hall et al., 2013 [1978]: 2) around which potent ideas about crime, justice, citizenship and society coalesced and convened.

My analysis in the following chapters draws on empirical research with professionals and practitioners who were responsible for designing, delivering and dealing with the punitive reaction against the ‘rioters’. These accounts, gleaned through 14 qualitative interviews conducted in 2018 with prosecutors, defence lawyers, sentencers, civil servants and local authority workers, offer a lens through which we can glimpse some of the cultural and ideological constructions, shared assumptions and moral claims that underpinned the state’s reactionary backlash in 2011, and provide rich insight into the complex and often contradictory meanings that have circulated and settled around the disturbances in the years since then.
Over the course of the thesis I make three key arguments. First, I contend that the analysis makes a significant contribution to critical academic literature on the ‘riots’, and more specifically on the cultural and ideological imaginaries that legitimated the state’s extraordinarily severe criminal justice reaction to the disturbances. Attending to practitioners’ ‘riot talk’ reveals the shared imaginations of the unrest, the people involved in it, the public and prisons that served to justify the punitive criminal justice response to the disturbances, and shaped enduring memories of this response as rational and proportionate.

Second, the thesis provides an original perspective on the sociological significance of ignorance, broadly conceived, in the contemporary politics of crime and punishment. My analysis of practitioners’ accounts, alongside political and media discourses, shows how the legitimacy and coherence of the criminal justice response to the disturbances depended on a highly selective memory of the events, a specific imagination of who was involved, a carefully configured construction of the public, and a blinkered view of the effects of punishment. Agnosis, I argue, is vital to the process of justifying ‘justice’.

Third, I argue that studying the ways that criminal justice professionals made sense of their organisations’ response to this very specific moment offers a lens onto the ideological configurations that legitimise the criminal justice system more broadly. My analysis offers insight into what – drawing on Jensen and Tyler (2015; see also Jessop, 2010) – I call the cultural political economy of punishment, whereby circumscribed imaginations of crime, criminality, citizenship, race and class work together to underpin and procure consent for the criminal justice system’s discriminatory practices.

In developing these arguments, the thesis provides an original perspective on how the criminal justice system sustains itself from within. Taking the disturbances as a moment where underlying logic and language of criminal justice became shockingly visible, the thesis identifies a series of discursive resources that normalise a racist and class-based system. The stories that policy makers, prosecutors and sentencers tell offer a glimpse of the discursive mechanisms of self-justification and legitimation that allow those working within it – as well as those outside – to justify an inherently unjust system.

In this introductory chapter I set out some important background and context for this thesis, briefly outlining the disturbances of August 2011 and some of the social and political reactions to the unrest. I then outline the structure of the thesis and set out the key arguments of each chapter.
Part 1. The ‘riots’ and responses

Beginning on Saturday 6th and ending on Wednesday 10th August, the 2011 ‘riots’ were marked by widespread clashes with police, damage to property and looting in cities and towns across England. The scale and spread of the disturbances meant that these few days were widely perceived as ‘the worst bout of civil unrest in a generation’ (Lewis et al., 2011: 1). The disturbances emerged at a moment of significant and widespread social and political turmoil, erupting fifteen months into the contentious Conservative-Liberal Democrat coalition government, formed after a tightly fought election resulting in no clear majority for any party. Coming to power in May 2010, two years after the global financial crash and in the depths of the subsequent ‘credit crunch’ recession, the Tory-dominated administration had successfully secured a narrative that diagnosed the country’s financial crisis as a consequence of reckless and irresponsible public spending by the previous Labour government, and put in place a brutal austerity agenda, imposing a program of vicious cuts to welfare spending and public services (Lewis et al., 2010). London’s Olympic games, which would come to be framed as a redemptive moment for the city and the nation, were still a year in the future. On a global scale, the Arab Spring was in full flow. The day before Duggan’s death, Egypt’s Hosni Mubarak had been put on trial, and within three weeks, Gaddafi would be overthrown as Libyan rebels took Tripoli (The Telegraph, 2011a). The Occupy movement, condensing around London’s Stock Exchange and New York’s Wall Street, was yet to take hold, but would dominate the news in the autumn of 2011.

The immediate spark for the disturbances was the killing of Mark Duggan, a 29-year-old of mixed Irish and black Caribbean descent and a father of four, by a Metropolitan Police officer who became known as V53 at the subsequent inquest (see page 94 for more detail). The police suspected Duggan, who was from the Broadwater Farm estate in Tottenham, North London, of being in possession of a firearm, having been informed that he was planning to collect the weapon from an associate and take it back to the estate. The police claimed Duggan had connections to the Tottenham Man Dem group, which had led to him becoming the focus of an offshoot of Scotland Yard’s Operation Dibri. At 6.15 in the evening on Thursday 4th August, officers from Operation Trident (the unit established to deal with gun crime in the black community) performed a ‘hard stop’ on the minicab Duggan was travelling in on Ferry Lane, Tottenham. Officer V53 shot Duggan, who was unarmed, in the chest and the arm. Duggan died at the scene.
In the hours following Mark Duggan’s death, his sister, brother and fiancée had attended the scene of the shooting but left unsure whether it was Mark who had been killed. One relative drove to Whitechapel hospital believing that he had been taken there alive by air ambulance, only to find that it was actually a firearms officer (injured by another of V53’s bullets) who had been transported (Barkas, 2014). It was not until the next day, Friday, that the family found out definitively that Duggan had died, and it took the police until the morning of Saturday 6th August to officially inform them of the death (Dodd and Taylor, 2012). At around 5.30pm on the Saturday afternoon, Duggan’s family, along with a group of about 300 friends and community members, marched from the Broadwater estate to gather outside Tottenham police station, demanding information about the killing. A police chief inspector came out to speak to the group and conceded that a more senior officer should be present, but this more senior representative never appeared (Lewis, 2011). How the peaceful protest escalated into rioting is not entirely clear, but some reported a teenage girl being beaten with batons by police officers (Eddo-Lodge, 2011).

That night saw widespread attacks on police cars, confrontations with police and looting across Tottenham, the nearby retail park and Wood Green two miles to the west, lasting through the night. The next day, Sunday, saw further clashes with the police and episodes of looting in locations across London. The most serious episodes were in Enfield, four miles north of Tottenham, and in Brixton, ten miles to the south, where disturbances broke out following the yearly Brixton Splash festival and a large branch of electrical outlet Currys was looted. Minor outbreaks of disorder occurred elsewhere in the city, including in Oxford Circus, Hackney and Waltham Forest (Lewis et al., 2011). Monday night, the third night of the disturbances, saw ‘the most intense 24 hours of civil unrest in recent English history’ (Lewis et al., 2011: 17), with disturbances across 22 of London’s 32 boroughs and episodes on a smaller scale in dozens of locations across the country, including in Birmingham, Nottingham, Liverpool, Bristol, Leeds and several smaller cities and towns. Clashes began in the late afternoon in Hackney, where there were sustained battles with police, before spreading across the capital. Some of the most seriously affected areas included Clapham Junction, Lewisham, Catford, Peckham, Woolwich, Wembley and Ealing, where Richard Bowes, 68, was critically injured after confronting ‘looters.’ The worst of the disorder was in Croydon – the scene of widespread arson, and the place where Trevor Ellis, 26, was shot dead (his killers were thought to have been involved in looting but never identified) (BBC News, 2014). By Tuesday night, police had
regained control in London, after deploying unprecedented numbers of officers, and the city was relatively calm, while unrest continued in other parts of the country including Gloucester, Liverpool, Nottingham and Birmingham, and reached its peak in Manchester and Salford (Lewis et al., 2011). By midnight on Wednesday 10th August, the last riot-related incident (a failed attempt to break into a corner shop in Ladywood, Birmingham) was over (Taylor et al., 2011).

It was estimated that 13,000 to 15,000 people were ‘actively involved’ in the unrest, while the financial cost to the country, including policing, clean-up operations, damage to property, losses to business and lost tourism revenue, was thought to run to around half a billion pounds (Riots Communities and Victims Panel, 2012). Across the country, police recorded a total of 5,175 individual riot-related offences (Home Office, 2011). Three hundred police officers were injured, 2,584 commercial premises were damaged, at least 231 crimes against domestic properties were recorded (HMIC, 2011) and five people were killed in events linked to the unrest (Riots Communities and Victims Panel, 2012).

As I will show in Chapter 2, a great deal of academic effort has been expended in pursuit of neat explanations for the unrest, reading the riots as a symptom of various social, cultural and economic malaises. This thesis takes a different approach, focusing instead on the state’s extraordinary reaction to the disturbances, and exploring what this might tell us about the political, cultural and ideological conjuncture from which it emerged. Though commentators have raised considerable concerns about the strikingly harsh penal sanctions handed down for riot-related offences – marked by custodial sentences on average four times longer than those passed for comparable crimes outside of the ‘riot’ context (Ministry of Justice, 2012a) – this critique has often overlooked the ways that the justice system in fact reacted with increased severity at every stage of the criminal process (see Lightowlers and Quirk, 2015 for more detail and discussion). The criminal justice response to the unrest was in many ways as shocking and striking as the disturbances themselves, and warrants sustained sociological attention.

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2 The vast majority of these offences (5,112) were reported by just ten police forces. The Metropolitan Police recorded 3,461 riot-related crimes (68 per cent of the total), followed by Greater Manchester Police (581 offences), West Midlands (495 offences) and Merseyside (195 offences), the other forces (Avon and Somerset, Thames Valley, Hertfordshire, West Yorkshire, Leicestershire and Nottinghamshire) all recording fewer than a hundred riot-related offences (Home Office, 2011).
After an initial loss of control in the first days of the unrest, the police reaction to the disturbances was swift and remarkably punitive. Having adopted a policy of not arresting suspects at the scene on the first night of the disturbances due to insufficient staffing levels, this approach changed dramatically as more officers were drafted in (Home Affairs Committee, 2011). A month after the disturbances, the ten police forces that saw the vast majority of disturbances had arrested 3,960 people (Home Office, 2011). Around 2,455 (62 per cent) of these arrests were made by the Metropolitan Police, with West Midlands (16 per cent) and Greater Manchester Police (eight per cent) the next two largest (Home Office, 2011). The majority of arrests were for acquisitive crimes, with burglary especially prevalent (41 per cent of all arrests); while almost a quarter (23 per cent) of total arrests related to disorder offences (violent disorder, public order and breach of the peace); with smaller numbers of arrests for criminal damage (five per cent), and violence and weapons offences (seven per cent) (Home Office, 2011).

Perhaps the most spectacular and memorable aspect of the courts’ response was the highly unusual introduction of all-night sittings at a number of magistrates’ courts to process the large numbers of people arrested, prompting serious concerns about due process, access to legal advice, and the quality of decision-making. Lawyers interviewed by The Guardian described ‘kangaroo courts, dispensing “conveyor-belt justice”’ with ‘tired and frightened children being brought into court in the middle of the night, having been held in police cells for up to 48 hours’ (Bawdon and Bowcott, 2012).

While ordinarily around a tenth of people arrested for the most serious offences will be remanded to custody, fewer than forty percent of those arrested for involvement in the disturbances were granted bail (Curtis, 2011). Many of those remanded for riot-related offences were children or young people, and many were ‘of previous good character’:

3 Although police forces continued to make arrests in the months following this, there is no national data available on the total number of people arrested for riot-related offences after September 2011. Some additional information is available on the situation in London: by early November 2011, three months after the disturbances, the number of arrests made by the Metropolitan Police had risen to 3,003 (Channel 4 News, 2011), and by Christmas the figure had reached 3,423 (BBC News, 2011a).

4 Most defendants awaiting trial or sentence are presumptively entitled to release on bail unless there are substantial reasons to believe that they pose a risk to the public by committing further offences, interfering with witnesses or absconding (Bail Act, 1976).
21.9 per cent of all suspects and 36.3 per cent of juveniles had no previous convictions and were charged with only minor offences (Ministry of Justice, 2012a). Though it is not formally meant to punish, legal scholars suggest that remand is widely used, in practice, as a form of informal punishment (Wells and Quick, 2010) or ‘a first bite at punishing an offender’ (The Guardian, 2011). This approach to remand meant that many people who were ultimately acquitted or given community sentences spent a significant period of time in custody; in this way, the exceptional approach to remand had the greatest impact on those who committed the least serious offences (Lightowlers and Quirk, 2015).

Many offences that would ordinarily be dealt with at magistrates’ court were instead sent up to the Crown Court, representing ‘a remarkable ratcheting up of the stakes’ (Lightowlers and Quirk, 2015: 73) given the far greater sentencing powers available to Crown Court judges. Nearly two thirds (65 per cent) of riot-related cases were sent to the Crown Court (Ministry of Justice, 2012a), paving the way for more punitive sentencing: Crown Court sentences are on average six times longer than those in magistrates’ courts for ‘either-way’ offences like burglary, theft and handling stolen goods (Gilson, 2011). In the wake of the riots, Crown Courts were especially likely to impose custodial sentences, and the usual ‘almost perfect’ consistency in sentencing between different Crown Courts was replaced by substantial variability, posing a serious challenge to legal principles such as proportionality, legal certainty and transparency (Pina-Sánchez et al., 2017). This tendency to send cases to the higher courts was in part due to guidance from the CPS on particular offences such as burglary. Even where cases remained in the magistrates’ court, the stakes were again raised by assigning most cases to professional district judges rather

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5 If a defendant is subsequently given a custodial sentence, time served on remand is deducted but no such allowances can be made where community punishments or fines are handed down.

6 Despite the existing guidance that states that burglary of non-dwellings should usually be tried by magistrates’ courts unless there are particular aggravating features, which did not apply in most of these cases (Lightowlers and Quirk, 2015: 73), the CPS’s riots guidance altered this, stating that ‘offences of burglary involving the stealing of property from shops or stores, even of a seemingly opportunistic nature, are unlikely to be regarded as suitable for summary trial’ (Crown Prosecution Service, 2011). Similar guidance was also issued by the courts service: a senior justices’ clerk issued guidance to court clerks instructing them to advise magistrates to consider disregarding sentencing guidelines and committing cases to the Crown Court if they felt their sentencing powers were insufficient (Bowcott and Bates, 2011).
than lay benches (district judges process cases more quickly, but are more likely than lay benches to remand defendants on bail, and to impose custodial sentences (Ipsos MORI, 2011)).

Though it has received little critical attention, the Crown Prosecution Service played a crucial role in responding to the disturbances, taking an exceptionally severe approach to prosecution (I discuss this in greater depth in Chapter 4). This remarkable ‘prosecutorial zeal’ (Lightowlers and Quirk, 2015) was reflected both in decisions regarding whether or not to prosecute, and the kind of offences with which suspects were charged. Effectively disregarding the usual standards and procedures signalled a significant shift in policy and paved the way for the courts’ remarkably harsh approach to remand and sentencing.

By August 2012, 3,100 individuals had been charged for riot-related offences, over 2,000 were tried, convicted, and sentenced (Ministry of Justice, 2012a). Of those convicted two thirds were sentenced to immediate custody; an increase of 24 per cent compared to similar offences in 2010 (Ministry of Justice, 2012a). Most shockingly, the average custodial sentence handed down for riot-related offences was 17.1 months; four times longer than the average sentence for comparable crimes the previous year (Ministry of Justice, 2012a) (see Figure 1 below).

Some illustrative examples give a sense of what this meant in practice. On the 11th August 2011, the day after the disturbances ended, Nicholas Robinson, a 23-year-old electrical engineering student with no previous convictions, was sentenced to the maximum permitted jail term of six months at Camberwell Green magistrates’ court after pleading guilty to stealing bottles of water worth £3.50 from Lidl in Brixton. He had been walking
home in the early hours of the morning when he saw the shop being looted and took the opportunity to help himself to a case of water because he was thirsty. His lawyer said he was caught up in the moment, and was ashamed of his actions (Addley et al., 2011). Ursula Nevin, a 24-year-old mother of two who had slept through the disturbances but had accepted a pair of shorts looted from Manchester city centre by her lodger, was sentenced to five months in prison for handling stolen goods (Carter and Bowcott, 2011). Ricky Gemmel, 18, received a 16-week custodial sentence for threatening a police officer, though he claimed he only called him a ‘dickhead’ after the officer assaulted him (Lakhani, 2012b). David King, 53, was the oldest person charged in Birmingham, and was sentenced to 16 months in prison after pleading guilty to trying to steal scratch cards but leaving the newsagent empty-handed (Lakhani, 2012b). Among the youngest children convicted was an 11-year-old boy, given an 18-month youth rehabilitation order for stealing a bin from Debenhams in Romford (BBC News, 2011b).

Particularly shocking was the treatment of children and young people. Around three-quarters of the defendants brought before the courts for riot-related offences in the six weeks following the disturbances were under 24 years of age (Ministry of Justice, 2012a). Those convicted of riot-related offences in the youth courts, where most cases involving children are heard (though some, concerningly, were heard in adult courts), were six times more likely to be sentenced to custody than those convicted by the same court for similar offences in 2010. By the summer of 2012 more than 700 under 18s – many extremely vulnerable young people with no prior convictions – had faced court; 218 were given custodial sentences averaging eight months; and 34 children were still being held on remand awaiting trial (Bawdon and Bowcott, 2012).

As I discuss in more detail in Chapter 5 this punitive reaction predominantly targeted people who are working-class and racialised, with those from economically deprived neighbourhoods and ‘minority’ ethnic groups far more likely to be affected. Forty-two per cent of young people appearing before the courts were, or had been, in receipt of free school meals, compared to the 16 per cent average. While people racialised as black made up 3.3 per cent of the overall population in England and Wales in 2011 (www.gov.uk, 2018), 39 per cent of those charged with riot-related offences identified as black, and were less likely to be granted bail, and more likely to be sentenced to prison (Ministry of Justice, 2012a). These patterns are largely reflective of wider racial disparities in the ordinary functioning of the criminal justice system whereby racialised people are more likely to be stopped and searched by the police, arrested, charged, tried, found guilty in the Crown
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Court and are at greater risk of receiving custodial sentences (Lammy, 2017; Williams and Clarke, 2018).

Alongside the racialised and classed immediate response to the unrest from the criminal justice system, in the months and years that followed the coalition government and subsequent Conservative administration mobilised the ‘riots’ to justify a range of ‘extrajudicial,’ ‘civil law’ and ‘collective’ punishments targeting not just those directly criminalised by involvement in the disturbances, but a broader population of marginalised and poor communities. London councils served eviction notices to households whose family members had been charged with (but not convicted) of riot-related offences, and government ministers pushed for benefits to be withdrawn from individuals involved in rioting (Gilson, 2011; Kelsey, 2015). The coalition government swiftly set in motion a series of punitive and vengeful social policy programmes to ‘fight back’ against the supposed causes of the unrest: gang culture, ‘troubled families’ and a putative ‘moral collapse’ in which traditional values and virtues had been replaced by irresponsibility, laziness, lack of discipline and social permissiveness (Cameron, 2011b). There was to be no Scarman-like independent inquiry into the root causes of the disturbances; instead Liberal Democrat leader Nick Clegg launched the Riots Victims and Communities Panel, whose 2012 report centred on addressing the ‘problems’ of culturally deficient, insufficiently ‘resilient’ communities, and failing public services, and proposed policies to match, including greater resources and powers for police and encouraging schools to build character (Cooper, 2012). Most of its recommendations were ignored.

In a speech a year on from the disturbances, Communities Secretary Eric Pickles set out the government’s longer-term response to the unrest, outlining their action in areas including policing and security, criminal justice reform, policy on families and parenting, tackling gangs and youth violence (see Chapter 5), and substantial changes in welfare, housing and education policy (Pickles, 2012). The disturbances have been used to demonstrate the urgent need for ‘regeneration’ and sweeping change to local areas that were affected by the unrest: gentrifying projects in Tottenham, for example, have explicitly drawn on the ‘riots’ to legitimise their aims to dramatically transform the area and its residents along the lines of class and race (Peacock, 2014). Other community responses, in contrast, have been instrumental in challenging these discourses, not least by highlighting, organising against and resisting violent and racist policing and criminal justice practices (Elliott-Cooper et al., 2014).
Both the criminal justice reaction to the disturbances and the broader policy agenda it catalysed, then, were focused on punishing the most marginalised populations in the country, overwhelmingly targeting poor and racialised communities and further entrenching long-established patterns of punishment and exclusion. In this thesis I contend that these responses to the disturbances, as much as the ‘riots’ themselves, require sustained critical attention. In the following chapters I explore how we might make sociological sense of these reactions. I investigate the claims, shared understandings, narratives and imaginations that legitimised, normalised and naturalised this response, and consider what this reveals about the cultural and ideological processes by which the criminal justice system continues to sustain itself in the contemporary moment.

**Part 2. The structure of the thesis**

The subsequent chapters situate the thesis in relation to broader academic debates, discuss its methodology and present the findings of my empirical research and analysis. In Chapter 2 I discuss how the thesis builds on, extends and contributes to academic conversations about the disturbances and the criminal justice response to them, and to broader sociological debates about the cultural constructions of crime and punishment. While much academic energy has gone towards diagnosing and debating the factors that led to the disturbances, I argue that we should shift our critical sociological attention towards the harsh criminal justice response to the unrest; attending in particular to the cultural imaginaries, narratives, assumptions and shared meanings that worked to normalise and justify the state’s punitive and discriminatory response to the disturbances. Drawing on the concept of agnotology (Barton and Davis, 2018; McGoey, 2016a; Proctor and Schiebinger, 2008; Slater, 2016a) I make a case for tracing how various kinds of ignorance, amnesia and denial were vital to legitimising the punitive criminal justice response. Approaching the disturbances in these terms – not as an event to be explained, but as a moment through which we can examine the ideological processes that procure consent for a violent and discriminatory criminal justice system more broadly – provides important new insight into the cultural political economy of punishment in the current conjuncture.

In Chapter 3 I describe my research methods, arguing that conversations with professionals who were at the heart of designing and delivering the punitive criminal justice response to the disturbances offer a unique lens onto the shared imaginaries that
served to legitimise and justify the response to the unrest – and those that problematised and challenged it. My research, based on in-depth qualitative interviews with criminal justice practitioners, affords an opportunity to explore how the broader political and ideological context played out through a set of tangible policies and practices, and is enacted, interpreted, negotiated and resisted in complex ways by different organisations and individuals. I set out an analytical approach, based on critical discourse analysis and drawing on concepts of ‘dirty work’, that has helped me to make sociological sense of practitioners’ ‘riot talk’ and to connect it to broader political and cultural processes. The chapter discusses the process of designing and conducting the project; and reflects on the methodological, political and ethical considerations that shaped the research and analysis. I argue that ‘studying up’ (turning the analytical gaze away from ‘offenders’ and towards those in positions of power who shaped and enacted the state’s response to the disturbances) offers important opportunities for researchers but also poses significant methodological and ethical challenges.

Chapters 4, 5, 6 and 7 foreground my empirical analysis and my key arguments; examining in turn how practitioners drew on shared cultural imaginations of the ‘riots’, the ‘rioters’, the public and the criminal justice system to legitimise the punitive response to the unrest. In each case I show how professionals’ accounts mobilise distinct forms of forgetting, ignoring or dismissal that allow them – in most cases – to justify their actions in 2011 and maintain a narrative of the criminal justice system as essentially necessary and fair.

In Chapter 4 I focus on my conversations with senior lawyers from the Crown Prosecution Service, arguing that specific patterns of amnesia and ignorance about the disturbances were vital in allowing prosecutors to normalise the state’s exceptionally punitive reaction to the unrest. Prosecutors’ accounts elided both the immediate context in which the disturbances occurred (in particular, the police killing of Mark Duggan) and the longer historical continuities of which they are a part, allowing them to frame the disturbances as an extraordinary, unprecedented and senseless outbreak of offending requiring an exceptional reaction. Drawing on interviews with more critical criminal justice practitioners, I show how acknowledging and recognising this context enables very different understandings of the criminal justice response; not as a reasonable response to an eruption of crime, but as a means of perpetuating and deepening the social divisions that sparked the unrest.

Chapter 5 explores how practitioners talked about who was involved in the disturbances,
tracing the particular imaginations of the rioters that served to naturalise and legitimise the racialised and classed criminal justice response. In contrast to the starkly racist and stigmatising representations of the rioters that dominated right-wing media and political discourses, those I interviewed emphasised the diversity of the rioters – and in particular, the surprising presence of a group of ‘unusual rioters’ figured as middle-class, educated, and white. Yet far from challenging or subverting the racialised and classed patterns of blame that circulated elsewhere, I show how practitioners’ understandings of these surprising rioters in fact reflected and reinforced, in sometimes subtle and tacit ways, long-established cultural imaginations that connect criminality to ‘race’ and class. I argue that doing so enabled those within the criminal justice system to rationalise the disproportionate criminalisation and punishment of working-class and racialised young people following the disturbances.

In Chapter 6 I demonstrate how criminal justice professionals drew on assumptions about the public to justify the courts’ draconian reaction to the riots. I argue that a shared idea of a monolithically fearful and vengeful public allowed practitioners to assert that the courts were simply responding to society’s demands for swift and severe punishment. This claim allowed prosecutors and sentencers to disavow personal and organisational accountability for their harshly punitive policies and practices, instead shifting moral responsibility onto a putative punitive public. I argue that rather than simply echoing what the public at large expected, practitioners were in fact summoning an imagined public that is imbricated with and orchestrated through contemporary politics of citizenship and nation, and in particular a regressive and exclusionary notion of Britishness that was reinvigorated and reinforced in the wake of the unrest.

Chapter 7 turns to look at the discursive techniques that interviewees used to normalise and naturalise the extraordinarily widespread use of prison as a punishment after the disturbances. I show how denying, dismissing or minimising the harms of imprisonment allowed professionals to frame the custodial sentences handed down as proportionate and just, whether by transforming prison from a political or ethical question into a technical problem; or understating the serious harms and violence that are inherent in imprisonment. These strategies, I contend, are crucial in enabling professionals whose roles bring them into close proximity with sites of profound state violence to justify their work. In particular, I argue that eliding the starkly racialised and classed dimensions of imprisonment allows practitioners to defend and legitimise the discriminatory violence of punishment, both in 2011 and more broadly.
Through these chapters, then, I map out the claims and narratives about the ‘riots’, the ‘rioters’, the public and prisons that practitioners drew on to make sense of the extraordinarily punitive state response to the disturbances, showing how processes of denial and ignorance are crucially important in allowing practitioners to position the criminal justice reaction as reasonable, rational, necessary and adequate. In Chapter 8 I draw together the arguments of the thesis, assess how the analysis contributes to academic literature on the 2011 ‘riots’, and explore what the research reveals about the ideological underpinnings of the criminal justice system more broadly; examining what I call the cultural political economy of punishment. I argue that four interlocking and overlapping elements – delimited, decontextualised and depoliticised conceptions of crime, racialised and classed imaginations of criminality, an imagined punitive public, and strategic ignorance of the harms of punishment – work together to sustain and legitimise the criminal justice system. I discuss how the disturbances provided a focal point for the rearticulation of ideas about race, class, citizenship and justice in the contemporary moment, providing further ideological ballast for a criminal justice system that disproportionately harms poor and racialised communities.
Chapter 2

Making sociological sense of the unrest and the criminal justice response

Introduction

The years since 2011 have seen the emergence of a wealth of riots research, with scholars from every conceivable discipline offering interpretations and readings of the unrest. Relatively few, in contrast, have focused on the startlingly harsh criminal justice response to the disturbances. This response, I argue, presents a rich opportunity for critical analysis. In this chapter I describe my approach to making sociological sense of the disturbances (and, more specifically, the criminal justice response to them) as a lens to examine the cultural politics of punishment in the twenty-first century and situate the research within contemporary academic conversations. I show how the thesis offers new insight into the processes by which the criminal justice system procures consent for its profoundly discriminatory and ineffective policies and practices in the current moment.

Focusing on the narratives and claims that coalesced around the disturbances in popular, political and professional discourses – what I call ‘riot talk’ – provides a significant contribution to three distinct bodies of academic work. First, it intervenes in critical conversations about the unrest, and more specifically on the cultural and ideological claims that legitimised the punitive reaction to the disturbances; second, to analysis of the sociological significance of ignorance in the contemporary politics of crime and punishment; and third, to literature on the cultural and ideological modes of consent that continue to legitimise and sustain the criminal justice system in the years beyond 2011.

In the first part of the chapter I review the explanations that researchers have offered to make sense of the disturbances. While many academic accounts have focused on the apparently novel features of the 2011 ‘riots’ and paid insufficient attention to England’s long history of urban unrest, I show how foregrounding this historical context is crucial.

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7 I borrow this term from Marisa Silvestri (2013) – see also Sasson (1995) on the significance of ‘crime talk’.
if we are to make sense of the disturbances and the state’s racialised and classed response to them. Moreover, despite providing crucial counterpoints to the dominant media and political discourses that had framed the riots as uniformly apolitical, many efforts to ascertain and confirm the causes of the disturbances are limited in that, I argue, they have not paid sufficient attention to the way that the state responded to them. While the disturbances themselves provoked a great deal of analysis, much of this has focused on explaining the causes of the unrest, with far less on the punitive response. We may indeed need to know what the various political, economic and social causes of crime are, but those causes tell ‘less than half the story’ (Hall et al., 2013 [1978]: 1). More important is understanding why society reacts to crime ‘in the extreme way it does, at that precise historical conjuncture’ (Hall et al., 2013 [1978]: 1). Despite the limitations of some of the explanations for the disturbances, it is useful to think about how interpretations of the unrest have ideological power in legitimising certain responses in their wake. ‘Riots,’ I argue, are key sites of meaning-making; providing moments in which shared assumptions about crime and society are made and remade. Rather than focusing only on the disturbances themselves, then, I argue that it is crucial to look critically at the responses to them, and to trace how these responses both reflect and actively structure broader political, cultural and ideological formations.

In Part 2 I set out my methodological approach. I make a case for expanding our sociological gaze beyond the disturbances themselves and their putative causes, looking instead at the responses they stimulated. While scholars have provided important critiques of the policies and practices employed in the state’s punitive reaction to the disturbances, this thesis develops a different approach, situating it in relation to a broader cultural, political and ideological context. Drawing on critical sociological scholarship, and particularly from emerging debates on the political power of ignorance and denial, I argue we must attend to the cultural and political formations that licensed and legitimised the punitive criminal justice reaction against them. Examining the imaginations and assumptions that were invoked to procure public consent for the harsh punishment of rioters offers important insight into the ideological constructions of crime, justice and citizenship through which the criminal justice system as a whole justifies and sustains itself – and in particular, its racist and class-based practices.
Part 1. Explaining the ‘riots’

The disturbances prompted a great deal of analysis; but far less has been written about the response. Even before the unrest had ended, journalists, commentators, politicians and researchers had offered a profusion of opinions on how we might interpret what was happening, and how the state should respond. Despite pleas from Boris Johnson, then Mayor of London, who criticised the media for offering ‘too much sociological explanation and not enough condemnation’ for the unrest (cited in Cooper and Nicholls, 2011), academics rushed to make sense of the events by situating them in a broader set of political, social and economic circumstances. In the years since 2011, scholars from a disparate range of disciplines have continued to produce journal articles and special issues, book chapters and books on the disturbances at an impressive rate. As well as sociologists and criminologists, urban scholars (Millington, 2013), psychologists (Reicher, 2011; Stott and Reicher, 2011), geographers (Baudains et al., 2013; Slater, 2011), economists (Bell et al., 2014), and legal scholars (Banakar and Lort Phillips, 2014; Lightowlers, 2015; Roberts and Hough, 2013; Sokhi-Bulley, 2016) have offered valuable analyses, alongside a number of cross-disciplinary and collaborative projects such as the Guardian and LSE’s Reading the Riots (Lewis et al., 2011), edited volumes (Briggs, 2012) and special thematic editions of journals such as Criminal Justice Matters (2011), Sociological Research Online (2011, 2013) and Contention (2014). Scholars from less likely disciplines such as psychiatry (Aiello and Pariante, 2013), psychoanalytic theory (Finchett-Maddock, 2012; Lowe, 2013), computing (Tonkin et al., 2012) and public health (McKee and Raine, 2011) have also offered interpretations of the unrest. The disturbances arguably ‘became something of a criminological Rorschach test’ (Reiner, 2012), where ‘almost every commentator tended to see in them a vindication of their own particular perspectives and concerns’ (Cavalcanti et al., 2012), with scholars interpreting the events using the concepts and theories from their own disciplinary toolboxes.

Some of these diagnoses have been overly simplistic and reductive, treating a heterogeneous and multi-faceted series of processes, moments and representations as a singular event that might be neatly explained by a set of determining factors, or even a single cause; the label ‘riots’ perhaps suggesting an artificial uniformity which belies the diverse actions and motivations encompassed by the term (Moxon, 2011). The events of August 2011, like other ‘riots’, were heterogeneous on at least three levels (Reicher, 2011). First, while the events varied greatly across time and space with qualitatively different
occurrences taking place in various locations over several nights, most analyses have sought to explain the disturbances as a whole (but see e.g. Clarke, 2012a; Clement, 2014; Valluvan et al., 2013 for geographically grounded analyses). Second, even within the same time and place, it is difficult to generalise about the actions and motivations of the different individuals and groups involved. The term rioters, then, also suggests a homogeneity that obscures the complexity of the experiences and understandings that might help us to make sense of what the riots signalled, how they were experienced and what the aftermath has been. Lastly, even if we were able to disaggregate individuals’ motivations, doing so is far from straightforward since individuals’ motivations are always complex and mixed (Reicher, 2011).

In the absence of a public inquiry or any serious political effort to comprehend the disturbances beyond offering a set of simplistic and stigmatising cultural diagnoses, this academic work has undoubtedly been vital in bringing critical perspectives to bear on the events, challenging and unsettling ‘the easy answers and smokescreens offered by the government’ (Allen and Taylor, 2012: 4). But I argue that much of this literature has paid too little attention to the historical continuities that allow us to situate the 2011 unrest in relation to long patterns of resistance to economic and social inequalities and racist policing practices; and has insufficiently analysed the state’s response to the disturbances and its significance.

In light of the diversity of theoretical perspectives that have been used to explain the disturbances, it can be difficult to identify key organising themes in the literature. Drawing on Murji’s (2017) analysis, I set out three (interconnected and overlapping) ways in which the 2011 disturbances have been framed: as a distinctive and novel kind of ‘riot’; as a reaction against inequality and austerity; and as resistance to racialised policing practices. Journalists, politicians and academics have drawn on these framings in different arrangements and configurations, rarely sticking doggedly to one simple explanation, but rather combining elements of each. Nevertheless, we can clearly see tendencies in how these framings have been used by different groups to establish different narratives of the disturbances and to license different responses to them.

**Focusing on the novelty and distinctiveness of 2011**

First, many scholars have highlighted the elements that seemed to set the events of 2011 apart from earlier disturbances, focusing particularly on the role of social media in facilitating the spread and scale of the unrest and on the rampant consumerism and
materialism that appeared to characterise the disturbances (Bauman, 2011; Newburn et al., 2015; Treadwell et al., 2013). Though these accounts may have limited explanatory power, paying insufficient consideration to the broader historical and political context within which the disturbances occurred, they are vitally important in helping us to understand the criminal justice response to them.

A key feature to catch the attention of commentators was the pace at which the events escalated, the wide geographical sweep of the unrest, and the overall number of episodes of protest, looting and violence. Many have emphasised the important role of new media and technologies in facilitating the spread and scale of the riots, and in particular communications networks such as Blackberry Messenger and social networking sites like Twitter and Facebook (Baker, 2011; Newburn, 2015; Tonkin et al., 2012). However, while new technologies and new modes of communication may well have affected the shape and speed of the events in 2011, analysis of the role of technology has often paid insufficient attention to the broader political, social and historical terrain on which the disturbances occurred. Similarly, work that has explained the spread of the disturbances using psychological and scientific modes of analysis has been criticised for neglecting the vital importance of the specific historical and political moment of 2011, drawing for example on discredited and outdated behaviourist theories of ‘contagion’ or ‘mob mentality’ to explain the seemingly unique space-time dynamic of the 2011 disturbances (see Burns, 2011; Gorringe and Rosie, 2011; Stott and Reicher, 2011 for critique).

In addition to analysis of the speed, scale and spread of the rioting, much work has focused on the perceived prevalence of acquisitive crime, in the form of ‘looting’, that seemed to distinguish 2011 from previous episodes of unrest. While the dominant political and mainstream media rhetoric pointed to the widespread looting as proof that the disturbances were entirely apolitical, instead motivated solely by individualistic greed and criminality (Cameron, 2011a; Williams, 2011), academics, too, sought to characterise the disturbances as a reflection of a social order defined by rampant consumerism (Bauman, 2011; Žižek, 2011; Treadwell et al., 2013; see Platts-Fowler, 2013 for a critique). Even before the looting was over, Zygmunt Bauman had diagnosed the unrest as ‘riots

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8 As well as allowing for an instant, continuous response from news outlets and commentators, new media also facilitated a number of interesting practical responses to the disturbances: Twitter and Facebook were integral to the highly contentious ‘riot clean-up’ operation (see Chapter 6 for discussion).
of defective and disqualified consumers’ (Bauman, 2011): the attacks on shops, Bauman argued, reflected a situation whereby shopping had become the primary measure and expression of social standing and success, and where stark economic inequality meant that many lacked the means to acquire goods at the desired pace, leading not just to material deprivation but profound social humiliation. Similarly, Winlow and Hall argue that the disturbances ‘lacked the clear, unifying political symbolism necessary to turn objectless dissatisfaction into articulate political demands’; instead, as principally ‘consumer-oriented subjects’, frustrated rioters ‘ultimately found themselves with nowhere to take their dissatisfaction but to the shops’ (Winlow and Hall, 2012: 465).

The disturbances, in this analysis, reflected the logic and values of an increasingly materialistic society, and ‘looting’ might be seen as an entirely coherent form of protest within the context of neoliberalism and its discourses of individualism and competition (Moxon, 2011; Treadwell et al., 2013). As Sumner (2011) asks, ‘[i]n an aggressively entrepreneurial free-market economy… how can any rational person be surprised when young people behave like aggressive entrepreneurs with scant respect for law or justice?’

In some cases, this focus on consumerism as a defining and supposedly novel feature of the 2011 disturbances has been at the cost of paying greater attention to the historical and political context in which they occurred. As Valluvan et al. (2013) argue, the analytical emphasis on looting, ‘alongside explanatory motifs of nihilism, vulgar materialism and gratuitous criminality’ often elided and obscured other vital context for the disturbances; in particular, institutional and structural circumstances such as police-community relations and deepening economic inequalities (see sections below).

Regardless of how successfully these accounts explain the unrest, understanding how commentators interpreted the disturbances in terms of their supposedly unique features, and simultaneously downplayed their similarities with other episodes of unrest, is vital in helping us to make sense of the criminal justice response. Discourses of unprecedented consumerism and looting have become central to discussions, interpretations and recollections of the disturbances: claims that the rioters were driven by an ‘excess of consumer desire’ have been used to obscure the importance of the social and political effect of acts of austerity governance (Jensen, 2013) and have underscored an imagination of the rioters as ‘a feral underclass of people seen to be morally and culturally separate from mainstream society’ (Casey, 2013). These claims, I argue, have been important in justifying the harsh punishment of rioters. In the subsequent chapters I explore the implications of the idea that the disturbances were entirely distinct from earlier unrest,
and argue that framing the disturbances as unprecedented was a powerful means of justifying the harsh response from the CPS and the courts. In Chapter 4, for example I show how prosecutors drew on the idea that the disturbances were exceptional and anomalous to defend the CPS’s severe approach. In Chapter 5 I show how the idea that the demographic make-up of the rioters in 2011 was novel and distinctive, too, worked to normalise their harsh punishment.

**Inequality, austerity and neoliberalism**

In contrast to those accounts of the disturbances that took their apparently unusual features as evidence of their apolitical or ‘post-political’ nature, other scholars have instead highlighted the economic and political background of austerity and deepening inequality in which the disturbances occurred (Harvie and Milburn, 2013). Attending to the structural context in which the disturbances emerged, I argue, is vital not only for understanding why they erupted, but for theorising the criminal justice response to them.

Scholars have emphasised the evidence of clear links between social and economic deprivation and disturbances (Akram, 2014; Lightowlers, 2015), pointing out that, throughout history, social unrest has tended to emerge at times of economic hardship and largely among the poorest groups in society (Grover, 2011). 2011 came in a period of economic downturn and rising social inequality overseen by a right-wing government, with disturbances taking place largely in deprived areas (Atkinson et al., 2012; McSmith, 2011; Newburn, 2015). Against this backdrop, commentators have seen the disturbances as a meaningful (though not necessarily legitimate or effective) response to widespread grievances, rather than a senseless and random outburst of meaningless criminality.

Researchers have noted that looting largely targeted those shops that were seen as symbols of stark inequality, where expensive goods were out of the reach of many local residents, and shops that were seen to discriminate against or exploit local residents (Elliott-Cooper, 2011). In light of this we might read looting, and the unrest more broadly, as ‘the consequence of the operation of socially and culturally embedded economic processes’ and not just the action of ‘feckless and irresponsible people’ (Grover, 2011). This focus on economic inequalities as a cause of the unrest looks beyond the immediate context of the disturbances, taking into view the everyday social struggles that preceded them, and continued beyond them. Rather than approaching the disturbances as an anomalous, isolated event – a ‘social puzzle’ (Thomas and Iossifidis, 2012) to be explained in terms of its most proximate causes – sociologists have located the dramatic events of the few days in August within a process of ‘slow rioting’ (Mckenzie, 2013) characterised
by on-going anger, desperation and localised criminalisation across generations. This view, while agreeing that looting was a prominent feature of the 2011 disturbances, situates this within a context of deepening inequality that suggests a different set of meanings. This framing seems to offer a more thoughtful and convincing reading of the conspicuousness of acquisitive crimes in the disturbances, though it is important to note that this novelty has arguably been overstated, ignoring the fact that looting and stealing has been a prominent feature in earlier episodes of unrest (Bateman, 2012; Casey, 2013; Newburn et al., 2015).

Again, I argue that this focus on economic and political inequalities as a backdrop for the unrest offers an important perspective on the ways that the state responded to the disturbances. While discourses of untrammeled greed have legitimised the harsh punishment of rioters, emphasising the context of extreme inequalities from which the disturbances emerged offers a more critical perspective on the criminal justice reaction. In Chapter 4 I show how practitioners pointed to the worsening effects of austerity in order to reframe the riots as social protest rather than as meaningless violence, and thus to critique and problematise the criminal justice response. In Chapter 5 I argue that foregrounding the political motivations of rioters allowed interviewees to question the appropriateness of the response.

**Emphasising continuity across history: ‘riots’, ‘race’ and racism**

In contrast to analyses that focused on the features that seemed to set the 2011 disturbances apart from anything that had happened before, some scholars have sought to understand the unrest by situating it in relation to uprisings and movements such as Occupy and the Arab Spring that were happening across the globe at the same time (Newburn, 2015; Winlow et al., 2015) or, more often, in relation to England’s history of unrest, drawing attention to the factors and features that have connected different disturbances at different points in time (Gilroy, 2013; Murji, 2017; Newburn, 2015; Solomos, 2011). In particular this analysis has stressed how post-war disturbances have reflected social dynamics of ‘race’ and racism, demonstrating for example how racialised police brutality has very often triggered disturbances. In order to better understand the disturbances – and, crucially, the responses to them – it is essential to locate them not only within an immediate economic and political context but in a longer history of urban unrest. Situating the 2011 disturbances within their historical context brings to the fore the close connections between disturbances and racism in England’s recent history and I
argue, helps us to make better sociological sense of the punitive response to the 2011 unrest and the modes of legitimation that underpinned it.

Despite the widespread shock and surprise expressed by journalists, commentators, politicians, and some academics in 2011, the disturbances were in many ways far from unprecedented or anomalous. While accounts of England’s riotous past might start with export riots in Bristol or Kings Lynn in 1347, or the 1381 Peasants’ Revolt (Clover, 2016: 49), historians have looked to the sixteenth century, or more commonly to the seventeenth and eighteenth centuries as the ‘golden age’ of food riots and peasant uprisings (Rudé, 1964; Thompson, 1971) often responding to increasing economic inequality, rising food prices, the enclosure of land, and religious backlashes. The Victorian era saw new kinds of collective action, no longer primarily concerned with struggles over food prices, but as struggles over wages, or labour power, manifested in new forms of industrial action such as the strike and the machine-breaking of the Luddites (Clover, 2016). This era also saw an important development in the history of unrest: the emergence of policing, with the founding of the Metropolitan police in 1830, and the establishment of police forces nationwide in 1856 (Mullan, 2001), and saw police become the target of unrest, as in the 1887 Bloody Sunday demonstration against unemployment, which ‘became the kind of running battle with the police with which we are now entirely familiar’ (Mullan, 2001). Situating the 2011 disturbances within this long history highlights the intimate connections between social unrest and shifting patterns of economic and political relations, troubling the narrative of ‘criminality pure and simple’, in David Cameron’s (2011a) terms, that dominated political and media discourses in 2011.

However, it is the twentieth century, and especially the post-war era, that offers the most important background for understanding the 2011 disturbances and, I argue, the criminal justice response to them. This riotous post-war era began with the so-called ‘race riots’ in Nottingham and Notting Hill in 1958 – in reality ‘a vicious week-long racist attack’ (Malik, 2020) by groups of armed white youths against West Indians – with racist disturbances occurring in Dudley in 1962 and, on a smaller scale, in various locations throughout the 1960s (Newburn, 2015). During the 1970s there was a shift toward large-scale confrontation between black communities and the police (Bowling and Phillips, 2002; Newburn, 2015) as relationships between the police and black communities became progressively more strained and fractious, resulting in unrest at Notting Hill Carnival in 1976 and again in 1977 (Gilroy, 2013).
The 1980s saw a dramatic upsurge in the frequency and intensity of episodes of unrest (Benyon and Solomos, 1987a) and important parallels with 2011. Though the disturbances in St Paul’s, Bristol in April 1980 appeared to politicians and journalists at the time as an aberrant, one-off event (Benyon and Solomos, 1987a), in fact they marked the start of an eruption of unrest in British cities over the next five year. These various episodes were precipitated by a context of high unemployment, especially for young people, and deepening tensions with the police, with the immediate catalyst for the disturbances all too often being police violence against racialised citizens. 1981 saw widespread unrest across the country, with the most serious disturbances taking place in Brixton, sparked in part by the police and the media’s indifference and inaction in the wake of the house fire that killed 13 young black people in New Cross in January 1981. The years ’82 to ’84 were comparatively peaceful, though there were several episodes of unrest in London and Liverpool. September 1985 again saw serious disorder, first in Handsworth, Birmingham, and again in Brixton; this time the spark was the shooting of Cherry Groce by police during a raid on her house. Officers, looking for Mrs Groce’s son, shot her in the spine, permanently paralysing her. Disturbances soon followed in Liverpool and Peckham.

A few weeks later Tottenham’s Broadwater Farm estate (where a four-year-old Mark Duggan was growing up) saw the most dramatic unrest of that decade. The summer had brought heightened tensions between police and black young people on the estate, exacerbated by a stop and search operation and incidences of reported harassment by the police. The immediate trigger was the death of Cynthia Jarrett, following the arrest of her son Floyd, a youth worker, for an out-of-date car tax disc. The details of the subsequent events are disputed, but what is clear is that the police burst into their home and raided it, during which Cynthia Jarrett collapsed and died of heart failure. Sunday 6th October was ‘a night of extraordinary violence’ (Benyon and Solomos, 1987a: 7) during which cars and buildings were burned, 20 members of the public and 223 police officers were injured, some by gunfire, and PC Keith Blakelock was stabbed to death. Fairly regular episodes of unrest occurred around London and the country through the late 1980s, and indeed the 1990s and into the twenty-first century (see e.g. Newburn, 2015 for details).

Situating the 2011 disturbances against this historical backdrop draws attention to the continuities between 2011 and these earlier disturbances, not least in terms of the context of clearly racialised issues of poverty and police violence (Akram, 2014; Jefferson, 2012), highlighting the politics of race, racism and policing that have been central to the history
of urban unrest since the middle of the twentieth century (Bowling and Phillips, 2002). Race – or rather racism – is the ‘overriding theme running like a thread through most of the riots in post-war Britain’ (Newburn, 2015: 50), yet critical attention to race and racism were often conspicuously absent in efforts to explain the 2011 disturbances (Solomos, 2011). As well as having limited power to explain the disturbances themselves, dehistoricised, depoliticised and ‘deracinated’ (Murji, 2017) narratives have important ideological implications, as I argue in the thesis: in Chapter 4 I show how ignoring or denying the historical continuities between 2011 and the 1980s, in particular, worked as a powerful means for practitioners to deny the political element of the unrest and justifying the harsh criminal justice response. In light of the immediate trigger for the unrest, the police killing of a person of colour, ‘to willfully fail to recognise race as a starting point seems to be a determined attempt to read the events in a non-political or post-political light’ (Murji, 2017).

Drawing attention to the longer history of the disturbances, then, has been crucial in helping to make sense of the unrest. However, I argue that widening our view to encompass the state’s punitive response to the unrest helps us to see much more clearly the connections between race and ‘riots’. Not only were the disturbances a reaction against long-standing patterns of police racism; but the response to them from media, politicians, criminal justice system and a broader policy agenda – has served to further entrench and normalise racialised patterns of punishment.

In the second half of the chapter I set out my approach to situating the 2011 disturbances within a cultural and ideological moment that imbued them with a specific set of meanings and licensed a particular set of punitive responses. I draw on research that has critically assessed the criminal justice response to the disturbances, putting it into dialogue with classic work on crime and culture, alongside more recent work that has begun to locate the unrest in a political and ideological conjuncture.

**Part 2. Beyond explaining the ‘riots’: Tracing a cultural political economy of punishment**

This thesis contributes to the existing academic work on the disturbances, which has largely sought to explain their causes, by taking a different approach to analysing the unrest. I shift the focus away from the disturbances themselves and towards the punitive state
backlash, and the political, media and professional discourses – what I call ‘riot talk’ – that licensed and legitimised it. In doing so, I take the disturbances and the criminal justice response to them as a lens through which we can explore how ‘justice’ is justified; or, the ideological and discursive processes by which the criminal justice system seeks and secures popular consent for its punitive practices, and the disproportionate harm they cause to marginalised and vulnerable communities.

Though legal scholars and journalists have provided useful analysis and critique of the surprisingly harsh criminal justice response to the unrest, highlighting the ways in which the police and courts deviated from their usual policies and practices and tracking the administrative decisions that enabled this (Lightowlers and Quirk, 2015; Pina-Sánchez et al., 2017; Roberts and Hough, 2013), I situate my research and analysis within a body of critical sociological work that has taken a broader view, exploring how particular political and cultural formations make possible such punitive state responses. I show how this thesis draws on and contributes both to a longer-standing project that examines law and order politics not simply as a response to crime, but as a reflection of a specific set of social and ideological circumstances, and second, to work that has situated the state’s response to the 2011 disturbances, specifically, in relation to the context of neoliberal austerity. I take this work forward by examining how these broader cultural and ideological processes came to shape and to procure consent for, the state’s punitive reaction to the unrest. By looking at the narratives, imaginations and regimes of common sense that practitioners draw on to make sense of the disorder – and, in particular, the diverse forms of agnosis or strategic ignorance they employ – we can identify the discursive resources that work to legitimise and normalise the punitive practices of criminal justice system more widely.

As I described in Chapter 1, analysis from researchers and journalists has been vital in drawing attention to, explaining and problematising the criminal justice system’s response to the disturbances, from the perceived failures of the police, to the CPS’s approach to prosecution, the chaos in the courts and the controversies and ambiguities surrounding the sentences handed down for riot-related convictions. This work has shed much-needed light on processes that were murky and unclear. Much of this critique, understandably, has focused on demonstrating the unusual severity of this response and highlighting the various controversial and legally problematic aspects of the reaction (e.g. Lightowlers and Quirk, 2015; Pina-Sánchez et al., 2017). Reading the Riots (Lewis et al., 2011) was especially thorough in publishing data and analysis on the criminal justice
system’s reaction to the unrest. The project’s reporting included a series of people who were arrested or convicted⁹ and those whose homes and businesses were damaged (Taylor et al., 2012), alongside surprisingly candid interviews with police who had been on duty during the disturbances (Lewis and Prasad, 2012; Prasad and Owen, 2012), prosecutors, judges, magistrates, defence lawyers and court staff (Bawdon and Wolfe-Robinson, 2012). This thesis similarly centres professionals’ accounts, as I explain in Chapter 3, but seeks to analyse them in not only journalistic but sociological terms, by examining how they relate to a set of broader political, cultural and ideological concerns. As well as situating the responses of the police, the CPS and the courts within a legal framework, and highlighting individuals’ experiences of it, then, I argue we must pay attention to the cultural, ideological and symbolic context in which this response emerged.

This thesis pays careful and critical attention to the narratives, moral claims and forms of power that made such a punitive backlash possible, and that have shaped and re-shaped shared understandings of the disturbances in the years since 2011. This analysis offers a way to think about the state’s response to the disturbances not as an anomalous or atypical deviation from its usual approach; but as a moment where the assumptions, shared understandings and narratives that shore up the system more broadly were made clearly visible and legible. Much of the legal analysis from 2011 has been concerned with the potentially discriminatory or harmful effects of these deviations from normal practice but has often left intact the assumption that the criminal justice system, when functioning properly under normal circumstances, is more or less effective, fair, or at least functional. Instead, I argue that we might use this response as a lens for thinking more broadly about how the state procures consent for an inherently harmful, class- and race-based system.

In this sense I draw on scholars who, in the wake of earlier disturbances, have shown how political and popular responses to social unrest can reveal a great deal about the nature of the moment in which they occur (Benyon and Solomos, 1987b; Gilroy, 1982a; Benyon, 1984; Keith, 1993; Solomos, 1988; Gilroy, 2002). This work has traced how reactions to disturbances in the 1970s and ‘80s were shaped in large part by cultural constructions of what the ‘riots’ were and what they meant, showing how ‘common sense

⁹ Others who documented and theorised the experiences of individuals who were criminalised in the wake of the disturbances and the impacts of punishment on their lives included Becky Clarke (2012a, 2012b) and independent films like Riots Reframed (Alam, 2012), Riot from Wrong (Nygh, 2012) and The Hard Stop (Amponsah, 2016).
understandings about the nature of violent conflict’ have been ‘just as important in determining the way people reacted as the events and processes that generated the riots themselves’ (Keith, 1993: 3).

I argue that as well as reflecting and revealing underlying structures of meaning around crime and criminality, the media, political, and criminal justice responses played an active role in reproducing and reshaping shared understandings of crime, justice and citizenship. ‘Riot talk’ served to legitimise the state’s harsh response to the disturbances by reaffirming long-standing assumptions about the nature of crime, ‘criminals’, the public and punishment. In particular, I show how a series of shared cultural imaginaries – dehistoricised and decontextualised definitions of crime, racialised ideas about criminality and culpability, regressive and exclusionary imaginations of the public and circumscribed understandings of prison and its effects – worked to license and justify the punitive criminal justice reaction to the disturbances. The thesis, then, updates and advances work that has shown how ideas about race, class and citizenship are reflected and refracted through crime and the state’s responses to it, drawing on work including Policing the Crisis (Hall et al., 2013 [1978]; first published 1978), critical analyses of 1980s riots, and more recent work that focused on the 2011 disturbances.

Policing the Crisis and critical interventions from the 1980s

I borrow from Policing the Crisis (Hall et al., 2013 [1978]) its central contention that in order to understand ‘crime’ we must look beyond the crime itself, expanding our view to include the various ways that society and the state responds to it. Policing the Crisis took as its starting point the extraordinarily harsh sentences handed down to three young men accused of a ‘mugging’ in Birmingham in March 1973 – one sentenced to twenty years’ detention, the others to ten – and the ‘moral panic’ (Cohen, 1973) that surrounded the case. This panic manifested in the huge amount of political attention, press coverage, ‘expert’ commentary, public concern and penal backlash that the crimes attracted. Like the crime itself, this response had an important ‘pre-history’; conditions of existence that were strikingly absent from efforts to explain the crime without attending to the reaction to it (Hall et al., 2013 [1978]: 2). I draw in particular on the insistence that crime be approached not as a simple ‘fact’ but as a complex social and cultural formation, as ‘the relation between crime and the reaction to crime’ (Hall et al., 2013 [1978]: 2). To start to make sense of this punitive reaction, the authors examine the emergence of mugging as a multifaceted social phenomenon, rather than simply as a novel form of criminal offence. They ask why the idea of mugging was so widely deployed; how the definition was
constructed and amplified; why society (including the media, politicians, police, judiciary and ‘moral guardians’) reacted to it in such a way, and what this might reveal about the economic, political and ideological conjuncture in which this sequence unfolded.

Such ‘moments of “more than usual alarm” followed by the exercise of “more than normal control”’ the authors contend, have repeatedly signalled ‘periods of profound social upheaval, of economic crisis and historical rupture’ (Hall et al., 2013 [1978]: 184).

I argue that we might think about the ‘riots’ as a similarly vital moment in the rearticulation of popular imaginations of crime, justice and citizenship in the twenty-first century. The kinds of responses that the 2011 disturbances engendered echo, in many ways, those that emerged in relation to ‘mugging’; from the dramatic media outcry, the political narratives and, not least, the extraordinary sentences handed down by the courts for riot-related offences. In this thesis I trace the determining conditions that made the social reaction to the 2011 disturbances ‘imaginable, possible and contingently necessary’ (Clarke, 2010: 340), and explore how the disturbances came to act as an ‘ideological conductor’ (Hall et al., 2013 [1978]: 2) through which a series of fears and tensions about crime, race, class and nation were articulated. The cultural construction of the unrest, I argue, has worked to reproduce and reshape consent for punitive politics and policy. The 2011 disturbances offer an opportunity to study what such a phenomenon, and the social reaction to it, tells us about the historical moment in which it occurred, and the times in which we are still living.

Policing the Crisis situated the moral panic around mugging within a crisis of the post-war, social democratic consensus – a series of intertwined economic, social, political, and cultural settlements, characterised by the welfare state, public ownership, and wealth redistribution through progressive taxation (Clarke, 2014) – and the forms of social and political consent that had sustained this settlement. From the mid 1960s to the mid 1970s, this consent had eroded, setting the scene for the emergence, in its place, of a new kind of authoritarian, populist politics that would come to be conceptualised as Thatcherism and, in the longer term, as neoliberalism (Massey and Hall, 2010). I argue that conversations about the 2011 disturbances similarly expose the modes of consent that underpin the criminal justice system in the twenty-first century. In particular, I ask how riot talk in 2011 has rearticulated and reaffirmed widely held imaginations of ‘race’ and class that naturalise the criminal justice system’s disproportionate targeting of marginalised communities. Policing the Crisis showed how the figure of the mugger in the 1970s ‘solidified a new “common sense” consensus around authoritarian policing and
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race relations’ (Jensen, 2014a), with young black men invoked as folk devils to legitimise increasingly aggressive policing in black urban neighbourhoods. This thesis shows how the 2011 disturbances similarly reinvigorated ‘common sense’ discourses that connect crime and criminality to race and class – but in ways that reflect the specific politics of race and class in the twenty-first century.

In doing so, the thesis also builds on, develops and updates work that has shown how disturbances, in particular, have paved the way for shifting politics of law and order. Scholars in the 1980s showed how urban unrest was an important arena in which popular understandings of race, class, citizenship and justice were made and remade, providing a set of cultural imaginaries that legitimised discriminatory patterns of policing and criminalisation. As Paul Gilroy (2002; first published 1987) notes,

> The country’s exceptionally punitive system of criminal justice still accommodates the principal institutional sites in which ‘race relations’ are made and rendered widely intelligible as intractable problems of crime, disorder, violence and social pathology.

(Gilroy, 2002: xxviii)

Responses to the widespread urban unrest of the ‘80s were especially powerful in constructing a link in the popular imagination between race and criminality (Benyon, 1987a), establishing a ‘new definition of blacks as a law and order problem’ (Gilroy, 2002: 90). Journalistic and political accounts ‘explained’ social unrest in terms of an inherently criminal ‘black culture’, while political motivations or explanations were effectively obscured. This process was crucially important in justifying increasingly authoritarian policing and criminal justice practices (Burgess, 1985), and naturalising the ‘systematic racist criminalisation of black communities in Britain’ (Keith, 1993: 3). Disturbances, then, have provided the setting in which common anxieties that connect racialised communities with crime and criminality have emerged and gained traction.

Though the racist policing practices and disproportionate criminalisation that had provoked the disturbances of the 1980s ‘continued unabated, indeed, if anything accelerated’ (Bowling and Phillips, 2002: 12), by the end of the decade the cultural imagination of crime and urban unrest as inextricably connected with race had arguably been unsettled (Bowling and Phillips, 2002). With relatively few major incidents of urban unrest occurring, some have argued, public anxiety about race and crime died down, ‘displaced to a large extent by a concern with youth in general’ (Bowling and Phillips, 2002: 11). The Poll Tax riot in 1991 ‘symbolised both the end of the Thatcher era, and
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the myth that riot was a “black thing” (Bowling and Phillips, 2002: 11). But as I argue in Chapter 4 and Chapter 5, the events of 2011 showed not only that racism and racist policing remain key to explaining ‘riots’ but also that racialised understandings of criminality and culpability have not disappeared. Rather, I argue, they have changed shape and been reconfigured, but remain potent. While in the 1980s disturbances were explicitly blamed on ‘black culture’ across political and media responses, in 2011 such statements were confined to the most conservative and regressive commentaries, while in the mainstream such explicitly racialised statements were disavowed. Nevertheless, I show, imaginations of disturbances as essentially black phenomena remain important in allowing practitioners to make sense of the disturbances and the criminal justice response to them.

Neoliberalism as conjuncture

As well as building on critical academic interventions that theorised moral panics and disturbances in the late twentieth century, the thesis also makes a significant contribution to more recent efforts to situate the 2011 ‘riots’ in the contemporary political and ideological conjuncture. As I will discuss in the next chapter, looking at riot talk within the criminal justice system, and its ideological and political implications, offers a new perspective on these debates. While Policing the Crisis sought to examine the cultural politics of crime in 1970s Britain, this thesis situates the 2011 disturbances within a moment where the failures and consequences of four decades of neoliberal politics came to the fore.

This context not only helps to explain the disturbances themselves – as argued above, scholars have theorised the unrest as, in part, at least, as a reaction against the sustained symbolic and structural violence that working-class communities had been subjected to for decades – but is also essential in making sense of the state’s response to them. Situating 2011 within a moment where the decades-long neoliberal consensus was under significant strain provides analytical concepts that allow us to think sociologically about the punitive state reaction to the unrest. Neoliberalism – conceived as a cultural, political and economic project based on an ‘ugly triad of economic deregulation, welfare state retraction, and penal expansion’ (Slater, 2016b: 5) – has been read as an inherently punitive political project that is centrally concerned with reproducing and legitimating harsh criminal justice practices. Wacquant’s (2008, 2009, 2010) conceptualisation of neoliberalism is especially useful in holding together an analysis of the impact of laissez-faire economic policy, on the one hand, and on the other, interventionist and vindictive
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social and penal policy. Neoliberalism as an intrinsically ideological project mandates ‘submission to the “free market” and the celebration of “individual responsibility” in all realms’ (Wacquant, 2009: 1, emphasis added) but in practice requires and is inherently imbricated with ‘more intensive and punitive interventions in the lives of marginalised groups’ (Crossley, 2016: 266). Punitive social and penal policy is ‘not a deviation from, but a constituent component of, the neo-liberal leviathan’ (Wacquant, 2010: 201 cited in Crossley, 2016). For Wacquant the two are intimately interlinked; the penal system and other forms of punitive ‘statecraft’ working together to contain and manage the social and economic havoc wrought by neoliberal economic policy. This conceptualisation offers a useful starting point for thinking critically about why the criminal justice system responded to the disturbances with such vigour and zeal.

This thesis builds on work that has emphasised the central role of the symbolic, the discursive and the ideological in the politics of neoliberalism; ‘the mechanisms through which public consent is procured’ for state policies and practices that effect deepening inequalities (Tyler, 2013b). These ideas of neoliberal statecraft as an ideological project have been especially useful in allowing scholars to make sense of the state’s response to the disturbances; tracing the discursive regimes and patterns of representation that have made society predisposed to such an extreme reaction. In this thesis I ask how the political and cultural context in which the 2011 disturbances emerged helps us to make sense of the response to them, paying particular attention to how the ideological underpinnings of neoliberal politics – ideas of personal responsibility, stigmatising imaginations of poor and racialised communities and exclusionary conceptions of the public – worked to legitimise and procure consent for the harsh punishment of rioters.

Drawing on the approach taken in Policing the Crisis, the concept of cultural political economy prompts us to consider not only how cultural imaginaries, narratives and stories provide ‘a semiotic frame for construing the world’ but also how such imaginaries actively contribute ‘to its construction’ (Jessop, 2010: 342; cited in Jensen and Tyler, 2015). I explore how media texts, political rhetoric and practitioners’ accounts worked together to legitimise and license the criminal justice response to the disturbances. Attending to the political and cultural conjuncture from which the disturbances emerged, I argue, helps us to understand why the criminal justice system reacted with such speed and severity, and to understand why there was relatively little public outcry about the violence and injustice engendered by this backlash.
Critical contributions to a cultural political economy of punishment

Building on critical work from recent years I maintain that in order to understand the response to the disturbances, we must first pay attention to how marginalised communities have come to be understood within the contemporary cultural politics of neoliberal austerity. The ideology and logic of neoliberalism were especially potent in setting the scene for the state’s punitive reaction to the unrest (Sim, 2012; Slater, 2016b; Tyler, 2013b). How ‘the riots were mediated, imagined and “made” in public’ – and in particular, the emergence of a specific set of narratives about what the disturbances were, and why they happened – ‘was used to generate and deepen public consent for the shift from protective liberal forms of welfare to penal workfare regimes’ (Tyler, 2013b) and, indeed, a punitive criminal justice response against the rioters. It was, arguably, because ‘popular and political hostility towards the poor had become so deeply embedded in the wider society’ that ‘the state, could, and did, respond coercively in order to restore order, with little consideration for the legitimacy of the judiciary’s actions’ (Sim, 2012: 27). This analysis has highlighted how political and media rhetoric around the disturbances, in particular, provided a set of meanings that legitimised the harsh punishment of rioters. The ruling Conservative party swiftly blamed the riots on individual responsibility, failing character and morals, exemplified in Cameron’s insistence that ‘these riots were not about poverty’ but rather ‘about behaviour’ (Cameron, 2011b). This framing effectively allowed politicians and commentators to deny the political nature of the unrest. Framed as decisively non-political, ‘the events were easily reduced to a consequence of poor choices and failed morals, which thus warranted punishment’ (Lamble, 2013: 582). ‘Set against the political backdrop of steep state retrenchment and relentless invocation of personal responsibility’, the disturbances were ‘bound to trigger rash statements and kneejerk government reaction’ (Slater, 2016b: 2), providing an ideological underpinning for the draconian measures and sanctions handed down to rioters.

Critical analysis has shown how the insistence on personal responsibility lent legitimacy to a range of punitive responses, mobilising the disturbances as evidence for a host of social and moral ills and legitimising punitive state interventions that predominantly targeted poor and marginalised people. This work has been vital in showing how, rather than seeking to recognise or address profound structural inequalities, state responses have framed their solutions to the ‘problems’ in terms of rectifying individual and cultural ‘problems’ that are inherently connected to imaginations of social class, race and gender. These ‘problems’ have included gangs and gang culture (HM Government, 2011; The
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Centre for Social Justice, 2012; see e.g. Angel, 2012; Brotherton and Hallsworth, 2011; Williams, 2015 for critique), welfare dependency and inadequate parenting (Allen and Taylor, 2012; Bristow, 2013; Crossley, 2016). Structural issues like child poverty and youth unemployment were reframed ‘as consequences of a cocktail of “bad individual choices”’ including ‘an absence of moral judgement, poor parenting, hereditary or genetic deficiencies, and/or welfare dependency’ (Tyler, 2013b). Media and political responses to the disturbances coalesced around a ‘powerful political myth’ of the ‘underclass’ (Easton, 2011), articulated in some cases through dehumanising and shockingly stigmatising language of ‘scum’, ‘ferality’ and ‘vermin’ (Tyler, 2013a, 2013b, 2015). This ‘underclass consensus’ (Tyler, 2013b) positioned the poor as deserving of their disadvantage. These critical analyses show how the systemic ‘symbolic defamation’ of marginalised people is a crucial part of the conditions of possibility for the state’s punitive reaction to the disturbances (Slater, 2016b). This body of work that has emerged since 2011, then, provides valuable concepts and ideas that are crucial for understanding how particular media and political discourses came to license and normalise a set of punitive responses.

This thesis makes two distinct contributions to this work. First, while most of the incisive critical analysis has focused on the punitive social policy measures that targeted already marginalised communities, I pay sustained attention to the narratives and assumptions that played into the criminal justice response – a relatively under-explored reaction, but one that, as I have shown, was strikingly severe and warrants further study. I build on and extend the existing work, showing how a set of meanings around the ‘riots’ has similarly underpinned and shored up penal policy in the years since 2011.

Second, I add a vital dimension to this sociological work by asking how these broader cultural and ideological processes came to shape, to legitimise, and to procure consent for, the criminal justice backlash against the rioters. The research in this thesis examines not only the discourses at work in political and media spheres but reveals how people at the heart of the criminal justice system itself justified the system’s reaction. By turning my focus to some of those people working within the CPS, the courts and local authorities, I examine the decisions they made, the considerations and compromises these entailed, and how they have come to be understood in the years since 2011 (in the next chapter I discuss the challenges of undertaking this kind of research).

I show how the narratives and moral claims that dominated political and media discourse in 2011 come to inform and make sense of the response of the criminal justice response
to the disturbances. As my analysis in the following chapters shows, practitioners in different parts of the criminal justice system, and even within the same organisations, drew on very different understandings of the riots, the rioters, the public and the penal system, revealing a degree of diversity, multiplicity, complexity and nuance that cannot be captured by focusing on political and media rhetoric alone. Moreover, by bringing in practitioners’ perspectives, the thesis offers a glimpse into the processes whereby the broader, somewhat nebulous, political and ideological context played out through a set of tangible policies and practices. In this sense the thesis explores how neoliberal statecraft is not simply imposed by a monolithic state; but rather is enacted, interpreted, negotiated and resisted in complex ways by the multiple organisations and individuals tasked with its delivery (Fitzgibbon et al., 2013; Jones, 2013). As I will show, practitioners engaged in regimes of sense-making that were markedly distinct from – but often connected to – media and political discourses. Attending to their accounts offers original and important insight into the ideological processes that legitimised the criminal justice response to the disturbances, and that continue to underpin the criminal justice system in the current context.

An agnotological analysis

Finally, the thesis makes a timely contribution to emerging literature on the role of agnosis, broadly conceived, in contemporary politics. This literature cautions against thinking of ignorance as ‘a mere gap in knowledge, the accidental result of an epistemological oversight’ or unintentional ‘by-product of the limited time and resources that human beings have to investigate and understand their world’ (Sullivan and Tuana, 2007: 1). Rather, an agnotological perspective prompts us to examine how popular understandings are shaped by structures of power and domination; how ignorance is deliberately cultivated, ‘carefully managed’ and ‘curated’ (Gilroy, 2019).

Writers such as Steven Box (1983), Stan Cohen (2001) and Paul Gilroy (2006, 2019) have long since alerted us to the crucial importance of deception, misinformation, mystification, obfuscation, uncertainty, denial, doubt, dismissal, omission, amnesia and silence as powerful social, cultural, economic and political forces. Sociological work on this theme has seemed to accelerate in recent years, coalescing around the notion of agnotology (Slater, 2014, 2016a; Barton and Davis, 2018). Coined by Robert Proctor (1995) in his research on the tobacco industry’s deliberate management of public ignorance of the health effects of smoking, the concept of agnotology – the study of ignorance and its crucial social and political functions – has been taken up widely,
developed and expanded by scholars across disciplines (see especially collections edited by Proctor and Schiebinger, 2008; and McGoey, 2016a). Following this lead, researchers have exposed how ignorance, doubt and denial work as important economic commodities for many organisations and industries, from anti-environmentalist businesses disputing the certainty of climate change, to insurance industries, to financial securities traders who profit from uncertainty in markets (McGoey, 2016b; Rayner, 2016). Others have emphasised how the cultivation of ‘strategic unknowns’ (McGoey, 2016b, 2019) or ‘orchestrated ignorance’ (Canning, 2018) is an exceptionally powerful political resource. Attending to patterns of ignorance, elision and amnesia is a crucial task for critical scholars because ‘it has the potential to reveal the role of power in the construction of what is known’ (Sullivan and Tuana, 2007: 2, emphasis added).

Agnotology, then, offers scholars a valuable framework for thinking about the diverse ways that states and powerful organisations mobilise ignorance as a powerful resource to naturalise and legitimise their power (Proctor and Schiebinger, 2008; McGoey, 2016a, 2019), and more specifically, the role of ignorance in legitimising the criminal justice system and its harmful and discriminatory practices (Barton and Davis, 2018; Mathiesen, 2004). Taking a lead from these researchers, my analysis focuses on tracing how the narratives – about the riots, rioters, society and justice – that served to justify and legitimise the state’s response to the riots and its day-to-day practices, rely for their coherence and legibility on processes of amnesia, omission and denial. It adds a further dimension to work that traces the vital role of agnosis in shoring up the class-based violence inherent in contemporary British politics, and the punitive austerity agenda in particular (Graeber, 2016; Slater, 2014, 2016a), and more specifically to an emerging body of work that applies this agnotological focus to the criminal justice system and how it normalises and secures acquiescence for the harms it perpetuates (Barton and Davis, 2018; Mathiesen, 2004).

Work on ‘penal agnosis’ (Scott, 2018), for example, examines how popular consent for prisons as a central tenet of criminal justice is built upon the wilful maintenance of ignorance of the reality of the realities of the people in prison, the conditions they live in and the effects of imprisonment (see also Peacock, 2019; Stanley and Mihaere, 2018). By examining the cultural imaginaries that served to rationalise and authorise the criminal justice system’s disproportionate targeting of racialised communities I draw on and develop ideas from scholars who study the peculiar role that ignorance plays in reifying and sustaining widely held ideas about ‘race’ (Mills, 1997; Sullivan and Tuana, 2007) and,
in particular, imaginations of racialised communities as disproportionately predisposed to crime and criminality (Gilroy, 1982b; Williams and Clarke, 2018). By investigating how knowledge and ignorance are mobilised in practitioners’ accounts of the riots, rioters, the public and the prison system, my interviews and analysis allow me to make an original contribution to this academic endeavour.

Conclusions

In this chapter I have set out my approach to making sociological sense of the 2011 disturbances. I have made a case for approaching the unrest as a lens through which we might examine the cultural political economy of punishment in the twenty-first century. This approach offers a significant contribution to three areas of work: critical analysis on the 2011 ‘riots’, the broader project of theorising the politics of crime and punishment in the contemporary conjuncture, and emerging work on the ideological significance of ignorance in its diverse forms.

Reviewing the abundant academic response to the disturbances, I noted that researchers expended a great deal of effort explaining the various factors that might have caused the unrest. I argued that in order to better understand the riots in sociological terms, we need to pay closer attention to historical, political and ideological context, and to the state’s punitive response to the disturbances. Situating the 2011 riots within their historical context draws attention to the vital connections between the causes of unrest, the cultural constructions of disturbances, and the state’s response to them, highlighting in particular long-standing relationships between disorder, ‘race’ and racism and the politics of law and order.

Drawing on critical work from the twentieth century and more recently, I have described how I approach the disturbances not simply as an event or set of events to be explained, but as a complex social and cultural formation that is constituted in large part by the various media, political and judicial responses to the disturbances. By paying close attention to this response, I argue, we can make better sociological sense of the unrest. I approach 2011 as an ideological conductor through which we can trace widely shared narratives about crime, justice, responsibility and morality, and ask how these reflect the ideology and politics of neoliberal austerity from which it emerged. ‘Riot talk’, I argue, offers a valuable resource for studying the claims and narratives that legitimise and
underpin the criminal justice system. By studying the stories and understandings that worked to rationalise and legitimise the harshly punitive response to the disturbances, I argued, we can better understand the processes by which the criminal justice system justifies and sustains itself. Public and professional debates about the disturbances and the appropriate state response to them offer insight into a wider cultural political economy of punishment that underpins the legitimation, perpetuation and reproduction of an ineffective and discriminatory criminal justice system; and the particular role of ignorance, amnesia, denial and dismissal in this process.

In the following chapter I explain how my research builds on these foundations by looking closely at how criminal justice professionals justified and defended – or, in some cases, criticised and challenged – the punitive criminal justice response to disturbances. I explain how this research enables us to see how the rhetorical, discursive and ideological construction of the disturbances shaped the criminal justice response to the unrest, and in turn how the criminal justice response to the riots and its ideological construction reproduced and shored up common sense ideas about crime and justice.
Chapter 3

Designing and conducting the research: Studying ‘riot talk’

Introduction

In the previous chapter I set out my approach to studying the 2011 disturbances and described how this emphasis on the state’s punitive response to the unrest extends and further develops the existing literature. While other scholars have treated the unrest as an outburst of crime to be explained, I made a case for focusing on the narratives and meanings that coalesced around the ‘riots’ and the criminal justice response to them, and the ideological implications of these. Instead of seeking to explain why the disturbances happened, then, this thesis focuses on ‘riot talk’ and uses this to trace the discursive regimes and patterns of meaning-making that made the harsh punishment of rioters seem reasonable and necessary.

In this chapter I discuss how I have implemented this methodological perspective. Conducting qualitative interviews with people who were at the forefront of the criminal justice system’s reaction to the disturbances, I argue, offers valuable insight into the modes by which the criminal justice response to the unrest was framed as legitimate, proportionate and necessary; and, conversely, the alternative narratives that provide a counterpoint to this. Examining practitioners’ accounts of the disturbances enables not only a deeper understanding of their individual processes of sense-making in relation to the state’s response to 2011, but the various mechanisms by which the criminal justice system seeks to procure consent and legitimacy for its punitive practices more broadly.

This approach offers a new dimension to existing critical work on the cultural and ideological processes underlying the punitive response to the disturbances. While researchers have done vital work in identifying the representations and discursive framings that dominated media and political debate in 2011 and set the scene for the state’s punitive response (as described in Chapter 2) I build significantly on this work by foregrounding the accounts of practitioners who were central to designing and delivering the criminal justice backlash to the riots, asking how they justify and make sense of the
punishment of rioters. Centring criminal justice practitioners provides a fresh empirical perspective and makes an important original contribution to existing work on the cultural and ideological processes that legitimised and normalised the punitive criminal justice response to the disturbances.

Between February and October 2018, I conducted 14 qualitative, semi-structured interviews with criminal justice practitioners and policymakers. The research participants included two people who had at the time of the disturbances been defence barristers, three defence solicitors, three prosecutors, a senior civil servant at the Ministry of Justice, a district judge, a magistrate, two staff in local authority youth offending services and a probation service manager (see page 232 for an overview of my interviewees, their roles, and where the interviews were carried out). Most interviews took around an hour, though some were slightly shorter (the shortest was around 45 minutes) and some were longer (about 90 minutes). Most of the interviews were conducted at the participant’s current workplace, while three were carried out in cafés, and one in the participant’s parents’ flat, which she was using as an office the day that we met. One interview was conducted over Skype due to the participant living in another part of the country. In this chapter I argue that these interviews offer a valuable way to capture the ‘riot talk’ that I have argued is so sociologically important. Interviews provide a rich opportunity to examine how professionals seek to present themselves, their work and their organisation to a potentially critical outsider; and as such, to trace the modes of legitimation that underpin criminal justice work.

The chapter is in three parts. In the first part I set out my research methods, making a case for turning my analytical gaze ‘upwards’ towards the criminal justice system, and explaining why interviews with criminal justice practitioners offer a valuable tool for tracing the cultural and ideological underpinnings of the criminal justice response to the disturbances, and the ‘afterlife’ of this response in the years since 2011. In Part 2 I reflect on my experiences of arranging and conducting the research interviews and consider what this reveals about the power and politics of ‘studying up’. While the criminal justice system remains guarded against critical research, I show that the complex, nuanced and shifting power dynamics that emerged within the research relationship challenge and complicate some of the simplistic assumptions about researching powerful individuals and organisations. Part 3 of the chapter sets out my approach to analysing the interviews, introducing key analytical concepts that I develop throughout the thesis.
Part 1. Designing the research

Why study criminal justice professionals? ‘Studying up’

By subjecting those who define and respond to crime to the same kinds of attentiveness and interrogation that have traditionally been applied to ‘offenders’, the thesis seeks to subvert some of the ethical and political challenges inherent in studying ‘crime’. Rather than focusing on those who were punished, I look ‘upwards’ at some of the processes that shaped these practices of criminalisation and punishment. I argue that attending to criminal justice professionals’ accounts offers a valuable resource for investigating the cultural and discursive means by which the criminal justice response to the disturbances was made possible, and by which popular consent for such a punitive backlash was secured, or at least sought (or, as I argue in Chapter 6, assumed to already exist). By paying critical sociological attention to those who were directly designing, delivering and dealing with the state’s criminal justice response to the unrest, and how they talk about their work, we can glimpse some of the modes of consent and legitimation that were at play – and, crucially, the cracks where this consensus broke down.

In Chapter 2 I made a methodological argument for taking a more expansive view of ‘the riots’, paying sustained attention to the punitive response to the disturbances, rather than focusing solely on the disturbances themselves. This decision is also rooted in political and ethical considerations. While sociological analysis has tended to focus on the effects of social inequalities on those in society who are relatively powerless, there are well-rehearsed arguments for attending to the processes, structures and institutions ‘whereby power and responsibility are exercised’ (Nader, 1972: 284). By ‘studying up’ (Nader, 1972) – subjecting these sites of power to the same academic scrutiny that has been largely directed toward those at the bottom of social hierarchies – scholars have sought to use research as a tool to hold to account the individuals and organisations that wield power and influence. The study of crime in particular has often involved research for the powerful – those responsible for creating and maintaining the definitions and markers of crime, and the appropriate responses to it – on the powerless (Winter and Lumsden, 2014). In this way, criminology has perhaps ‘the most dangerous relationship to power’ of all the social sciences (Hudson, 2000, cited in Winter and Lumsden, 2014: 1).

Of course, researchers have sought to redress this ‘dangerous relationship’ by maintaining a focus on those who are the targets of practices of policing and punishment, but employing research methods and practices that aim to serve the needs of marginalised
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groups rather than those of the state (see e.g. Williams and Clarke’s (2018) convincing call for a ‘criminology from below’). The approach I take here, however, is to turn the critical gaze of research on the culture and practices of power, rather than of the powerless: a shift from looking ‘downstream’ to looking ‘upstream’ (Crossley, 2017). As I argued in the previous chapter, while much has been written about the riots and the motivations of the rioters, far less attention has been paid to those who have played vital roles in the punitive criminal justice reaction to the disturbances. This thesis takes the standpoint that the people, places, processes and institutions involved in defining and responding to crime are as much a part of the phenomena, and warrant as much analytical attention, as the crime or ‘criminals’ in question (Hall et al., 2013 [1978]). Focusing my analytical gaze upwards offers a distinctive insight because it renders visible a complex process of narration, negotiation and self-legitimation that ordinarily remains out of sight to sociologists and the public. Prosecutors, senior civil servants and judges had a peculiarly powerful role in defining the disturbances and the appropriate response to them, but unlike media and political discourse, this professional and institutional riot talk has received scant attention.

Moreover, attending to professionals’ riot talk offers a view onto a regime of sense-making that is connected to, but distinct from, those that have been explored in existing work. While important critical academic examinations of the discursive construction of the disturbances have focused on media and political discourses (e.g. Lamble, 2013; Tyler, 2013b; Slater, 2016b; Kelsey, 2015) I identify a set of imaginations that were markedly different from those at work in much political and media discourse. It is important to study this process because it has potent and tangible implications. The practitioners I interviewed were often in senior positions within high-status professions and had been instrumental in designing and enacting the startlingly punitive response to the disturbances that predominantly affected already marginalised and over-criminalised communities. Understanding their perspectives, I argue, is crucial if we are to better understand this response, its conditions of possibility and its aftermath in the criminal justice system.

Why conduct interviews? Tracing the afterlife of the ‘riots’

Interviews offered an effective tool for bringing to light the imaginations and narratives that criminal justice professionals drew on to make sense of and justify their work in relation to the disturbances. Social scientists are often cautious about using interviews as a means of discovering what people do, or why, since ‘what people say is the legitimation
of what they do, not the explanation or the description’ (Miller, 2012: 31 emphasis added), but it is precisely this aspect of interviews that I make use of (I discuss the concept of legitimation in more detail in Part 3 of this chapter). I approach practitioners’ accounts not as an accurate record of what they did in 2011 or why; but as a glimpse into the discursive resources they draw on to explain and justify the criminal justice response to the disturbances, in a highly specific social setting and at a particular moment in time.

The timing of my project allowed me to examine how collective imaginations of the riots had both settled and shifted in the intervening years; to trace the meanings that endured and those that had fallen away. In Chapter 2 I set out the importance of attending to the ‘pre-history’ (Hall et al., 2013 [1978]: 2) of the riots to make sociological sense of them; but looking at the ‘afterlife’ (Tamm, 2015) of the riots, too, provides valuable insight into their significance. Conducting research seven years after the riots offered a perspective that was not available to scholars studying the disturbances as they happened and in their immediate aftermath, allowing me to trace not just the meanings and definitions that had shaped the response to the disturbances in 2011, but the narratives that had ideological influence in the years that followed.

The imaginations that my interviews revealed were reflective not only of the cultural and political moment in which the riots happened, but are also intertwined with the context in which the interviews took place. Far from simply capturing practitioners’ views as they were in 2011, the interviews provided an opportunity for practitioners to reflect on the riots in a way they had not done before, or with new understanding that comes only with hindsight. As retired district judge Leonard pointed out at the end of our interview, in a high-pressured and fast-moving professional life he had little time to mull over his work.

Doing the job that I did, you do something and move on. You don’t give it any other thought… And actually it’s been quite a nice part of retirement, [to] sort of go back and think ‘Did I really do that?’

In this way the interviews constitute a kind of oral history of the riots, and following this tradition I take the view that memory is not ‘a passive depository of facts, but an active process of creation of meanings’ (Portelli, 1991: 52). Practitioners’ narratives of the riots, whether reliable or not, provide a valuable resource for analysis. Paying attention to the ‘afterlife’ (Tamm, 2015) of the riots allows us to see how meanings of riots and the rioters not only emerged at a specific moment but how these meanings have been reconfigured and ‘translated’ (Tamm, 2015: 4) over time, leaving a cultural memory of 2011 that, I
argue, says as much about the political and cultural tensions at play in 2018 (when the research was conducted) as it does about the events themselves.

My interviews, like all oral history, tell us ‘less about events than about their meaning’ (Portelli, 1991: 50), revealing ‘not just what people did, but what they wanted to do, what they believed they were doing, and what they now think they did’ (Portelli, 1991: 2). Remembered – or misremembered – accounts may be partial and unreliable in terms of factual accuracy; but rather than representing a weakness in the method ‘this is, however, their strength: errors, inventions, and myths lead us through and beyond facts to their meanings’ (Portelli, 1991: 2). Stories, regardless of their veracity, ‘are a powerful means of making sense of our social reality,’ Kvale and Brinkmann (2009: 55) remind us, and interviews are ‘a key site for eliciting narratives that inform us of the human world of meanings’ (Kvale and Brinkmann, 2009: 55). In this thesis I focus less on the revelations about policy and practice contained in participants’ recollections – though these are important and often illuminating – than the tensions, desires and priorities of the teller that the accounts reveal. The particular value of these accounts ‘lies, not so much in their ability to preserve the past, as in the very changes wrought by memory’ (Portelli, 1991: 52). Interviews, in this way, are a valuable method for an agnotological approach (see Chapter 2): by attending to the ‘half-truths, silences, and concealed information’ (Portelli, 1991: 258) they contain, my interviews offer a view onto the processes by which collective memories of 2011 have been shaped by processes of ignorance and amnesia.

The research in this thesis is based on a relatively small number of qualitative interviews. While I had anticipated interviewing around 30 participants, my final sample was 14. In part this reflects the methodological challenges of gaining access to institutions like the judiciary and the CPS (as I have discussed), which limited the number of professionals I was able to meet. Nevertheless, the interviews I conducted provided rich material, and working with a manageable number of interviews meant I was able to pay close attention to the complexity, continuities and contradictions within and between participants’ accounts. Though the individuals I interviewed are not necessarily typical of their professions or representative of other kinds of criminal justice workers who were not included in the study, the recurrence of narratives and claims about the disturbances and the criminal justice response across my conversations with participants from different parts of the criminal justice system (as I discuss in the following chapters) points to a cultural political economy of meanings that, I contend, circulated beyond the necessarily limited material on which my analysis is based (I discuss this in more detail in chapter 8).
Part 2. Conducting the research

Having discussed why I have centred criminal justice practitioners’ accounts in the research, and why interviews provide a valuable tool for tracing how professionals justified the criminal justice response to 2011, here I describe my experience of arranging the research and conducting the interviews. While the process of organising the interviews in many ways affirmed established ideas about the power of the criminal justice system to guard itself from view by tightly controlling its exposure to researchers, my experiences of actually conducting the interviews revealed a much more ambiguous and nuanced power dynamic between myself and the participants, problematising some of the simplistic assumptions about researching upwards which assume that broader power dynamics will simply be reproduced in the research encounter. I found that interviews, far from solely providing a forum for professionals to rehearse hegemonic narratives, created a space in which professionals were in some ways accountable to me as an interviewer, providing justificatory and sometimes defensive accounts of their work and their organisations. Practitioners’ accounts were often characterised by doubt, defensiveness, and dilemma that reflected complex, nuanced and shifting power dynamics within the research relationship.

Arranging the interviews

I began arranging my interviews in earnest in January 2018, when I started to contact prospective research participants, and continued the ongoing process of negotiation throughout the period of fieldwork, ending in October 2018. Some groups of professionals were far easier to access than others: while defence solicitors, for example, were relatively forthcoming in their responses to my approaches, the judiciary, in particular, proved an extremely closed organisation.

This process demonstrated the challenges of studying the criminal justice system, and highlights the importance of this research for subjecting to critical analysis these guarded and somewhat secretive institutions (Baldwin, 2008). As I explore throughout the thesis, participants’ accounts revealed how ignorance, denial and amnesia were vitally important in naturalising and legitimising the harshly punitive penal response to the unrest. The barriers that criminal justice organisations use to shield themselves from critical scrutiny by researchers allow them to retain close control over the knowledge about them that is in the public sphere, and to control the narratives about them. While some organisations were surprisingly open to participating in this research, I argue that the challenges I faced
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in gaining access to judges, in particular, are symptomatic of how ignorance and invisibility plays a crucial role in upholding state practices.

Having personal contacts or ‘friends in high places’ (Puwar, 1997) is a significant advantage for researchers seeking to study people in prestigious professions, but having such connections to call on is dependent on researchers’ social class, ethnicity, gender, professional seniority and age, and I was in many ways at a disadvantage having no obvious ‘way in’ to the criminal justice system. Without direct connections or a professional network to call on, I made contact with most of my interviewees via email, using publicly available information to find appropriate individuals and contact details. This strategy had patchy success: though I recruited four research participants in this way, the majority of messages I sent out went unanswered, or prompted some correspondence that died down before we were able to arrange a meeting (see page 233 for an overview of the recruitment process for my final participants). However, my own privileges, and particularly my middle-class positioning and the informal connections it afforded, undoubtedly helped me to facilitate the research. Many of my interviews were made possible by making use of indirect connections through friends and colleagues who put me in touch with their contacts, who then put me in touch with their colleagues, and so on. My ability to develop trust and rapport with often high-status professionals was also undoubtedly aided by my middle-class habitus and my whiteness, and my ability to present myself in interviews relatively politically ‘neutral’ and unthreatening.

While putting together the funding proposal for this project I had established relationship with a penal reform organisation who I had hoped would help me to make contact with criminal justice professionals through their membership and networks. However, it proved very difficult to maintain regular contact and get things moving, and as the focus of my research changed and its findings looked less likely to be relevant to the organisation’s policy and campaigning work, and my own perspective on the political issues at stake developed, the partnership also began to feel less appropriate.

One particular moment from the research illustrates this point. Prior to my meeting with district judge Leonard he had recommended I dress smartly for the interview, in order to move swiftly through the court’s security checks. Having dressed accordingly in office wear, at the end of our discussion Leonard thanked me for following his suggestion, joking that ‘I thought you might turn up in a T-shirt saying “All coppers are bastards!”’. My ability to present myself as professional, and perhaps as less politically invested than he expected, seemed to facilitate our discussion and his willingness to help me contact other judges.
Personal relationships and informal contacts were invaluable in arranging the research, but in the case of the judiciary the organisation remained very difficult to access. My contact with Leonard, the only judge among my participants, came about somewhat serendipitously: we were put in touch by Roger – a criminal defence solicitor and head of a long-established East End firm – who I had interviewed. Roger had known Leonard for many years, the two having practiced at neighbouring law firms earlier in their careers, and still saw each other regularly at Law Society events, providing the opportunity for Roger to put us in contact. When I met Leonard in a colleague’s plush office at Westminster Magistrates’ Court (see Chapter 7) he suggested a number of other judges who had been central in the judiciary’s response to the disturbances, suggesting I go through the office of the Chief Magistrate to contact them. Even with Leonard facilitating this contact, the formal process for requesting judicial participation in research was lengthy and bureaucratic and ultimately unsuccessful. The application required an explanation of how the project would benefit the judiciary or the courts, how it would improve or promote the administration of justice, and a comprehensive list of interview questions. The guidance for applicants stated that approval would only be granted if it was judged that ‘members of the judiciary would not be drawn into areas of political controversy or commenting on the merits of government policy,’ that the research was ‘in the public interest’ and that ‘judicial discretion and independence would not be impaired by participation’ (Courts and Tribunals Judiciary, 2018). I was required to provide assurance that members of the judiciary would not be identified, and had to agree to ‘provide a final draft copy of any report to members of the senior judiciary and the judiciary involved in the research, to give them an opportunity to comment upon it before a report is published’ (Courts and Tribunals Judiciary, 2018). Having submitted a detailed letter covering all these points, and only receiving an acknowledgement several weeks later after two follow-up emails, the three emails and two phone calls I made over the course of the following four months elicited no further response.

Like other researchers, then, I found gaining access to judges ‘a very tricky undertaking’ (Baldwin, 2008: 376): along with other powerful institutions, the judiciary ‘tend to be publicly visible and seemingly easy to contact’ but in reality ‘have remained secretive, placing high value on privacy and exclusion’ (Alvesalo-Kuusi and Whyte, 2017: 3). Members of the senior judiciary in particular tend to be ‘distinctly unenthusiastic about research; frequently viewing such endeavours as an unwarranted intrusion into matters that should be their business and no one else’s’ (Baldwin, 2008: 375). Though researchers
have succeeded in establishing research relationships with judges beyond studying written
documents or observing their work in court (e.g. Griffith, 1977; Darbyshire, 2011;
Annison, 2014) the judiciary, compared to other criminal justice organisations, seem
reluctant and resistant to participate in critical research (Baldwin, 2008).

Despite playing a crucial role in the punitive backlash against the rioters in 2011, the
judiciary remained remarkably hidden from public view, aside from one district judge,
Tan Ikram, taking the highly unusual step of speaking out publicly to vigorously defend
the judiciary’s approach to the disturbances (Lakhani, 2012a), and one anonymous district
judge giving a brief comment to Reading the Riots journalists (Bawdon and Wolfe-
Robinson, 2012). Judges’ invisibility in 2011 suggested that the judiciary in the twenty-
first century to a great extent remains ‘a closed institutional sphere within the state,
relatively anonymous, represented in its institutional rather than its individual person’
(Hall et al., 2013 [1978]: 36) so that

individual differences of attitude and viewpoint between different judges, and the
informal processes by which common judicial perspectives come to be formed… are
normally shielded from public scrutiny, and have rarely been studied or written about in
any systematic way.

(Hall et al., 2013 [1978]: 36)

Tim Newburn noted a year after the disturbances that in contrast to the involvement of
rioters, victims, police officers, defence lawyers and the Crown Prosecution Service, the
judiciary had rebuffed all requests to take part in the Reading the Riots study. ‘Paradoxically’,
he wrote, ‘it is easier at the moment to contact an unconvicted looter than a judge’
(Newburn, 2012). Given the critical nature of this research project and the seemingly
impenetrable wall that protects the judiciary from critical researchers seeking to situate
their practices in relation to broader patterns of politics and power, I felt fortunate to
have been able to interview one judge. Having access to often revealing and surprisingly
frank discussions with practitioners who are seldom involved in research highlights the
original contribution of this thesis, but also points to the ways in which the judiciary
maintains a firm grip on its representations, its reputation and what is known about it.

Negotiating access to prosecutors similarly laid bare the power of state organisations to
closely control the research process. My contact with the CPS was facilitated by a
colleague who put me in contact with a relative working at the CPS, whose responsibilities
fortuitously included managing the organisation’s participation in research. To obtain
agreement to interview three prosecutors, I was required to sign two documents: first, a declaration to state that I understood my research was subject to the Official Secrets Act, and that any ‘unauthorised disclosure’ may be tried in court and subject to a maximum penalty of two years’ imprisonment or an unlimited fine (see appendices from page 235) and second, a research undertaking form (see page 239) that included the following clause:

(v) any book, article, broadcast or lecture based upon the research findings and incorporating information derived from the interviews for which permission has been granted will be submitted to the CPS prior to any publication for comment. The CPS retains the right to edit or otherwise restrict publication of any such information. A thesis made available for public inspection shall be deemed a publication.

The prospect of agreeing that the CPS could ‘edit or otherwise restrict publication’ of not only my thesis but future publications, presentations and teaching materials was extremely concerning and placed me in a vulnerable position. I was risking not only potential criminal proceedings but a great deal of my own time and effort in undertaking research and analysis that the CPS could effectively prevent me from using.

This raises important questions about research ethics in ‘studying up’ and the need for more nuanced understandings of the risks of harm in research with powerful organisations. In part because ‘the empirical methods used in social science have almost exclusively been developed to face downwards rather than upwards’ (Alvesalo-Kuusi and Whyte, 2017: 4), standard research ethics frameworks do not adequately reflect the complex power dynamics at play in research with the criminal justice system. Established ethical codes seek to ‘protect all research subjects, regardless of their social position or status’ (Alvesalo-Kuusi and Whyte, 2017: 5), in practice protecting powerful individuals from scrutiny by researchers. While turning the analytical gaze ‘upwards’, then, is an attempt to subvert the traditional power dynamics of research that has focused largely on

12 I attempted to negotiate these terms; suggesting instead that I share the interview transcripts with participants, or with the organisation, for checking before I use it in my analysis and writing. My contact at the CPS provided some partial reassurance, assuring me that the organisation was accustomed to academics publishing research that was critical of them, and explaining that they would only remove or correct factual inaccuracies. It was also somewhat unclear what the implications would be if I were to proceed with publication without making the changes they had requested. After discussing the issue with my supervisor, I somewhat apprehensively decided that it was worth the risk.
marginalised groups, the practicalities of negotiating access to the criminal justice system suggest that powerful organisations are able to exert their authority to carefully control their exposure to academic scrutiny and critique. I reflect on this further in Chapter 8, taking into account the process of securing ‘sign off’ for the analysis in the thesis.

Below I turn to consider how these power dynamics played out in the interviews themselves, showing that while the criminal justice system erects effective barriers to protect itself from critical analysis, the interview as a research method creates space for a far more nuanced negotiation between researcher and participant.

**Conducting the interviews: interviewing ‘elites’**

Despite the challenges I faced in accessing some organisations, my interviews with criminal justice professionals engendered a set of complex power relations between myself and my interviewees that complicates some established understandings of interviewing ‘elites’. Some have argued that, in contrast to ‘traditional’ or ‘downstream’ studies, researchers interviewing powerful or high-status individuals are relatively powerless in the research dynamic (Neal and Mclaughlin, 2009). Interviewing experienced, often high-status professionals about their work often means that participants are accustomed to leading discussions and speaking authoritatively on the subject at hand (Lancaster, 2017). ‘Elites’ are ‘used to being in charge,’ ‘used to having others defer to them’ and ‘used to being asked what they think and having what they think matter in other people’s lives’ (Ostrander, 1995: 143). In these accounts, interviews are structured by participants’ ability to micromanage and direct the encounter, making it difficult for researchers to steer the conversation to the topics in question and to glean valuable ‘data’. In my research I found that although some professionals presented polished and well-rehearsed statements (which are nevertheless valuable in themselves, as I discuss in Part 3) for others the interview provided a space to grapple with complex political and moral dilemmas. Practitioners’ accounts were often marked by more complex efforts to justify, rationalise and legitimise the decisions and actions that they and their organisations had taken in 2011, suggesting a much more ambiguous and flexible power dynamic in the encounter between researcher and participant, and showing that ideas about ‘elites’ need to considered with nuance and care.

It is important to note that my encounters with criminal justice professionals were varied and each engendered its own dynamic. Though I had prepared a list of questions and each of the interviews covered these same broad areas, the content of the discussions and
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their tone were in practice shaped by respondents’ own interests and priorities, but also their own position within the system, their ability to prepare for the interview, the nature of their participation and their perception of me and my interests. First, my interviewees, though all established professionals, were by no means of equal standing in terms of their seniority, status or influence. Leonard and David were leading figures in the magistrates’ courts, Martin was a senior civil servant, and Amar, Kofi and Jason all senior CPS lawyers. While solicitor Roger was head of a long-established law firm, the other defence lawyers I interviewed had in 2011 been newly qualified. There are also considerable discrepancies in financial security and prestige between professions within the criminal justice system: while Leonard’s judicial role earned a three-figure salary (Ministry of Justice, 2019), with defence lawyers Sadie and Tanya I had extended conversations about the disastrous decimation of legal aid and lack of funding for criminal defence work and the inequality of arms between defence and prosecution lawyers, and Adam, Claire and Ashley were working for poorly funded and overstretched community and youth offending services within local authorities.

These differences were in some ways reflected in my subjective experiences of interviews. In some interviews, particularly those with prosecutors and sentencers, I sometimes felt starkly aware of the objective discrepancies between myself and my interviewees in terms of professional status, seniority and knowledge, most clearly, but also of gender, age and social class. As a PhD researcher in my early thirties, I was younger than most of my research participants, and with no legal background or training, had relatively little expertise in some of the issues we were discussing. With prosecutors and sentencers it was not unusual for participants to draw attention to their own professional achievements and credentials, citing their long years of experience, their close working relationships with the most senior politicians and figures in the criminal justice system, their responsibilities and their large teams, and accolades and praise they had received for their work in 2011 and more broadly. I never experienced this as a direct means of interviewees asserting their authority or superiority, but certainly felt, at times, what Ostrander (1995: 19) describes as ‘a simultaneous sense of being put in one’s place by elites at the same time that they are being warm, friendly, open and communicative.’ Going back to the interview transcripts to locate these moments where I recalled feeling patronised or spoken down to, the text did not always match my memory of the interaction – the words spoken were perfectly reasonable, but as Neal and McLaughlin (2009) note, the emotional tone or feel of an interview encounter is not always captured by the transcript. With other
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interviewees like defence lawyers and those in local authorities, there seemed to be more of a sense of a shared critical perspective, and our interviews tended to feel much more like conversations between two individuals with different, but in some ways complementary, perspectives on the issues at hand. Claire, Ashley and Adam each mentioned their own experiences as social science students, showed a seemingly genuine interest in my research and often expressed analytical and political perspectives similar to my own.

My relatively junior status and rather ambiguous outsider position undoubtedly worked to my advantage in some ways. In introducing myself at the outset of the interview, I often pointed out that although I was interested in the criminal justice response to the riots, I was a sociologist and might need some explanation of the legal or organisational detail. This allowed me to ask somewhat obvious questions and elicit articulations of basic principles and logics. To draw an example from my interview with district judge Leonard, my outsider status allowed me to ask about the logic of sentencing:

Chloe: One of the things that you mentioned that I as a sociologist am really interested in is the kind of, the different kind of purposes of sentencing, as you mentioned. I don’t know, that must be a challenge. There’s a tension there I suppose.

Leonard: There is. Yeah. It’s a well-recognised tension. The law… sets out the purposes of sentencing. But it doesn’t give precedence to any one [purpose]. So on any given day, a judge or a bench of magistrates is having to say, ‘well, you know, do we go for punishment here, or do we go for rehabilitation?’

The balance of punishment and rehabilitation is a basic feature of sentencing that, had I been a law student, I would have presumably looked rather foolish for raising in such an ill-informed way. Like Ostrander (1995: 19) I found that by directly positioning myself as a curious outsider, rather than a critical peer, senior male professionals, in particular, were happy to assume the role of educator, providing valuable insight into the assumptions and structuring narratives of criminal justice work that might otherwise be difficult to capture.

In some ways, the power dynamics in my research interactions seemed to be shaped less by participants’ professional seniority than by the circumstances in which the research had been arranged, and participants’ perception of my own role. Those I had contacted directly and those who were retired often seemed more open and more reflective in our discussions than those who I had been put in touch with via gatekeepers, who regardless
of my assurance of anonymity\textsuperscript{13} may have felt more cautious as representatives of their organisation or profession. Participants also engaged differently in the interviews depending on the extent to which they had prepared for it. Before each interview I had provided participants with an information sheet (see page 234) introducing myself and the project and setting out the overall aims of the project. While some had gathered documentation and reviewed their own notes from 2011 (retired judge Leonard, for example, who I introduce in Chapter 7, brought to our meeting a large folder of archived material labelled \textit{RIOTS} and seemed to have prepared comprehensive and well-considered responses to the issues I was interested in), others clearly had far less opportunity to prepare (Claire, for example, who I introduce in Chapter 5, began our conversation asking ‘is this something about the riots?’). Power dynamics were also renegotiated and shifted over the course of an interview. My meeting with defence solicitor Tanya was one of the more difficult interviews of the research but illustrates the fluidity of the research dynamic. It had taken us several months to arrange the interview, earlier attempts having been scuppered by her crowded work schedule. Tanya began the discussion by saying she did not think she would be able to help me much, having been a newly qualified solicitor in 2011. My pre-planned questions seemed to fall rather flat – Tanya was reserved and seemed to give only brief, factual answers, in stark contrast to my interviews with more senior figures who had freely monologued at length without interruption. She was clearly distracted by her phone; and I felt uncomfortable taking an hour of her time that she seemed reluctant or unable to spare. As I asked my final question, about whether the criminal justice system would respond in the same way to future disturbances, Tanya reiterated some of her concerns about the courts’ reaction in 2011, and seemed pessimistic that anything significant had improved since then, but then turned the question back to me, which took me by surprise:

\textsuperscript{13} All the names I use for research participants are pseudonyms, and individual identifying information has been removed or changed. This decision is partly to protect participants’ confidentiality and perhaps enable them to speak more freely. Some participants – particularly those in high-profile public positions – were happy to be named, but given the critical nature of the analysis I felt that anonymising all interviewees would in some ways protect both myself and them (I discuss this in Chapter 8).
Tanya: So I don’t know what the answer is. I’m sure the reaction [next time] will be identical, or worse. *(Laughing)* I’m sure there must be a better way. What do you think?

Chloe: *(Long sigh)* I think, realistically, I think yes, it would be more or less the same… You know, I think quite a big part of it is that the government set the agenda very quickly, saying you know, ‘this is just a law and order issue, and we’re not going to take it seriously’. You know, not thinking of it as a political act at all.

I was suddenly confronted with the choice between trying to remain the impartial interviewer, or revealing my own opinions. Exposing my own view took my conversation with Tanya in a different direction, creating a new sense of openness and mutual understanding and a more fluid discussion.

Though I had largely tried to avoid explicitly stating my own views on the subject at hand – partly to avoid jeopardising access to individuals and organisations – all of the interviews are inevitably shaped by participants’ perceptions of me, my interests and my politics. An ‘inter/view’, Portelli reminds us, ‘is an exchange between *two* subjects: literally a mutual sighting. One party cannot really see the other unless the other can see him or her in turn’ *(1991: 31)*. It is in fact impossible to present oneself to participants as a neutral or objective researcher: if you withhold or conceal your own perspective, the interviewee will nevertheless build their own assumptions, shaping their responses in ways you cannot control or account for. Other interviewees, though they had not usually directly asked me what I thought, will have made their own judgments about my stance and agenda. In this way researchers ‘cannot ever really know what is going on in any given research encounter and therefore how the knowledge we take from it is being produced’ *(Valentine, 2002: 125–126)*.

Even with the most experienced professionals, whose roles undoubtedly gave them very tangible authority and status and who had thoroughly prepared for the encounter, the interviews revealed a complex dynamic that is not captured by ideas about ‘elite interviewing’. Regardless of seniority or status, it is too simplistic to assume that ‘the power and authority available to “elites” in their professional life will translate directly onto the interviewer–interviewee relationship’ *(Smith, 2006: 647)*. Rather, the interview interaction seemed to provide a space where practitioners, whatever their professional standing, were called to account for themselves; to justify and legitimise their actions and their institutions in ways that require a different set of analytical concepts. Indeed, I was often surprised by the level of openness, self-reflection, and uncertainty that practitioners
showed in our interviews. Interviews seemed to provide space for the kinds of questioning and reflection that practitioners often did not have opportunity to engage in day-to-day. Discussing the power of the courts handing out prison sentences to rioters, defence solicitor Roger – who, as I discuss in Chapter 5, was highly experienced, confident and self-assured – seemed to grapple with his own contradictory ideas about deterrence, working through them as we spoke:

I’m not a great believer – in fact I’m not a believer at all – in deterrence. I think it’s nonsense. But actually that may be – I test myself – one of the occasions when deterrence does [work]. But I think perhaps in a riot situation, in the immediate process where you don’t want it to start up again, I think probably, talking against myself, I think probably deterrence does have a purpose, when you just need to get a message across: ‘We’ve got to stop this’.

Roger’s self-questioning reminds us that regardless of a participant’s professional status, authority or public standing, the research interview can prove a situation where professional legitimacy, and ‘elite’ status itself, can be contested, destabilised and unsettled (Neal and Mclaughlin, 2009). Interviewees may feel exposed or vulnerable discussing public criticism of their organisations, intimidated by researchers who they perceive to be better informed regarding the particular topic in question, or ‘because your questioning may reveal their inadequacies’ (Empson, 2018: 17–18). Interviews with PhD candidates are unlikely to pose significant risk to professionals’ reputations, especially given the firm grip organisations retain over the research process; yet however low the stakes, the power relation in a research interview is peculiar in that the participant, whoever they are, has agreed to be accountable to the researcher (Dick, 2005). It is precisely this dynamic that provides a rich opportunity to examine how professionals seek to present themselves, their work and their organisation to a potentially critical outsider; and as such, to trace the modes of legitimation that underpin criminal justice work. This makes interviews an ideal tool for exploring the mechanisms and narratives that practitioners draw on to make sense of and justify their work in relation to the riots – but it also necessitates a set of concepts that capture this complexity. In the following section I introduce some key analytical concepts that I develop to make sense of the interviews in sociological terms.
Part 3. Analysing interviews: Legitimation, dirty work and denial in riot talk

In this section I describe my approach to analysing my interview data, based on a framework of critical discourse analysis, and the key concepts I used in this process. I approach the interviews as spaces in which practitioners account for themselves and their work, paying particular attention to the processes of legitimation, neutralisation and denial that practitioners engage in to construct narratives of the criminal justice response to the riots as necessary, appropriate and just. Attending to riot talk in these terms, I argue, allows us to trace the vital role of ignorance in legitimating the criminal justice system and its punitive practices.

Critical discourse analysis (CDA) offers a framework for analysing and explaining the relationships between ‘discourse’ (in this case, primarily practitioners’ interviews but also media and political texts) and its social, cultural and political context (Fairclough, 2013; Richardson, 2006; Wodak and Meyer, 2016). It aims to investigate, understand and explain the larger cultural and symbolic context within which discourse emerges; the structural frames that shape its flow of meaning; and, crucially, how discourse figures in the establishment, reproduction and change of unequal power relations. Though the interviews provided a great deal of important insight about how the various organisations had decided on and coordinated their response to the riots, and the historical and organisational context against which these decisions were made; my process of analysis has been primarily concerned with identifying and exploring the key discursive and narrative resources that help practitioners to account for, legitimise or problematise the criminal justice system’s response to the riots, and the ideological and political implications of these claims, reflecting the methodological stance I set out in Chapter 2.

Rather than an isolated and bounded stage of the project, analysing the data was an iterative process that developed through the course of the research, and involved each phase of the project from planning the interview questions, conducting and transcribing the interviews and coding the transcripts, to planning, drafting and editing the empirical chapters of the thesis. Prior to the interviews, I prepared interview guides that anticipated key themes and topics of interest. Immediately after each interview, I made notes of the key themes of the discussion, breaking this down into two key categories: information about the processes, policy and practices involved in the criminal justice response, and the kinds of assumptions, claims and narratives that practitioners drew on to make sense
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of this response. This process continued while transcribing the interviews. As well as transcribing what was said (noting significant pauses, sighs, laughter, emphasis and tone of voice where this seemed important in shaping the meaning or mood of what was said), I made brief notes to mark interesting or surprising points to investigate further, seemingly recurrent themes, as well as notes to myself on interviewing strategies, questions that had worked well or fallen flat to amend for subsequent interviews. I coded the transcripts using NVivo, creating themes or ‘nodes’ reflecting the broad areas of interest I had identified in the planning stages of the project, and those that emerged from the interviews.\(^\text{14}\)

Very early in the research, it became clear that my interest in practitioners’ ways of justifying the criminal justice response was a rich seam of inquiry that needed further attention and more detailed conceptualisation. Before carrying out the interviews, I knew I was interested in the process of legitimatation (as discussed in Chapter 2) but had underestimated the nuance my analysis would require. I assumed that certain practitioners – prosecutors and sentencers, perhaps – would vociferously and unreflexively defend and rationalise the courts’ response, while defence lawyers would provide a far more critical appraisal of this reaction. I was somewhat surprised at the more complex positions practitioners expressed: the first defence lawyers I interviewed did not convey especially negative views on the how the criminal justice system had treated their defendants, beyond questioning the validity of blatantly disproportionate approaches to sentencing, and even the more analytical accounts from other defence lawyers, probation and youth offending practitioners positioned the criminal justice response to the riots as somewhat necessary, inevitable and unproblematic. As I point out above, my interviews with

\(^{14}\) I initially set up five nodes: ‘Causes of riots’, ‘Who were the rioters’, ‘Logic of punishment’, ‘Justification of CJ (criminal justice) reaction’ and ‘Critique of CJ (criminal justice) reaction’. The first two nodes capture my interest in exploring how practitioners talked about the nature of the disturbances themselves, and those who took part in them. The third node reflected my interest in the underlying assumptions and claims about the aims of criminal justice that might rationalise or help to make sense of the peculiarly punitive criminal justice response to the riots. Lastly, the fourth and fifth nodes reflected my curiosity about the extent to which practitioners would express praise or criticism for this response, either justifying or criticising their own and their organisations’ responses to the riots. This process of coding evolved as I conducted and analysed more interviews, adding more refined and detailed nodes to reflect new themes as they emerged.
professionals across the board were marked by reflection and questioning about the appropriateness and effectiveness of the criminal justice response to the riots. Practitioners often anticipated or acknowledged the concerns that had been raised about the courts’ treatment of rioters but, crucially, found ways of – partially, at least – resolving these dilemmas, diffusing the tension that such acknowledgement implied, and effectively deflecting the criticism that they came under. To make sociological sense of this, my analysis has centred on a series of concepts which I briefly introduce here.

**Riot talk as legitimation**

I have discussed how I approach my conversations with criminal justice practitioners as glimpses into how they justified their work in 2011 within a setting where, to differing extents, they may have felt the need to reassert their own credibility and legitimacy, and how these accounts connect to media and political discourses. As well as exploring how practitioners constructed stories about the riots and the rioters that allowed them to frame their own work in 2011 as necessary and reasonable, and analysing how they drew on shared cultural imaginaries to do so, it is important to consider the ideological and political work that these stories do. Practitioners’ claims about the nature of crime, of responsibility, and of the public are shaped by and reflective of the political and ideological moment in which they emerge; but these claims themselves are not only symptomatic of this moment. Rather, as I set out in Chapter 2, they are important in maintaining and sustaining these relations, procuring public consent (or rather reinforcing a presumption of public consent) and acquiescence for the way things are. My methodology, then, expands the focus of my analysis beyond the research interaction itself, instead bringing into view the broader social and political relations within which it is situated, and – crucially – on which practitioners’ accounts act. My analysis has focused on tracing the narratives and discourses that allow practitioners to legitimate the criminal justice response to the riots, and the criminal justice system broadly.

Legitimacy is a crucial concept in academic understandings of criminal justice (Bottoms and Tankebe, 2013, 2017; Sparks and Bottoms, 1995). While social scientists have paid a great deal of attention to the extent to which criminal justice institutions, policies and practices possess legitimacy as a characteristic, or succeed in securing popular legitimacy; they have focused less on the activity of legitimation, the process by which individuals and organisations stake claims to legitimacy (Barker, 2001). Reflecting on Weber’s famous
Barker (2001: 14) argues that what characterises the state ‘is not the possession of legitimacy’ as an abstract or measurable quality, ‘but the activity of legitimation’; a process of self-authorisation and self-justification by which those in positions of power assure themselves of their own legitimacy and right to rule. The 2011 riots seemed to represent a moment of profound crisis of legitimacy and authority for the criminal justice system. Most obviously, this crisis was read through the police force’s failure to maintain control of the streets, calls for more law and order, and the courts’ draconian practices as a way to reassert the state’s authority and ability to maintain order (Barker, 2011; Gilson, 2011); but the courts’ highly unusual and starkly disproportionate approach to remand and sentencing was also seen as a threat to the legitimacy of the criminal justice system as fair, proportionate and independent (Gilson, 2011; Roberts and Hough, 2013). While other researchers have been concerned with whether the criminal justice response to the riots was legitimate, and on whose terms, my interviews allow me to explore the processes by which those within the system seek to justify it in the context of the research interview. My analysis of the interviews traces how practitioners navigated various critiques (sometimes assumed or implied) of their organisations’ responses to the riots, and constructed accounts that positioned themselves, their organisations and their work as morally sound. Taking legitimation as ‘an active, contested political process’ (Barker, 2001: 28) rather than an abstract resource, I examine the various ways – often involving considerable creativity – that practitioners navigate and negotiate the complex moral and ethical issues inherent in their work in the criminal justice system, and in particular, the discursive mechanisms that allow them to justify and rationalise the morally troubling aspects of their roles: the courts’ overwhelming targeting of marginalised communities and the violence of punishment.

I put this approach to legitimation in dialogue with approaches to ‘dirty work’ (Hughes, 1962; Ashforth and Kreiner, 1999, 2014) to think through how my participants construct and maintain positive imaginations of their professional identities. Drawing on Sykes and Matza’s (1957) classic work on ‘techniques of neutralisation’, this theory provides a useful framework for analysing how workers deal with threats to their individual and institutional identities posed by the ‘taint’ of work that is physically, socially or morally ‘dirty’, and the discursive mechanisms they engage in to avoid themselves becoming

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15 Weber defines the state as ‘the human community which (successfully) claims the monopoly of legitimate coercion’ (Weber, 1948, cited in Barker, 2001: 2).
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stigmatised, ‘stained’ or marked by the work (Ashforth and Kreiner, 1999). Though researchers using these concepts to analyse discourses of crime and justice have most often been used to explain how ‘offenders’ justify and make sense of their criminal acts (e.g. Ugelvik, 2012), others have usefully applied these ideas to study how those in positions of relative power – such as those in the finance sector (Mackenzie Davey et al., 2014; Simpson, 2017) or in immigration and other detention systems (Johnston and Kilty, 2016; Ugelvik, 2016) – make sense of morally and politically problematic work.\(^{16}\)

While research on criminal justice work as dirty work has usually focused on the socially tainting effects of practitioners’ association with ‘criminals’ and criminal acts (e.g. McIntyre, 1987 on defence lawyers; Tracy and Scott, 2007 on prison officers; Malvini Redden and Scarduzio, 2018 on judges), my interviews explore how practitioners negotiate and negate the morally tainting aspects of riots work. My analysis has approached practitioners’ work in the wake of the riots as a kind of ‘dirty work’ – or, as work that holds the possibility of being seen as dirty by some in the context of the interview\(^ {17}\) – that requires practitioners to undertake work to manage this risk and maintain meanings of morality and legitimacy in relation to their work while navigating and negating the ‘taint’ of bearing responsibility for a disproportionate, ineffective or unjust response to the riots.

\(^{16}\) These strategies might involve normalisation (rendering the work acceptable and ordinary); reframing the meaning of dirty work (infusing it with positive value); recalibrating (adjusting the standards used to assess the work and minimising the dirty component); and refocusing through the shifting of attention to the non-stigmatised features of the job (Ashforth and Kreiner, 1999, 2014; Kreiner et al., 2006). Through such strategies people construct, negotiate, and maintain the meaning of their work and its implications for their own sense of self (Simpson and Simpson, 2018). Scholarship on criminal justice work as emotional labour also addressed some of these questions (Barry, 2020; see e.g. Burke et al., 2020; Humblet, 2020; Lennie et al., 2020; Mastracci and Adams, 2020; Tidmarsh, 2020; Westaby, Fowler and Phillips, 2020; Westaby, Fowler, Phillips, et al., 2020).

\(^{17}\) As Penny Dick (2005) argues in her research on how police officers deal with the moral ambiguity of the use of coercive force in their work, whether or not work is seen as dirty – either by the workers or by others – is complex and highly situated. The kinds of ‘identity work’ that professionals will need to engage in to protect against the threat of ‘taint’ posed by their work is largely dependent upon the social situations in which they are called to account for themselves and their work.
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I have focused on identifying the claims that practitioners made about the riots, the rioters, the public and the criminal justice system that allowed them to position their responses to the unrest as reasonable, proportionate and morally sound. In line with the framework of critical discourse analysis I situate practitioners’ accounts in a wider cultural and ideological context within which they gain coherence, currency, credibility and legibility several years after the riots; and ask how these imaginations serve to underpin the broader practices of the criminal justice system. In this way my approach to analysis allows me to map out what I have described as a cultural political economy of punishment.

Following others’ approaches to CDA, my analysis of practitioners’ accounts illuminates ‘what has been left unsaid,’ ‘what has been taken for granted, that which is hiding in plain sight but is ignored or neglected, and the implicit subtext behind what is said’ (Green, 2008: 110). I draw particularly on Cohen’s (2001) work on denial and the many ways that people and organisations, deal with ‘information that is too disturbing, threatening or anomalous to be fully absorbed or openly acknowledged’ and so is ‘repressed, disavowed, pushed aside or reinterpreted’, or the information itself ‘registered’ but its implications ‘evaded, neutralised or rationalised away’ (Cohen, 2001: 1). I identify the ‘strategies’ that practitioners employ – not only deliberate attempts to manage information, but also implicit or even completely unconscious strategies – to manage ‘uncomfortable knowledge’ (Rayner, 2016: 113). These include straightforward denial (refusing to acknowledge or engage with information), and more subtle moves like acknowledging the existence of information but dismissing it as erroneous or irrelevant, diverting attention away from it, and displacing focus onto another topic.

In doing so my analysis makes a particular contribution to understandings of the vital role of ignorance, in various forms, to processes of legitimation. What was striking about practitioners’ accounts of the riots and their aftermath was not only what they claimed or emphasised; but what was left out, forgotten, denied, avoided or glossed over. For practitioners to construct their responses to the riots – and their work more widely – as effective, necessary and appropriate, effectively requires them to ignore, forget or avoid certain knowledge about the riots and their context, the ‘rioters’, the public and the prison system. Taking an agnotological approach I pay close attention to these absences and silences, considering how doubt, uncertainty and ambiguity worked to legitimise and naturalise certain imaginations of the riots and the criminal justice system’s response to them.
Conclusions

In this chapter I have set out my approach to addressing my research questions, discussed my experiences of conducting the research, and considered its implications for our understanding of research methods and ethics. Interviews with professionals who were involved in designing and delivering the criminal justice response to the disturbances, in particular, offer a valuable tool for tracing the cultural and ideological underpinnings of the response, but also allow us to consider the significance of the disturbances in the years since 2011. The decision to direct my attention ‘upwards’ towards the criminal justice system is also rooted in an ethical commitment to look critically at the sites and practices of state power, which often remain invisible in studies of ‘crime’. However, conducting critical research on the criminal justice system poses significant challenges. Organisations like the judiciary and the CPS closely control researchers’ access and their resulting work, making it difficult to hold them to account, and, I argue, necessitating a more nuanced approach to research ethics.

However, my experiences of interviewing professionals reveal a much more unclear set of power relations that trouble simplistic accounts that presuppose that structural power inequities will be directly reflected in research encounters. The interviews provided a space where practitioners, far from simply asserting their structural dominance or enforcing hegemonic narratives, grappled with politically and morally troubling aspects of their work that required complex processes of dismissal, omission and disavowal. The relations of power, control and authority in research with professionals, whatever their structural and systemic privileges, can be profoundly uncertain and unclear (Neal and Mclaughlin, 2009). In light of this, we might more usefully think of power within the interview encounter as ‘an ambiguous, fluid, multi-directional dynamic, which can flow unevenly across and between different positions in the research relationship’ (Neal and Mclaughlin, 2009: 695; see also Smith, 2006).

By revealing how practitioners negotiate and neutralise the problematic and uncomfortable aspects of the punitive response to the disturbances, my interviews offer a view on to the processes of legitimation that underpin and sustain the criminal justice system. In particular, my experience of discussing the unrest with criminal justice professionals shows how ignorance is integral in structuring legitimation, requiring analytical concepts that capture the vital importance of agnotology in understanding the cultural political economy of punishment.
In the following chapters I move on to set out the main arguments from my analysis, discussing what my interviews revealed about the shared imaginations of crime, criminals, society and justice that practitioners articulated in discussing their work in response to the disturbances. The following chapter, the first of these empirically grounded discussions, focuses on the narratives that professionals drew on to make claims about what the ‘riots’ were, and what they meant, and ask how these can help us make sense of the punitive reaction to the disturbances.
Chapter 4

Remembering and forgetting the riots: Amnesia and dismissal in prosecutors’ accounts of 2011

It was almost like a breakdown of law and order. The society was in meltdown. The authorities had to step in and put in place some really harsh measures to make sure that the whole thing didn’t collapse.

Kofi, Senior District Crown Prosecutor, London

Introduction

In the previous chapter I made a case for using interviews with criminal justice practitioners as a way to investigate the cultural, political and ideological moment in which the disturbances and the state’s response to them emerged. In this chapter I turn to these interviews, examining how practitioners constructed accounts of the riots that variously rationalised and problematised the punitive criminal justice response, and explore the ideological implications of differing memories of the events of August 2011. I draw on my interviews with lawyers from the Crown Prosecution Service, who had been responsible, in different ways, for coordinating and delivering the organisation’s extraordinarily punitive response to the riots, both in the immediate midst of the unrest, and in the years that followed. Prosecutors’ riot talk, and their stories about the nature of the disturbances, were vitally important in allowing them to justify and legitimise the CPS’s unusually harsh reaction to the riots. Taking an agnotological approach, I show how denial, dismissal and amnesia were central to prosecutors’ accounts of their work as reasonable, proportionate, necessary and adequate.

The chapter is structured in three parts. First, I examine the collective memory of the riots that emerged in prosecutors’ accounts, showing how prosecutors articulated an imagination of the disturbances as a moment of extraordinary violence that posed a grave danger to the city, the country, and to society itself. This shared definition of the unrest as a unique and unprecedented threat to law and order was vitally important in
prosecutors’ arguments that the disorder necessitated and legitimated an equally exceptional prosecutorial reaction.

In Part 2 of the chapter I argue that the coherence of this shared memory of the disturbances relies heavily upon forms of amnesia and denial. I show how this characterisation of the disturbances as entirely without precedent ignores and obscures England’s recent history of unrest; and how prosecutors variously forgot, distorted or dismissed Mark Duggan’s killing at the hands of the Metropolitan Police. By ignoring or avoiding Duggan’s death, prosecutors were able to deny the political aspect of the riots, instead positioning them as a law and order issue necessitating a swift and severe prosecutorial reaction. By eliding this vital historical and political context, prosecutors effectively foreclosed critique of the criminal justice response to the disturbances and the need for structural, rather than penal, remedies.

In Part 3 I show how foregrounding Duggan’s death and acknowledging the historical continuities that the disturbances were embedded in licensed very different readings of the criminal justice response to them, allowing more critical practitioners to position the punitive response to the riots – and the CPS’s actions, in particular – as problematic and counterproductive, or even as a stark moment of state violence reproducing the very inequalities that had led to the unrest.

I conclude the chapter by considering how the harsh prosecutorial response has shaped the enduring collective imagination of the ‘riots’ in the years since 2011. Meanings around the disturbances, I argue, were not fixed in 2011; but rather have continued to settle and shift in the intervening years, with certain narratives being lost along the way while others have become reaffirmed by retelling. I argue that the criminal justice response has shaped the afterlife of the disturbances in which they are remembered primarily as an extraordinary outburst of meaningless criminality.

**Part 1. ‘Society was in meltdown, the authorities had to step in’**

In this part of the chapter I demonstrate how the disturbances were recalled in my interviews with prosecutors in 2018, examining some strands of the shared memory that ran through prosecutors’ accounts.

My interview with the senior prosecutor I call Kofi highlighted some of the more unusual and controversial aspects of the CPS’s response to the ‘riots’. I met Kofi in October 2018
at the Ministry of Justice building in Petty France, in the heart of Westminster, which houses the national headquarters of the CPS and their London operations. This was the fourth time I had made the journey to the CPS offices: in the months before meeting Kofi, I’d come to the same office to interview two other prosecutors, Amar and Jason, and also to meet Martin, a civil servant in the Ministry of Justice, housed on the other side of the building. Arriving each time, I was confronted by a hulking, turreted, fourteen-floor brutalist edifice which seemed an apt home for the government departments dealing with punishment in the most direct way.18

Kofi had qualified as a lawyer in Ghana in the 1980s and moved to the UK shortly afterwards, joining the CPS as an administrator and working his way up through the ranks. When the disturbances began in Tottenham in August 2011, he was part of a team of senior lawyers convened by Alison Saunders, who was then Chief Crown Prosecutor for London, to coordinate the CPS’s response.

Kofi: She immediately convened a, if you like, a CPS COBRA19 response team – CPS London COBRA response team, I should say… And we had regular meetings; we met every afternoon to assess what was going on, what our response would be… and literally briefings from Alison who obviously was in touch with the Attorney General’s office, and the Director at the time, who would’ve been Keir Starmer, who in turn were feeding into the government’s response at Number 10, or Whitehall. So that’s how the set-up was.

In the first days of the disturbances, the CPS’s immediate task was to ensure prosecutors were available to cover the large volume of cases appearing before the magistrates’ courts; including the all-night court sessions at Highbury Corner, Westminster and Camberwell magistrates’ courts. Kofi explained that the first prosecutions of riot-related offences happened very quickly, ‘while the fires were effectively raging. People just stepped up and

18 As Carl Cattermole brilliantly puts it in his book Prison: A Survival Guide, for those drawn into the criminal justice system the Ministry of Justice building looks ‘like a malevolent concrete brutalist spaceship that has come to abduct your friends’ (Cattermole, 2019: 37).
19 COBR or COBRA is the acronym for Cabinet Office Briefing Rooms, a series of rooms located in the Cabinet Office in 70 Whitehall and is shorthand for the Civil Contingencies Committee that is convened to handle matters of national emergency or major disruption (The Institute for Government, 2020).
Remembering and forgetting ‘the riots’

got on with it.’ Trying to recall exactly what had happened seven years earlier as we spoke, Kofi searched his laptop for emails from that time.

I’m just looking at an email from myself to the team on the 9th of August 2011 here… (reading from screen) ‘By way of a further update, police have called this Operation Withern. Highbury Corner will be running additional courts from five to nine p.m. tonight, and potentially for the rest of the week’… I think that was the first thing that we heard. And then I think they realised that with the numbers, they had to really step up the game, really, and that’s when they introduced the night courts.

In the face of these extended and extraordinary court hours, as Kofi explained, his staff had ‘just stepped up. I mean, it was amazing.’ Although they had struggled to recruit enough prosecutors to cover the cases being dealt with on the first night, before staff had had the chance to make arrangements for childcare, by the second night ‘it was fine.’ I asked Kofi how prosecutors’ work practices during the riots had differed from their usual ways of working:

Chloe: Other than being there through the night, obviously, and the volume [of cases], was there anything about the process that had to be kind of changed to adapt to the circumstances?

Kofi: Yeah, so obviously the papers [from the police] were, literally, the barest minimum. In a normal case we would be asking for a lot more… But obviously we couldn’t afford to be precious at that time, so really the barest minimum was acceptable to process these cases, in the hope that some of them would plead [guilty] because they were caught bang to rights and therefore there was no need for a file build.

Kofi and his, colleagues, then, were prosecuting cases with only ‘the barest minimum’ of evidence, ‘in the hope that people would plead guilty’ so that further evidence would not be required for cases to go to trial, suggesting a significant departure from their usual ways of working. Prosecutors’ work is guided by the Code for Crown Prosecutors which sets out a two-step process for deciding whether to prosecute a case: an evidential test (requiring the police to have sufficient evidence to provide a realistic prospect of conviction) and a public interest test (Crown Prosecution Service, 2018b). The CPS effectively deviated from their usual policy and practices regarding both of these standards. As Kofi suggests here, the usual requirements for evidence were substantially
lowered, leading to the prosecution of cases that may ordinarily have been dropped or returned to the police for further evidence. Equally striking was the CPS’s approach to the public interest test for riots cases. Kofi explained that ‘Obviously, in terms of public interest, it would almost always be in the public interest to proceed’ with riot-related cases:

Whereas before you would be thinking, this was an isolated incident, he has no previous convictions, it’s at the lower end of the scale – you know, we had a kicking in of a shop window, he’s offering to repay the shopkeeper, we think we can deal with this by way of a caution or out of court disposal – that wouldn’t be happening around that time. So even if that same person then committed that offence during or after the riots, it would’ve been dealt with [differently] – you know, we’re gonna prosecute you.

This was reflected in CPS policy: in August 2011 the CPS issued legal guidance for prosecutors, stating: ‘[t]he serious overall impact of the disorder in August 2011 has been such that prosecution will be in the public interest in all but the most exceptional of circumstances’ (Crown Prosecution Service, 2011). Effectively overriding the usual public interest test was, like the lowering of the evidential standard, a significant deviation from usual policy and practice. Cases were pursued that in ordinary circumstances are likely to have been dropped or diverted from the criminal justice system. This was especially significant for those cases involving minor offences, children and young people, and those with no previous criminal record (Lightowlers and Quirk, 2015). At the same time, legal scholars have suggested, the CPS were choosing more serious charges that

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20 Police providing incomplete files to the CPS for decisions about charge were advised to explain that the on-going nature of the disorder and the strain on police resources meant that enquiries could not be completed within the time limits, and to recommend that charging decisions should be based not on the usual evidential test but on the lower standard of the ‘threshold test’, requiring the prosecutor only to have ‘reasonable suspicion that the suspect has committed the offence and reasonable grounds for believing that further evidence will become available within a reasonable period (Lightowlers and Quirk, 2015: 70).

21 The speed at which the guidance was issued drew criticism, since it suggested that ‘a substantial policy decision had been made at speed and without consultation’ (Lightowlers and Quirk, 2015: 70). It is worth noting however that aspects of the public interest test are, even in ordinary circumstances, somewhat underdetermined and open to interpretation: for example the importance of ‘the impact on the community’ of offending means that the context in which an offence occurs, as well as the offence itself and the circumstances in which it was committed, are taken into account in assessing public interest.
carried considerably longer sentences – for example, categorising offences that would normally be treated as theft, carrying a maximum custodial sentence of seven years, as burglary, which can receive up to 10 years in prison – significantly raising the stakes for defendants (Lightowlers and Quirk, 2015). Despite this central role in the harshly punitive response to the disturbances, there has been little research into the culture and practices of the CPS, either in relation to these events or more generally (Lightowlers and Quirk, 2015; Sosa, 2012).

For Kofi and the other prosecutors who I met, as I will show, the CPS’s approach to the disturbances was recalled as largely unproblematic, inevitable, and impressive. My analysis in this chapter identifies the particular narratives and definitions of ‘the riots’ that allowed them to position such a response as necessary, appropriate, and even worthy of celebration. I argue that techniques of denial, silencing and, most importantly, forgetting were integral in these accounts. It is only by erasing or ignoring vital aspects of the unrest that prosecutors were able to maintain an unproblematically positive sense of their work in the wake of the riots.

As I set out in Chapter 2, my research was not primarily concerned with trying to establish the causes of the disturbances; nevertheless, interviews offered valuable insight into how practitioners navigated and negotiated competing definitions and explanations, helping us to trace how they legitimised their organisations’ responses to the unrest. Interviews often began with practitioners setting out a kind of opening statement that outlined their role in responding to the disturbances. Beyond simply recounting what they and their organisations did in 2011, these accounts consistently provided a series of rationalisations and justifications for these actions. These initial narratives of the disturbances were often important in setting the parameters for the rest of the interview, providing a kind of working definition that helped to situate and support practitioners’ subsequent claims about the criminal justice system’s reaction. Central to these justifications were claims about what the disturbances were, and what they meant. For the prosecutors I interviewed, recalling the unrest as a moment of extraordinary and uncontrollable violence that posed a serious threat to society was vital in setting the scene for the controversial prosecutorial reaction to the disturbances. In prosecutors’ account the ‘riots’ were figured as an unforeseeable and ultimately meaningless outburst of criminality; to borrow Benyon’s (1987b: 167) phrasing, an exceptional threat to law and order requiring an exceptional response.
Remembering and forgetting ‘the riots’

Amar, who had been a Senior District Crown Prosecutor in London in 2011 and was now a Deputy Chief Crown Prosecutor, and who I had met a few weeks prior to interviewing Kofi, recalled the disturbances as a frightening time:

It felt like a breakdown in law and order. So people were getting quite terrified… if you were living near Croydon, people could see smoke coming, billowing from an old carpet factory, that warehouse that had been there for hundreds of years or something. So it’s quite a scary experience for people. And then watching groups of generally young men, and others (laughing), you know, helping themselves to, smashing and vandalising shops. So it was quite, a very scary experience.

Fear and terror loomed large in Amar’s account. Not only was the unrest ‘a scary experience for people’, for Amar it was defined by the groups of youths ‘smashing and vandalising shops’; by ‘five-handed robberies, and violent disorders and people just, you know, smash and grab and helping themselves to anything that moved.’ In Amar’s telling of the events, this ‘smashing and grabbing’ not only represented a frightening ‘breakdown in law and order’, but crucially precluded any interpretation of the riots as politically motivated:

You know, one has to sort of say, we may understand people being unhappy about unemployment and all sorts of things, but helping yourselves to the latest 42-inch television (laughing) did seem a little bit unusual.

Amar may have been sympathetic to ‘people being unhappy about unemployment and all sorts of things’, but the prominence of looting in Amar’s narrative of the disturbances rendered irrelevant these broader structural factors. This narrow focus on acquisitive crimes – people ‘helping themselves’ to high-value consumer goods – seemed to foreclose any understanding of the disturbances as anything but a meaningless outburst of criminality. In 2011 the looted widescreen television, in particular, was a recurring icon in the frenzied media and political rush to denounce the riots (Nisco, 2016), seeming to act as shorthand for a much bigger set of claims about the primacy of materialism, opportunism and greed in the disturbances. It became a screen of another sort, obscuring political or structural explanations for the disturbances, and providing seemingly self-evident and irrefutable proof that the events could be explained as individual acts of criminality. Framing the riots as a frightening but ultimately meaningless outburst of ‘offending’ efficiently strips the events of political significance, relegating them strictly to
the realm of individual responsibility and morality, and framing the criminal justice response as neutral and rational (El-Enany, 2014).

Prosecutors’ definitions of the disturbances resonated with the meanings that dominated media and political discourse in 2011. Recurring representations of the disturbances as lawlessness, anarchy and as mindless mob rule (see Figure 2, Figure 3, Figure 4 below) created an imagination of the ‘riots’ as pure chaos that could not possibly carry any important information about the social or economic conditions from which they arose (Kelsey, 2015).

Figure 2: The Independent, 8th August 2011
Figure 3: Evening Standard, 9th August 2011
Figure 4: The Sun, 9th August 2011
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This also echoed political narratives that sought to swiftly close down explanations of the disturbances as a response to structural or systemic political failings, instead narrowly framing them as ‘criminality, pure and simple’ in David Cameron’s (2011a) well-rehearsed phrasing. Home Secretary Theresa May, too, made clear that ‘the only cause of a crime is a criminal’, and that ‘everybody, no matter what their background or circumstances, has the freedom to choose between right and wrong’ and that ‘[t]hose who make the wrong decision, who engage in criminality, must be identified, arrested and punished’ (May, 2011). This denial of politics crossed party lines, emerging from Labour politicians’ accounts: Sadiq Khan, then MP for Tooting, echoed the same point, writing that the disturbances were ‘not a genuine outlet of political angst, nor a reaction to police conduct’, but ‘simply criminality on a devastating scale’ (Khan, 2011).

Like Amar, prosecutor Kofi had also begun our conversation by recalling the fear that he thought the public had felt during the disturbances:

I think it was a really scary time for everybody. I remember, I live in South London, near Clapham, and I remember the night that the shops there were the target of the disorder.
And I could actually hear sirens from where I live, going up and down the road, which was pretty scary. Like, oh my God, this is spreading.

As Kofi reiterated later in our interview, ‘It was kind of scary. You know, you just thought, there’s mayhem breaking out everywhere’:

And it wasn’t just isolated, so it wasn’t just, I don’t know, Notting Hill, or Croydon. It was Croydon, Notting Hill, Tottenham. So you’re thinking ‘Oh my God, where’s this gonna end? (Laughing) Is it gonna end?!’

It was this sense of ‘mayhem’ and the disorder spreading uncontrollably that seemed to underpin the dread that Kofi recalled. Kofi recounted asking himself ‘Is it gonna end?’, evoking a fear of the unrest being completely beyond prediction or control. For Kofi, like for Amar, the disturbances represented an extraordinary breakdown of law and order requiring an exceptional response:

It was almost like a breakdown of law and order. The society was in meltdown. The authorities had to step in and put in place some really harsh measures to make sure that the whole thing didn’t collapse.
Framing the riots as a moment where ‘society was in meltdown’ was a crucial means of justifying and legitimising the CPS’s unusually harsh approach to prosecuting riot-related offences. For Kofi the unrest required and necessitated ‘some really harsh measures’ to prevent a complete ‘breakdown of law and order’. The disturbances were not just a threat to retail and commercial properties, to particular neighbourhoods; or even to the city, but a threat to society itself. In the face of such a danger, Kofi says, the authorities had to step in, not only to protect local businesses and residents but to safeguard society.

By framing the disturbances as an unforeseen, unpredictable, and ultimately meaningless tide of violence that posed a serious risk to the country, CPS lawyers were able to claim a moral responsibility to restore law and order. This identification of prosecutors as guardians of public safety was key to prosecutors’ accounts. As Kofi explained,

As a matter of public policy I think that it’s important that (sighing) the primary (pause) objective or function of a state is to ensure the safety of its citizens… So in order to do that, some measures needed to be taken… If it’s a riot case, [prosecution] almost always will be in the public interest at that time, because obviously the public need to feel safe, and the state needs to deter that sort of behaviour.

For Kofi, then, a vital means of claiming legitimacy for the CPS’s response was to frame it as a crucial means of ensuring public safety – safety which, in his account, had been gravely endangered by the disorder. The legitimacy of the state’s supreme authority over citizens is predicated on its claim to protect and regulate people’s ‘most vital interests’ (Green, 1990; cited in Bottoms and Tankebe, 2017: 47); that is, to ensure their safety and security. Against the Hobbesian images of the disturbances as frightening disorder, chaos, mayhem and lawlessness, Kofi positions the CPS as centrally concerned with protecting the public. By framing the unrest as meaningless criminality, the ‘measures that needed to be taken’, in this account, were clear: rather than any broader consideration of the social causes of the disturbances, prosecuting as many cases as possible, as quickly as possible, to secure convictions that would bring the unrest to an end by ‘sending a message’ to those rioting, or considering joining in.

In this way, the definition of the ‘riots’ was an important mechanism for justifying the CPS’s adoption of unusually harsh prosecution practices, allowing Kofi to frame the prosecution of all cases, regardless of whether they met the usual criteria, as a matter of public interest, and as a vital means of protecting the citizenry as a whole (itself a contentious notion that I discuss in Chapter 6). As Bauman (2000b) notes, when crime is
framed as a threat to society, acting to apprehend and ultimately exclude those posing a danger can be positioned as ‘an act of good sense and justice’ (Bauman, 2000b: 25). While the CPS’s approach to prosecuting riot-related offences courted controversy (Bawdon and Bowcott, 2012), framing the disturbances as a danger to society allowed prosecutors to effectively neutralise this potential ‘taint’, instead positioning their work as benevolent; as ‘an act of human care and charity, a profoundly moral duty’ pursued in the interests of the public, allowing prosecutors to see themselves as ‘sensible and righteous, as becomes the defenders of law and order’ (Bauman, 2000b: 25 emphasis added).

In the subsequent sections of the chapter I examine the forms of denial and amnesia inherent in this account. I show how prosecutors’ stripped-back accounts of the disturbances elided and obscured the crucial historical and political context that problematises this simplistic narrative of crime and justice.

**Part 2. ‘We don’t have much of a history of that’: Forgetting the historical and political context of the disturbances**

Framing the unrest as apolitical and completely unprecedented was crucial in legitimising the harsh prosecutorial reaction, but this narrative necessitates a sort of amnesia and blinkered or selective knowledge. First I show how prosecutors’ claims that the disturbances were unprecedented ignored or minimised the clear parallels in England’s recent history – most notably, the widespread urban unrest of the 1980s. When prosecutors did acknowledge these historical precedents, it was in highly selective terms that allowed them to frame 2011 as comparatively apolitical. Second, I show how these framings of 2011 as meaningless and lacking any legitimate political motivation relied upon forgetting the more immediate context for the disturbances, Mark Duggan’s killing. As well as legitimising a severe criminal justice response, stripping the 2011 riots of their political and historical context, instead focusing solely on their rareness and exceptionality, obscures the clear continuities of racialised state violence that run through England’s riotous history.

Prosecutor Amar had worked alongside Kofi and other senior CPS staff to plan the organisation’s response to the disturbances in London. Amar recalled convening a meeting to coordinate CPS lawyers to cover magistrates’ courts, where all the people
arrested for riot-related offences were initially being dealt with. His memory of some of the detail was, unsurprisingly, slightly hazy after several years:

You must forgive me, the day seems to have escaped my mind but I remember the details of it. Whether it was a Thursday or a Friday, I forget… But the main thing is that it was about four or five in the afternoon and all was going wrong in London (laughing). So there were riots in Tottenham and Croydon and a whole host of other places. So our job was simply to assist the court to see whether, if the police were arresting people, would there be prosecutors available? So that was our main job. And we worked with HMCTS,22 the courts service, and I arranged rotas to dispatch prosecutors off to various courts.

Amar was quick to point out that this process had happened very rapidly:

People were being arrested and they were being charged and prosecuted very, very quickly. So, but I think you have to view that, and look at it in the sort of context of what happened at the time. And in this country’s history it’s quite rare.

Amar seemed to acknowledge or at least anticipate criticism of the speed at which people were charged and prosecuted, but was quick to point out that this needed to be seen ‘in the context of what happened at the time’, and specifically in relation to the unusual nature of the events: ‘in this country’s history it’s quite rare’. Later in the interview Amar explicitly addressed the critical attention that the punitive response to the disturbances had received:

I can’t remember whether it was academics, but there was a lot of critical journalism after the event, after they’d finished, saying, look, you know, [the] criminal justice system had just shut down, and it was like everybody was just being locked up etcetera. Well yes, it probably did feel like that. But then I think they were very unique circumstances… It was quite extraordinary at the time.

For Amar and others, the notion of the riots being unique and extraordinary was a crucial factor in justifying the criminal justice system’s deviation from normal policy and practice and its punitive treatment of rioters. David, who had been a magistrate in 2011, similarly told me that the riots were:

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22 HM Courts and Tribunals Service
a very, very unusual set of circumstances, and something that the English justice system had never had to tackle, in modern history.

Framing the 2011 disturbances as unique – or even anomalous and atypical – obscures vitally important historical context that reframes our reading of the unrest and the response to it. Though the 2011 disturbances were certainly unusual, and in some senses unique – in terms of their geographical spread and the speed at which unrest occurred in different locations across the country – seeing 2011 as entirely unprecedented requires a significant amount of amnesia. As I set out in Chapter 2, England has a long history of unrest, with events of the 1980s providing the clearest precedents and parallels. These episodes of unrest were precipitated by a context of a Conservative government, high unemployment, especially among young people, and increasing tensions with the police, with the spark very often provided by the assault or killing of a black resident at the hands of the police. Tottenham in particular is ‘an area uniquely saturated with histories of conflict between the community and the police’ (Gilroy, 2013). Perhaps ‘the most surprising thing’ about the disturbances, then, was ‘the surprise that greeted them; as if we had not seen their like before’ (Jefferson, 2012). As I will go on to discuss in the next part of the chapter, the Metropolitan Police’s killing of Mark Duggan’s on Ferry Lane draws attention to the historical continuities that played out in the 2011 riots. Yet for many professionals, this history was either denied – signalling a powerful ‘historical amnesia’ (Benyon, 1987b: 167), a ‘cycle of perpetual forgetfulness’ (Hall, 1987: 50) so that every new episode of urban unrest is met with shock and bewilderment, as if nothing like it had ever happened before – or its relevance is swiftly dismissed, as I show below. This was a powerful means of legitimising the exceptional response.

‘It wasn’t based on the deprivation or the racism which Toxteth and Brixton were’

When prosecutors recalled the disturbances of the 1980s, they drew a clear distinction between the two periods, effectively disarticulating 2011 from its historical context and obscuring the lines of racialised and classed state violence that run through this past.

Having pointed out that rioting is ‘quite rare’ in English history, Amar did briefly acknowledge the unrest of the 1980s:

I mean we’ve had, you know, Brixton riots and whatnot. You may be younger than I am, certainly (laughing) but most people don’t really remember that. And I was probably at school still when the Brixton riots happened, and it’s just a vague memory of people
being unhappy, and disturbances being caused etcetera. But we don’t really have much of a history of that.

For Amar, in his middle age, the Brixton riots were ‘just a vague memory of people being unhappy’, rendered obsolete or irrelevant by their temporal distance from the present. Moreover, Amar suggested, these events weren’t meaningfully comparable to 2011:

Well, when did we have riots? Maybe back in ‘81 or something, and probably something in Tottenham. But they weren’t really – they were violent disorders. We’ve had loads of violent disorders. Football’s a good example, isn’t it, from the game, to the fights and all the rest of it. So we’ve had quite a lot of that. But that’s about the only sort of comparators one would have.

In this telling, the widespread urban unrest of the 1980s has more in common with football hooliganism than with 2011, despite all of the parallels in the context and the precipitating events. While reluctantly acknowledging the historical precedents, then, Amar dismissed their significance, denying the connections that give the 2011 disturbances a very different set of meanings from those he attributed to them – an exceptional outburst of meaningless offending.

Similar strategies of dismissal emerged in my conversations with other professionals. As Roger, a criminal defence solicitor, told me, the unrest in 2011 ‘wasn’t based on the deprivation or the racism’ that riots in the ‘80s had been:

Brixton and Toxteth in the 1980s were deeply deprived areas with real problems. And I mean, the Scarman report was, you know, a real eye-opener to people. Whereas I don’t think this set of riots was the same issue at all. I mean, certainly in deprived areas the kids thought ‘Gosh, this is exciting’, but it wasn’t based on the deprivation or the racism which I think both Toxteth and Brixton probably were.

Though Roger acknowledged that some of the unrest in 2011 had taken place in ‘deprived areas’ and recognised the context of austerity and cuts to local services, he was clear that 2011 was different. In particular, it was the perceived prevalence of acquisitive crime that marked the 2011 disturbances as senseless: ‘The looting was silly. It was just silly. And the fires were serious, but the looting was just nonsense’. For Roger, a generation older than Amar, the riots of the 1980s were not just a vague memory of unhappiness but were in fact imbued with meaning as reactions against profound social inequalities. But far from highlighting the historical parallels between the two periods of unrest, Roger drew
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a bold dividing line between them. He positioned the 2011 riots as decisively not about poverty or racism, but solely about ‘excitement’, entirely stripping the unrest of political, social or economic meaning. Such representations of the riots as motivated by nothing more than greed, destruction or fun ‘provide a concerted concealment’ (Hirsh and Swanson, 2020: 222), actively obscuring and rendering invisible the structural and systemic context from which they emerge, and normalising the punitive reaction.

As Gilroy (2013) pointed out, the idea that ‘thirty years earlier there had really been things to complain about, while nowadays, things were not so bad as to justify the rioters’ “mindless violence”’ became a curiously common refrain in media and political commentary in 2011. The narrative that the riots of the 1980s, unlike these ones, were a response to genuine structural problems permeated even the most deeply conservative commentaries in 2011. The Daily Mail, for example, made a clear-cut distinction between the two periods:

To blame [the riots on] the cuts is immoral and cynical. This is criminality – pure and simple – by yobs who have nothing but contempt for decent, law-abiding people. No, regardless of the propaganda being pumped out by the Left-wing establishment, this is not a repeat of the political riots that scarred the early 1980s, which were sparked by mass unemployment and alleged police racism.

(Daily Mail Comment, 2011)

The Mail positions the 80s unrest as political – ‘sparked by mass unemployment’ and police racism (or, at least, alleged racism) – while 2011 is decisively defined as a matter of criminality ‘pure and simple’. Political responses echoed this logic; contending that while the earlier riots were rooted in racism, as Scarman showed, what happened in Tottenham was mindless, copycat violence. The Parliamentary Home Affairs Committee observed that while there could have ‘been an element of disengagement’ among some of those involved in the riots, nonetheless, ‘unlike some events in the past, including the riots in the 1980s, there does not seem to be any clear narrative, nor a clear element of protest or clear political objectives’ (Home Affairs Committee, 2011: 31).23

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23 In contrast, the Scarman report – though far from radical and highly problematic in its focus on ‘cultural’ problems (Barker and Beezer, 1983; Gilroy, 2002) – nevertheless set the scene for this enduring cultural memory of the 1981 Brixton disturbances. Scarman’s acknowledgement of economic, social and political inequalities, and in particular the need for changes to racist policing
These claims embodied a kind of perverse nostalgia, harking back to a golden age of unrest where riots meant something; when they clearly and incontrovertibly signalled profound social inequalities. Of course, like all nostalgia, this narrative appeals to a putative past that is largely imagined. Prosecutors’ accounts pointed to a widespread consensus that emerged in 2011, acknowledging the 1980s disturbances as rational responses to legitimate grievances. Yet this is dramatically different from the meanings that were ascribed to the events at the time. ‘After every outbreak of rioting in the UK, the government responds in exactly the same way’, argue Stott et al. (2019): ‘Previous riots, they say, may have had social and political causes – deprivation, inequality, racism – but this time, these riots are an exception’. Past disturbances are held up as legitimate, as a politically pure and morally authentic example against which to define these riots as illegitimate and immoral, effectively ‘mobilising the past to justify an authoritarian clampdown in the present’ (Sim, 2009: 79). Even the 1981 disturbances ‘were not as neat to categorise and interpret as they look in hindsight’ (Smith, 2013). Unrest in the 1980s was routinely perceived as ‘entirely unexpected and unprecedented in recent British experience’ (Benyon, 1987b: 166), and far from universally recognising the riots as a legitimate reaction against structural violence, media and government rhetoric in 1981 and ‘85 was dominated by discourses of a pathological black culture that framed the unrest as aberrant, irrational and entirely unjustifiable (Benyon and Solomos, 1987b; Burgess, 1985; Gilroy, 2013; Keith, 1993; Murdock, 1984). The 1980s riots, then, were imbued with political legitimacy and credibility only in retrospect, providing an ideal of authenticity against which contemporary riots could be compared, measured and found to fall short.

This selective acknowledgement of history was clear, too, in my conversation with Martin, a senior civil servant who had led the prison service’s response to the riots. Comparing 2011 to the 1985 Broadwater Farm riots, Martin recalled the earlier disturbances as decisively more political:

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practices arguably shaped a shared understanding (at least in the longer term) of the riots as the actions of ‘a normal community with a legitimate grievance’ (Lea, 2011) which took the form of a rational, if not acceptable, outburst of anger and resentment.
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They were a response to stop and search and stuff like that, and police intimidation, as were the Brixton riots and that sort of stuff. These [2011 riots] weren’t a response to that… If I remember rightly, they came out of a single incident, didn’t they?

Rather than being a reaction against systemic patterns in police practices, Martin said, the 2011 disturbances were set off by ‘a single incident’. I reminded Martin that it was the killing of Mark Duggan that had precipitated the unrest. After a brief moment of confusion, he recalled Duggan’s death:

Martin: That’s it, that’s right, the Tottenham stuff. I couldn’t- I was thinking of De Menezes for a while there. I was thinking, ‘that’s not the right one’.

Chloe: No, that was a few years before. So yeah, Mark Duggan’s death and then

Martin: That’s right. So that was it, and that then created the spark. But it wasn’t sort of brewing in Tottenham as far as I can tell, in the same way as Broadwater Farm, or Brixton, or Toxteth or any of that was brewing for quite some time.

In this way Martin positioned Duggan’s killing as an isolated and anomalous incident, entirely unrelated to the racialised police practices that caused the 1980s disturbances. While he recognised Duggan’s death as a ‘spark’ for the riots, he pulled it firmly out of its political context, in contrast to earlier riots that had been a response to long-standing tensions. This framing obscures the significance of Duggan’s death; ignores the politics behind it, and the clear lines that run through England’s recent history of urban unrest.

‘I can’t really remember what triggered it’: erasing Mark Duggan’s killing

Defining the 2011 disturbances as qualitatively different from the 1980s ‘riots’, as unforeseeable and entirely apolitical criminality, provided a powerful means of normalising the harsh prosecutorial reaction against them. The clearest challenge to this imagination is that these disturbances, like so many others in England’s recent history,

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24 Jean Charles de Menezes was a 27-year-old Brazilian electrician who was shot dead by a Metropolitan Police officer after boarding a tube train at Stockwell Underground station on 22nd July 2005. In an apparent case of mistaken identity, he was taken to be a suspected terrorist who had attempted to bomb London the previous day, two weeks after the ‘7/7’ attacks that killed 52 people. De Menezes was shot seven times in the head and once in the shoulder at point-blank range. In 2008 an inquest jury recorded an open verdict after being barred by the coroner from returning a verdict of unlawful killing (Siddique, 2016).
were a direct reaction to the killing by the police of a person of colour in a relatively deprived and over policed neighbourhood. Mark Duggan’s killing, then, represented a sticking point in prosecutors’ justifications of the criminal justice response to the disturbances. I look here at how prosecutors navigated this obstacle; showing how the killing of Mark Duggan was variously erased, distorted, or neutralised, allowing professionals to maintain the claim that the prosecutorial response to the disturbances was appropriate and just.

A sense of amnesia about Duggan’s killing was common in my interviews with prosecutors, and others across the criminal justice system. Sometimes this was a question of where practitioners’ accounts began and ended, and what was left out. Often, practitioners’ ‘opening statements’, the narratives they presented at the outset of the interview began at a point in time where the disturbances were in full flow. Amar’s account simply made no mention of Mark Duggan at all; rather, his account started when ‘all was going wrong in London’, with ‘riots in Tottenham and Croydon and a whole host of other places’. As Scheppele (1989: 2096–2097) notes, ‘where to begin’ is a significant question; legal narratives are often tightly bounded and miss out vital context that would suggest different conclusions. By simply leaving out Duggan’s killing and cutting straight to the riots, Amar maintains a coherent narrative in which the CPS’s role was ‘simply to assist the courts’ in dealing with a dangerous and senseless outbreak of violence.

For senior prosecutor Kofi this vital – or, rather, lethal – context had, over the years, simply slipped out of his recollection of events.

Kofi: I have to really think about how it actually came about, because I can't really remember what triggered it. There was something in Tottenham, was it?

Chloe: Yeah, it was Mark Duggan, the police shooting.

Kofi: Mark Duggan’s police stop, that’s right. He was killed, wasn’t he? He was stopped because they suspected he was carrying a firearm, or something?

Chloe: That’s right.

Kofi: And that’s what was the trigger, yeah… It’s very, what word am I looking for, inauspicious. It’s just, you know, obviously a tragic event for those concerned, the shooting by officers of a person in the car. But, you know, you wouldn’t hear that and think ‘Oh my god, we’re gonna be in conflagration tomorrow, the whole country’s gonna be on fire’.

(Emphasis added)
Rather than eliding Duggan’s death entirely, Kofi’s framing might be read as a kind of interpretive denial (Cohen, 2001); not negating the fact that something happened, but imbuing it with an alternative meaning from what might seem apparent to others. Kofi frames Duggan’s death as a personal and private tragedy: ‘a tragic event for those concerned’ (presumably Duggan and his family, though maybe the police officers too) but essentially an unfortunate and anomalous event, and the disturbances as a disproportionate reaction that couldn’t possibly have been anticipated. Again this was consistent with the dominant political interpretation of Duggan’s death. On the 11th August 2011 David Cameron stated that though ‘initially there were some peaceful demonstrations following Mark Duggan’s death’ the killing ‘was then used as an excuse by opportunist thugs in gangs, first in Tottenham itself, then across London and then in other cities’ (Cameron, 2011d):

It is completely wrong to say there is any justifiable causal link. It is simply preposterous for anyone to suggest that people looting in Tottenham at the weekend, still less three days later Salford, were in any way doing so because of the death of Mark Duggan.

(Cameron, 2011d)

Kofi, like Cameron, decisively disarticulates the ‘trigger’ of the riots from what subsequently happened, denying any ‘justifiable causal link’, in Cameron’s words, and insisting the riots were essentially unrelated.

Unlike Kofi and Amar, Jason – a senior prosecutor who had been in charge of more serious Crown Court cases during and after the disturbances – did clearly recall Duggan’s death. He remembered the riots being linked to ‘a long-term issue’ involving:

a significant proportion of the society in general being really disenfranchised and disillusioned by (pause, intake of breath) society in general, which is why they were rioting.

You know, as a result of primarily, you know, the Mark Duggan case and others.

Initially, then, Jason pointed to Duggan’s killing as a cause of the disturbances, alongside a broader context of austerity and political disillusionment. Pointing out that ‘a significant proportion of the society’ were disillusioned by ‘the Mark Duggan case’ and others suggested an awareness of the systemic nature of the issues of police brutality in Duggan’s death. But he seemed to hesitate in his analysis when we returned to the topic later in the interview. Some, he said, ‘would have been triggered by concerns about certain
cases; others would have been triggered by their general view about politics, society in general:

It would be interesting to know, actually. I don’t think any real research has been done into actually what caused it. I mean it’s easy to say ‘it was triggered by’ – which initially it was triggered by the concerns over the Duggan case, from memory, I think that’s right…
But actually, were those people involved in it because of that? Who knows? I’d question whether that actually is right.

Jason somewhat backtracks here; casting doubt on whether people had really been motivated by Duggan’s killing. As I discussed in Chapter 2 (and in contrast to Jason’s notion that no ‘real research has been done into what caused it’) explanations for the disturbances have proliferated in the years since 2011, and pinning down any simple, singular explanation for the diverse and complex set of actions and events is difficult. In some ways, then, Jason’s reluctance to identify a definitive cause for the disturbances is understandable. But given the vast amount of academic research into the causes of the unrest that has been published in the years since 2011 (see Chapter 2), Jason’s seeming unawareness seems also to suggest a disconnect between academic research, and criminal justice policy and practice, perhaps reflecting another way in which criminal justice policy is produced through and imbricated with selective knowledge and ignorance (see e.g. Slater, 2008; Gregg, 2010; Hayden and Jenkins, 2014 on ‘policy-based’ or ‘decision-based evidence making’ in punitive social and penal policy). Besides his seeming lack of knowledge of the research, Jason’s agnostic attitude (‘Who knows?’) signals an unwillingness to accept the political salience of Duggan’s death without robust evidence and fits into the broader organisational narrative offered by his colleagues, framing the riots as a largely, if not entirely, criminal rather than political phenomenon.

Sentencers’ accounts similarly dismissed or minimised the significance of Duggan’s death in the unrest. Retired district judge Leonard told me that:

Although the riots appeared to start because of the shooting of the young man in Tottenham, that clearly wasn’t the grievance, if there was a grievance, from other parts of the country.

Though he acknowledged that Duggan’s killing had ‘appeared’ to play a role in the start of the riots, as least, it certainly couldn’t explain the spread of the unrest to other towns and cities, where there may, Leonard suggests, have been no real ‘grievance’ at all. Rather,
Leonard said, ‘There were other factors at play. It wasn’t our job to worry about what those factors were.’ Again, this points to a reasonable unwillingness to provide a universal explanation for diverse episodes of rioting across the country. But Leonard’s framing of Duggan’s death as a one-off, isolated event that could not possibly be connected to unrest in other locations, again obscures the systemic and structural violence that Duggan’s killing in some ways represented or revealed, and that the state’s response to the riots so completely failed to recognise, let alone address. Leonard’s insistence that the grievances that led to the disturbances were irrelevant or outside the scope of the judiciary’s concern (‘it wasn’t our job to worry about what those factors were’) also points to the ways that the bureaucratic architecture of the criminal justice system allows its constituent organisations to disavow moral responsibility for the cumulative impacts of the system of which they are a part (I discuss this in more detail in Chapter 7).

Like Leonard, David, who had been a magistrate in 2011, recognised that a police shooting had sparked the disturbances – but, like in many others’ accounts, Duggan’s name had been lost along the way:

David: I know this all started because some- the police shot and killed, and I can’t remember the man’s name, you’ll probably remember it.

Chloe: Mark Duggan.

David: That’s right, shot and killed him. And there’s all sorts of rumours around that. There’s allegations that apparently a police, one of the police’s mobile phones would appear to have had a bullet embedded in it. How true it is I don’t know.

That David had remembered that a bullet had become embedded in a police device, but not that the bullet had unambiguously been fired by a police officer – instead implying that Duggan had shot at the police – was telling of how the shape of events had solidified over the years that had passed between the riots and the point at which I was doing my research, in 2018. David’s recollection is perhaps not surprising when we consider how Duggan was represented by the media following his death. On the day of Duggan’s killing by police, the Telegraph for example reported ‘A policeman’s life was saved by his radio last night after gunman Mark Duggan opened fire on him’ (The Telegraph, 2011b), and an
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initial statement from the Independent Police Complaints Commission (IPCC) referred to a ‘shoot out’, though this was withdrawn within days.\textsuperscript{25}

\textsuperscript{25}Duggan had not fired any shots; the gun that he had allegedly been carrying was found in bushes about five metres from where he had been shot, but no witnesses described seeing him throw it. ‘Independent’ investigations into Duggan’s death were desperately disappointing, reflecting decades of similar conduct in cases of deaths at the hands of the police. Though Duggan’s family and community quickly raised grave concerns about the IPCC’s conduct (Scott, 2011), it wasn’t until January 2013 that the public inquest into Duggan’s death was announced. When the inquest was held in the autumn of that year, the police officers directly involved in the shooting maintained that Duggan had emerged from the cab holding a gun, concealed inside a sock, and that he had raised the gun as if to shoot, forcing the police officer ‘V53’ to fire in self-defence.

The inquest heard from only one civilian witness, who said that he was watching through the open window of a ninth-floor flat on the other side of the road, and who described what he saw as ‘an execution’ (Prodger, 2014). He said Mark Duggan was not holding a gun, but a mobile phone, and that having tried to flee, was ‘trapped’ and was holding his arms up as if to surrender when he was shot at close range. In January 2014 the jury concluded by a majority of eight to two that Mark Duggan had been lawfully killed by police. Despite deciding that Duggan was unarmed at the time he was shot (though all ten jurors agreed that there had been a gun in the taxi with Mark Duggan, eight of them were sure the gun was not in his hands when he was shot dead) they found that ‘V53’ ‘honestly believed’ that Duggan was armed and was about to shoot at the police (Prodger, 2014). Their explanation for the whereabouts of the gun was that Duggan must have thrown it from the taxi before it was surrounded, despite no witnesses giving evidence to support this idea (Prodger, 2014). The verdict was met with dismay and disbelief by Duggan’s family. They appealed the inquest verdict, arguing that the coroner should have directed the jury to consider whether the police officer’s ‘honest belief’ that Duggan was armed and about to shoot was reasonable, and that the coroner should have made clear that if the jury found Duggan to be unarmed they could not return a conclusion of lawful killing. Yet in October 2014 three High Court judges upheld the verdict. Meanwhile, the IPCC’s long-awaited report into Duggan’s killing was released in March 2015, more than three and a half years after he had died, and was deemed a ‘whitewash’ by many (Scott, 2015). The family were given permission to take the case to the Court of Appeal, which in March 2017 again upheld the verdict of lawful killing (Taylor, 2017).

In October 2019, Duggan’s family agreed a settlement with the Metropolitan Police, reaching ‘an agreed position without acceptance of liability on the part of the Metropolitan Police Service or its officers’ (\textit{BBC News}, 2019). The struggle to hold the police to account, however, has continued – most recently, with research group Forensic Architecture scrutinising the officially sanctioned version of events and finding it untenable (Dodd, 2019).
Duggan’s killing represented a kind of ‘uncomfortable knowledge’ (Rayner, 2016) that challenged the CPS’s narrative about the disturbances as a uniquely dangerous outburst of meaningless violence and criminality. Maintaining a coherent sense of their work as meaningful and moral required prosecutors to neutralise this potentially troublesome or problematic knowledge. For some, as I have shown, Duggan’s death was simply left out of their accounts, while for others it was neutralised by positioning it as an isolated incident, an individual tragedy unrelated to broader questions of police racism, and unconnected to the disturbances that followed it. This denial or dismissal of the significance of Duggan’s death is an important means of maintaining the widespread and ‘well-rehearsed disavowal that [the 2011 riots] had anything to do with racism’ (Back, 2014). While acknowledging the role of racism in causing the disturbances ‘would call for structural remedy’ (Allen and Taylor, 2012: 15), denying racism serves to absolve the state of responsibility to respond to the unrest in anything other than ‘law and order’ terms.

In the next section of the chapter I show how foregrounding Mark Duggan’s death licenses a very different reading of the disturbances, as a response to systemic inequalities that require structural remedies.

**Part 3. ‘We basically re-enacted Mark Duggan in a different format’: Resisting narrow framings of the unrest**

I have argued that shared understandings of the disturbances as absolutely unique and out-of-the-blue, and as meaningless, ignore and obscure the deep-rooted systemic and structural problems that would require another kind of response aside from the law and order backlash that we saw. I now turn to look at what happens to definitions of the riots if Mark Duggan’s death is not ignored or dismissed but centred. Drawing on interviews with professionals who, unlike the prosecutors and sentencers I have focused on so far, worked closely with people who had been involved in the disturbances, I show how they challenge and counter the definition of the riots as senseless criminality; instead seeing them as a response to a long history of police brutality towards marginalised communities. This imagination of the riots opens up very different ways of thinking about the criminal justice response to the riots; not as a benevolent restoration of public safety, but as an emblematic example of deeply racialised and classed processes of criminalisation and punishment.
I met Ashley at the offices of the North London local authority where he managed the youth offending service, working with children and young adults who had been brought into contact with the criminal justice system. In contrast to prosecutors, whose accounts often began by emphasising the terror of the riots, Ashley started our conversation by setting out the causes of the disturbances as he saw them.

Thinking back to 2011, I’m aware of the fact that the young people were quite disaffected around that time… They were also quite upset about some of the cuts which they had faced… The young people basically felt that no-one was listening to them. They couldn’t get the right type of job that they want, or some of them felt that there was no point in going to college, because actually they’re not going to get a decent job at the end of it. And those who were going to college had their grants slashed.

For Ashley, the riots needed to be understood within this context; the disturbances occurring a year into the Coalition government, with the austerity agenda having profound consequences for young people’s opportunities and prospects:

And I know obviously we had quite a large financial deficit, nationally, in [2011], but still. They’re taking from the poor. It’s really not the best way of dealing with those sorts of issues. It just moves the problem elsewhere… And I think that people who are intelligent enough to know what the social problems were within the country were able to see that these disturbances were a symptom of what certain groups of young people were feeling.

I got the sense that for Ashley the interview was a chance to tell a different story about 2011; to represent and advocate for the young people he worked with. This acknowledgement of austerity wasn’t entirely absent from CPS lawyers’ accounts – Jason, too, had mentioned the cuts – but Ashley put it in far more politicised terms. Ashley located the disturbances decisively as the result of a punitive government policy agenda that had ‘taken from the poor’, overwhelmingly impacting upon already marginalised communities. In contrast to prosecutors, who stripped the riots of any political meaning by isolating them from their political context, or carefully qualifying any suggested link between the riots and the austerity agenda, Ashley connected the unrest firmly to the broader political and social context.

Ashley also framed the disturbances clearly as the result of Mark Duggan’s death, and – crucially – situated Duggan’s death within wider patterns of discrimination and victimisation:
Those riots started with the incident with Mark Duggan, didn’t it?... I think it was a culmination of tension and people feeling disempowered, powerless and discriminated against. I think it was a combination of all those factors. ‘Cause there had been tensions between certain groups, BME young people, in particular, also some white young people who are from working-class backgrounds, or from lower- less affluent backgrounds. So tensions had been brewing for quite a while in a way. And I think with the stop and search policies, that made them feel more victimised, also, because they were much more likely to be stopped. And that’s what happened with Mark [Duggan] wasn’t it? (Emphasis added)

While civil servant Martin had claimed that the issues leading to the 2011 unrest had not been simmering ‘in the same way as Broadwater Farm, or Brixton, or Toxteth’, Ashley directly contradicted that, stating that tensions between the police and marginalised young people had been building over a number of years, and that these were at the heart of the disturbances. In contrast to Kofi, Jason and Martin, who understood Duggan’s death as an anomalous and isolated event that had nothing to do with the wider rioting it sparked; Ashley challenged this interpretive denial (Cohen, 2001), reframing Duggan’s death as inherently linked to broader patterns of starkly classed and racialised policing practices.

For Ashley, it was this context that needed to be addressed if future riots were to be avoided. It was the increasing social and economic inequalities between communities (not least the likely impact of the UK’s impending exit from the European Union on the poorest regions of the country, he pointed out) and the persistent problematic policing practices targeted at the most marginalised communities, that would lead to further unrest. Rather than pointing to prosecution and conviction as the best way to bring the disturbances to an end and prevent them from occurring in the future; Ashley argued that meaningful change in social, economic and political inequalities was needed. ‘Otherwise’, he said, ‘we’re just going to see a repeat of these issues that we saw in 2011’.

This understanding of the disturbances as a response to issues of unfair criminal justice practices was also taken up by Sadie, who I met at her office in a Law department at a central London university. Now an academic, in 2011 Sadie had been a newly qualified barrister, and had defended a number of people for riot-related charges at magistrates’ courts. Of the participants I interviewed, Sadie was perhaps the most sharply critical in her assessment of the state’s response to the unrest. Like Ashley, she saw the disturbances as a direct response to Mark Duggan’s killing, and positioned Duggan’s death not as an anomaly, but as part of a wider pattern of discriminatory policing practices. But Sadie’s
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analysis went further, by emphasising how the criminal justice reaction to the unrest was not only inadequate, but actively counterproductive, perpetuating the racialised violence that had led to the unrest:

In some ways it is ironic that if you take the Duggan example, part of what, or a significant part of what sparked the riots was a response to oppressive law and order practices which impact particular communities in disproportionate ways. And yet it seems to me that the outcome of the criminal justice system in relation to the riots was basically exactly the same thing: an oppressive law and order policy (laughing) which impacted on particular communities in disproportionate ways. So we basically re-enacted Mark Duggan in a different format, but with equal problems, or similar problems. Um, and nobody seems to think that’s a problem, so far as I can tell (laughing).

For Sadie the reaction of the criminal justice system to the riots was not an adequate or rational response to the unrest but a reflection of the same systemic problems – ‘oppressive law and order practices which impact particular communities in disproportionate ways’ – that had led to Duggan being killed.

In my interviews with prosecutors, Duggan’s killing had been ignored altogether, or his death stripped of history and context so that it became an individual tragedy that bore no meaningful relationship to the resulting disturbances. Prosecutors’ elision or dismissal of Duggan’s death allowed them to frame the riots as a senseless breakdown in law and order. In this telling, it was possible to position the state’s immediate reaction to the unrest – the rapid prosecution of a vast number of riot-related acts as serious criminal offences – as a proportionate and necessary means of restoring public safety and deterring potential rioters. In stark contrast, by putting Duggan’s death – and the ingrained inequalities of race and class that it highlighted – at the centre of their narrative of the riots, Ashley and Sadie problematise the criminal justice response to the riots, highlighting the inadequacy of a criminal response to an inherently social and political set of events. Sadie, moreover, points out that the harsh criminal justice response to the riots fed straight back into the problems that had led to the disturbances in the first place.

Commentators similarly noted that the state’s harsh approach to policing, prosecution and sentencing was likely to increase the likelihood of future unrest. By ‘reinforcing the adversarial relationship that the police already have with many people within the riot-torn communities… disproportionate sentences for apparently minor crimes, and politically inspired collective punishments of whole households could create incentives for future disorders’ (Gilson, 2011).
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troubling the narrative of law and order that seemed so self-evident in prosecutors’ accounts.

These more critical accounts serve to remind us that the meanings that settle around disturbances are subject to constant challenge and contestation, not only from outside the criminal justice system but also from within it; and that the meanings surrounding the response to the riots are not fixed or secure but rather requires an ongoing process of reproduction. For those like Ashley as a youth offending service manager and Sadie as a former defence barrister, these critical views posed ethical tensions and ambiguous feelings about their own roles within a system that they saw as profoundly unfair. While prosecutors neutralised the uncomfortable knowledge (Rayner, 2016) that Duggan’s killing represented, and maintained a presentation of their work as justified; for others their riots work retained a distinctly ‘dirty’ taint that could not be easily neutralised.

Conclusions

This chapter has examined the shared meanings and definitions of the ‘riots’ that emerged in my conversations with criminal justice professionals. Drawing on my conversations with prosecutors Kofi, Amar and Jason, I have drawn out the threads woven through their accounts of the disturbances that served to position the CPS’s extraordinarily harsh approach to the disturbances as legitimate, necessary, and proportionate. For prosecutors, defining the disturbances as a moment of unprecedented fear and disorder provided an effective means of deflecting criticisms that have been levelled against the CPS, and the criminal justice system more broadly. Kofi, Amar and Jason’s accounts of the unrest can be read as efforts to legitimise, justify or defend a set of prosecutorial policies and practices that were, by any measure, unusual, with an apparent uplift in the charges being chosen, and a significant diversion from the usual public interest test and level of evidence required.

Prosecutors told a story of the riots as disorder of the most fundamental kind: a frightening and chaotic breakdown of law and order, and a grave danger to public safety. In this way, prosecutors recalled a situation in which they were morally obliged to rapidly restore order and safeguard society. Swiftly prosecuting as many ‘rioters’ as possible was framed as a vital measure to protect the country. I have argued that the coherence of this powerfully legitimating imagination of the riots is contingent upon processes of amnesia,
denial and ignorance. Decontextualised, selective and circumscribed imaginations of ‘crime’, I contend, are an integral aspect of the cultural political economy in which the harsh criminal justice reaction to the disturbances was widely accepted as appropriate and fair.

My analysis demonstrates how prosecutorial narratives of the 2011 disturbances, like legal discourse more broadly, is predicated on the privileging of selective accounts and claims to objective truth, at the same time silencing, excluding, dismissing and discrediting the alternative narratives and stories which fall outside of its narrow purview (Schepple, 1989: 2079). Certain stories are ‘officially approved, accepted, transformed into fact’ while alternative or contradictory narratives that would lead to different conclusions and ‘other ways of seeing’ are written out entirely, dismissed or discredited (Schepple, 1989: 2079). The claim that the 2011 disturbances were entirely unprecedented played a crucial role in prosecutors’ justifications of the CPS’s response, allowing them to frame the ‘riots’ as exceptional events requiring an extraordinary reaction. In doing so, their accounts ignored and obscured England’s long history of urban unrest, signalling the continuation of a ‘cycle of perpetual forgetfulness’ (Hall, 1987: 50) that has characterised public responses to urban unrest over the past forty years, so that each outbreak of unrest is met with surprise and disbelief. I noted that this amnesia is intimately connected to a deep wistfulness for earlier disturbances: where prosecutors recalled past periods of unrest, they were cast in a golden glow of nostalgia, as understandable responses to genuine political grievances, providing an ideal against which the 2011 riots were compared and unfavorably contrasted (Stott et al., 2019).

Mark Duggan’s death represented a sticking point in the narrative of the disturbances as unprecedented, apolitical and meaningless; representing a stark reminder of the deep-rooted social, political and racial inequalities that have consistently given rise to unrest in the post-war period. Properly acknowledging the significance of Mark Duggan’s death would require a reckoning with the history and the ongoing issue of racism inherent in the very system within which practitioners work. I showed how prosecutors effectively navigated this challenge; either by excluding Duggan’s death altogether or by denying its relevance. As the very different accounts from youth offending manager Ashley and defence barrister Sadie showed, putting Duggan’s death front and centre enables a very different view of the prosecutorial reaction to the riots – as, at best, an irrelevant and woefully inadequate response that fails to address the manifold social inequalities
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underlying the events; or at worst, a brutally upscaled re-enactment of the discriminatory
criminal justice practices that led to Duggan’s death.

Such critical readings of the riots and the response, though, have remained relatively
marginal to public debate in the years since 2011. As Stuart Hall noted in the wake of
riots in the 1980s, the definitions of unrest that are rapidly established are hard to unsettle:

alternative explanations of a deeper and more searching kind may occasionally come to
the fore and raise matters for the agenda, but never with the urgency or vigour or
commitment or collective political will necessary to bring about fundamental change.

(Hall, 1987: 45)

Imaginations of the 2011 disturbances as meaningless violence, and the punitive backlash
as a proportionate and necessary response, meanwhile, have retained their ideological
currency, underpinning and legitimating a series of punitive policy agendas in the
aftermath of the riots (in the following chapter I discuss the Troubled Families and gangs
projects that the riots catalysed). The claims about the nature of the unrest that animated
prosecutors’ accounts were echoed by other practitioners, including sentencers, civil
servants and even some defence lawyers, and closely reflected the narratives that
dominated media, political and policy discourses in 2011. The circumscribed story of the
riots that flowed through my interviews with prosecutors, then, points to a widely shared
cultural imaginary of the disturbances; albeit one that is contested and opposed by critical
voices within and outside of the criminal justice system. That prosecutors designing and
delivering the state’s punitive response so closely reproduced these narratives signals that
the prevailing definitions of the disturbances that emerged in 2011 has not only cultural
but profoundly practical implications. The delimited definition of the unrest seemed to
furnish prosecutors with the terms of reference and vocabulary to pursue their
prosecutorial agenda, to effectively justify it and to deflect criticism; perpetuating
historical patterns whereby narrating and defining unrest, uprising and insurrections as
irrational and violent acts that must be crushed to restore order and enforce the rule of
law has provided a key means of legitimising racialised regimes of punishment throughout
the twentieth century and into the twenty-first (Camp, 2016: 17).

Prosecutors’ stories, told seven years after the riots, illustrate how decontextualised and
delimited imaginations of the disturbances have served to normalise and justify a violent
criminal justice response to the unrest; but interviewing practitioners at this moment in
time also offers a view onto how this response itself has played an important role in
shaping the meanings that have coalesced and settled around the events in the years since 2011. The dramatic reaction to the riots has not only been licensed and shaped by these definitions of the disturbances as ‘criminality pure and simple’ but has also inflected our understandings of the ‘riots’ themselves. The meanings that coalesce in the aftermath of riots are intimately connected to the state’s response to them (Hall et al., 2013 [1978]); and the imaginations of the unrest that permeated my conversations with prosecutors in 2018 are inherently entangled with the extraordinary criminal justice response, the spectacle of widespread arrests, rapid prosecutions, the night courts and the long sentences handed out. By treating the disturbances as an outburst of unprecedented and inexplicable criminality, the criminal justice system actively moulded the enduring cultural memory of 2011 which was so clear in my interviews. Moreover, the definitions that attached to the disturbances are not neutral but are mobilised to achieve or to underwrite political and ideological ends.

The forms of denial I have described worked to maintain an imagination of criminal justice work, and prosecution in particular, as neutral, just and necessary, pointing to the vital role of ignorance, amnesia, ‘misrepresentation, evasion’ and ‘structured blindnesses’ (Mills, 1997: 19) that are vital to legitimise and reproduce a criminal justice system that disproportionately targets racialised and marginalised communities. The shared memory of the disturbances in 2018 – and conversely, the amnesia about the unrest’s immediate causes, and its longer history – as an anomalous, unprecedented, unprovoked and senseless outburst of violence has provided a potent resource to legitimise the criminal justice system in the longer term; equipping professionals with a set of discourses that normalise its race- and class-based practices. The legitimacy of these practices, I have argued, depends upon erasing or refusing to recognise the material histories, social relations, and structural conditions that criminalise marginalised and racialised populations (Cacho, 2012: 9). In the next chapter I build on this analysis by exploring the ideological and political implications of shared imaginations of the people involved in the unrest.
Chapter 5

Surprising and typical ‘rioters’: Diversity, race and cultural constructions of criminality

We found a lot more people you wouldn’t normally expect, just joining in.

Jason, Senior District Crown Prosecutor, London

Introduction

The previous chapter explored how criminal justice professionals’ claims about the meaning (or meaninglessness) of the disturbances served to variously naturalise or problematise the harshly punitive law and order response to them. In this chapter I turn to examine the understandings of ‘the rioters’ that interviewees evoked. I show how imaginations of two contrasting figures – the surprising rioter and the typical rioter – personify and reinforce long-standing cultural connections between race, class, criminality and guilt. I argue that these shared understandings of the rioters work as important ideological conductors, normalising and legitimising a criminal justice response that disproportionately targeted marginalised and racialised communities.

In Chapter 4 I showed that prosecutors’ and sentencers’ accounts of the disturbances largely echoed the definitions that circulated in media and political discussions. In this chapter, however, I discuss how our conversations about the rioters revealed a very different set of imaginations. While I had expected practitioners to draw on the starkly classed, racialised and stigmatising stereotypes like the ‘chav’ and the ‘gang member’ that dominated popular debate in 2011, such crass figures were absent from our discussions. In contrast, practitioners were keen to emphasise the apparently unanticipated diversity of those who were involved; and in particular the presence of middle-class, educated and privileged young people. Yet far from subverting the racialised stereotypes that populated popular debate, the ideas about race, class and criminality that ran through practitioners’ descriptions of these ‘surprising’ rioters subtly placed responsibility for the unrest on racialised and working-class communities, implicitly justifying their punishment.
The chapter is organised in three parts. First I consider how the rioters were portrayed in the media, arguing that ‘race’ – though often communicated in coded and tacit ways – retained a powerful role in structuring common sense narratives about who was responsible for the disturbances. Though the cultural politics of race and class in 2011 largely precluded the kind of starkly explicit scapegoating of economically marginalised black communities that dominated discourses of urban unrest in the 1980s, political and media commentators conjured a series of classed and racialised figures that undertook the same semantic work.

In Part 2 I turn to my interviews with criminal justice practitioners. In stark contrast to political and media framings, I show how interviewees emphasised the diversity of the rioters in 2011 – and in particular, the involvement of middle-class, white people in the disturbances. But practitioners’ accounts of the heterogeneity of the rioters, far from subverting or overturning the long-established associations between race, class and criminality that dominated media and political discourse in 2011, in subtle ways reproduced them, implicitly shifting blame for the unrest onto the imagined ‘usual suspects.’

In Part 3 I discuss the challenges of resisting these racialised and classed discourses of criminality for professionals working within the criminal justice system. Even where practitioners had critical appreciations of the implications of racialised and classed discourses of criminality, I show how the political and policy context within which they work delimits the extent to which they are able to resist them, instead rendering individuals complicit in their perpetuation. I conclude the chapter by arguing that practitioners’ accounts of the rioters point to a broader context in which insidious ideas about race, class and criminality take different forms in different moments and in different discursive spheres, but remain remarkably durable, flexible and resilient.

Part 1. Race, class and criminality in popular representations of ‘the rioters’

Widely circulating media and political discourses about the rioters drew on and shored up long-standing cultural connections between race, class and crime. Mobilising ‘a battlefield of ideological constructions’ (Kelsey, 2015), these representations served as important cultural ballast for the punitive criminal justice response to the riots and its
disproportionate targeting of racialised and marginalised young people. Despite the widespread denial of racism as an explanation for the riots, as I discussed in Chapter 4, distinctly racialised and classed ideas about who the rioters were and why they were involved abounded in public debate in 2011. By framing the rioters in terms which are already associated with danger and disorder, I argue, these representations paved the way for a racialised and classed punitive reaction.

In some cases, the linking of the rioters and race was overt and unambiguous. Though even the most regressive and reactionary commentaries acknowledged that the rioters were not all – or even predominantly – people of colour, they framed the riots as a symptom of an uncontrollable and pathological black culture. Historian David Starkey’s infamous Newsnight appearance on 12th August 2011 was perhaps the most remarkable example of the linking of the rioters and black identity. Starkey claimed, in startingly melodramatic tones, that the riots fulfilled Enoch Powell’s ‘Rivers of Blood’ prophecy that immigration would result in violent conflict:

> His prophecy was absolutely right in one sense. The Tiber didn’t foam with blood, but flames lambent wrapped round Tottenham and wrapped round Clapham, but it wasn’t inter-communal violence, this is where he was completely wrong. What’s happened is that a substantial section of the chavs have become black. The whites have become black.


The riots, Starkey acknowledges, weren’t actually ‘inter-communal’ or ‘race riots’, and many of the ‘chavs’ rioting may have been white, but their actions were framed squarely in terms of their black culture:

> A particular sort of violent, destructive, nihilistic gangster culture has become the fashion and black and white, boy and girl operate in this language together. This language which is wholly false, which is a Jamaican patois that’s been intruded in England, and this is why so many of us have this sense of literally a foreign country.


Similarly, commentator David Goodhart (2011) blamed the riots squarely on an ‘African Caribbean culture’ that had influenced, or more precisely infected, British cities: a ‘culture of disaffection’ with a ‘black core’, a violent, ‘vicious’, ‘self-pitying’, ‘angry, destructive and self-limiting’ ‘inner city culture’ with ‘roots in the black American ghetto, subsequently crossing the Atlantic on the back of hip hop and rap culture’ (Goodhart,
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2011). Goodhart’s framing of a ‘culture of disaffection’ and Starkey’s impression of black culture as an ‘intrusion’, are stark examples of ‘what is now old “new racism”’ (Phoenix and Phoenix, 2012: 63), whereby immigration and multiculturalism are ‘regarded as having brought to Britain a population that destroyed the cultural homogeneity of the nation and… threatened to “swamp” the culture of “our own people”’ (Miles and Brown, 2003; cited in Phoenix and Phoenix, 2012: 63).27 By binarising black and white – with blackness positioned firmly as problematic and pathological – Starkey revives and ‘creates afresh an old racialised hierarchy of belonging’ (Miles and Brown, 2003; cited in Phoenix and Phoenix, 2012: 63) that endures in the twenty-first century. Commentators like Starkey are able to draw freely on these discourses of stigmatised and infectious ‘black culture’ with little or no need to appeal to empirical evidence; instead drawing on imaginations of black identity that are ‘easily evoked and recognised because they have sedimented into common sense’ (Phoenix and Phoenix, 2012: 63).

Explicitly racist accounts like Goodhart’s and Starkey’s – echoing the widespread references to problematic and pathological ‘black culture’ that had been common ‘explanations’ for disturbances in the 1980s (Barker and Beezer, 1983; Gilroy, 1982a; Solomos, 1988) – were rare in 2011. Partly this was because of the shifting terrain of what was politically ‘say-able’ (Back, 2014) around race: by and large, what we saw in representations of the rioters was instead ‘a form of racism that disavows that it is racism at all, that knows it cannot speak in openly racist terms’ (Back, 2014). While the language used to talk about the disturbances may have, on some levels, been ‘deracinated’ (Murji, 2017: 171) – overtly denying or ignoring the central role of race and racism in the riots – more subtle, ‘hidden racial narratives’ (Back and Solomos, 1995: 5) of criminality, disorder and danger were nevertheless effectively communicated.

Political and media discourses conjured a series of classed and racialised figures that encoded and communicated race without speaking it. Against Starkey’s wildly offensive remarks about ‘black culture’ his mobilisation of ideas about ‘gang culture’ (see page 122 for more discussion) and ‘chavs’ went relatively unnotic, but are equally potent in conveying messages about race. Starkey’s claim was not only that ‘the whites have become black, but more specifically that it was ‘chavs’ who had been tainted by black culture and

27 In Chapter 6 I will explore in more depth how the boundaries of the nation were redrawn in the wake of the riots, with rioters positioned as threatening outsiders and regressive notions of Britishness reinforced.
criminality. The ‘class disgust’ (Tyler, 2008: 25) inherent in Starkey’s reference to chavs is also intimately connected to issues of racial difference: ‘chav disgust is always racialising… chavs are not invisible normative whites, but rather hypervisible “filthy whites”’ (Tyler, 2008: 25). Along with discourses of ‘scum’ (arguably the favoured class pejorative in 2011 (Tyler, 2013b)) and ‘the underclass’, references to ‘chavs’ acted similarly as a ‘semantic battering ram’ (Tyler and Slater, 2018) marking ‘the rioters’ with racialised class stigma, highlighting how racialised imaginations of deviance, pollution and criminality underpin representations of the rioters, even where race is not explicit.

Images, as well as language, were mobilised to link the rioters to ‘black culture’, effectively conveying what could not freely be said in the current political context (Back, 2014). One photograph in particular, a photo loaded with racialised, classed and gendered meanings, dominated newspaper front pages on the worst days of the unrest in London (see below Figure 5, Figure 6, Figure 7 and Figure 8).

![Image 1](image1.png)

**Figure 5**: The i, 9th August 2011

![Image 2](image2.png)

**Figure 6**: Daily Mail, 9th August 2011
The photograph, evocatively described by Lamble (2013: 577) ‘depicts a lone male figure in the street, stepping brazenly in front of a burning car’:

Clothed in a gray tracksuit and black sneakers, with hood up and stance defiant, he embodies the demonized figure of the ‘hoodie’ that has come to symbolize dangerous and troubled youth in Britain. The black scarf that covers his face adds to his ominous persona; though his skin is not clearly visible, he evokes the aura of stigmatized blackness.

(Lamble, 2013: 577)

As Lamble argues, this image conveyed a message of racialised danger and threat without articulating or even showing blackness itself, symbolising profound and persistent associations between blackness, deviance and criminality, and providing ‘semiotic shorthand’ for a ‘particular set of classed meanings’ about who was rioting (Jensen, 2013). Representations of rioters drew on ‘hatreds that connect to the enduring legacy of racism’, ‘not marked linguistically in racial terms’, but ‘shown everywhere visually and symbolically through a cast of racialised and classed characters’: the ‘morally degenerate Chavs, the hooded strutting rioters pictured in front of burning cars, the out of control under-classes, the nihilistic “bad man” gangsters’ (Back, 2014). In this way, race was not directly spoken
but was displayed and communicated nonetheless, providing a powerful imagination of the rioters that served to rationalise and normalise over-representation of racialised and poor people criminalised in the wake of the disturbances.

Those brought before the courts for riot-related offences in the months following the disturbances were disproportionately likely to be from economically marginalised backgrounds. Thirty-five per cent of the adults appearing in court for riot-related offences were claiming out-of-work benefits, compared to 12 per cent of the working age population (Home Office, 2011); while 42 per cent of young people appearing before the courts were, or had been, in receipt of free school meals, compared to the 16 per cent average; and 64 per cent of those young people lived in one of the twenty most deprived areas in the country, while only three per cent lived in one of the twenty richest areas (Home Office, 2011). Data from the Ministry of Justice reveals stark inequalities along the lines of ‘race’, too, with disproportionate numbers of black people, in particular, arrested, charged, remanded to custody and receiving immediate custodial sentences (Ministry of Justice, 2012a). While people from black ethnic groups made up 3.3 per cent of the overall population in England and Wales in 2011, 39 per cent of those brought before the courts for riot-related offences identified as black (Ministry of Justice, 2012a). In stark contrast, white people make up 86 per cent of the population, but accounted for only 41 per cent of those appearing in court in the wake of the disturbances. Black people were disproportionately unlikely to be granted bail: among those cases that had not come to a final conclusion at court by September 2012, only 26 per cent of black defendants, compared to 31 per cent of white defendants, were granted unconditional bail (Ministry of Justice, 2012a). For those cases where defendants had been sentenced, 68 per cent of black defendants, compared to 64 per cent of white defendants, were given an immediate custodial sentence (Ministry of Justice, 2012a).

These disparities are largely reflective of wider patterns in the ordinary functioning of the criminal justice system in England and Wales (Ministry of Justice, 2012a), and attest to ‘a quantifiable reality of racial disparity’ in criminal justice (Williams and Clarke, 2018: 2).

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28 The Ministry of Justice statistics included are based on defendants’ self-defined ethnicity as recorded by the courts, based on five categories: White, Black, Asian, Mixed, Other and Not Stated (Ministry of Justice, 2012a).

29 Twelve per cent were from the mixed ethnic group, seven per cent the Asian ethnic group, and two per cent were from the Chinese or other ethnic group (Ministry of Justice, 2012a).
Black, mixed race, Asian and other people from ‘minority’ ethnic groups are eight times more likely than white people to be stopped and searched by the police, more likely to be arrested, charged, tried, found guilty in the Crown court and are at greater risk of receiving custodial sentences (Lammy, 2017; Williams and Clarke, 2018). While only 14 per cent of the general population are from a minority ethnic group, they make up a quarter of the prison population (Lammy, 2017); this disparity is especially stark for black people, who make up 12 per cent of adult prisoners, meaning that there is a greater disproportionality in the number of black people in prisons in England and Wales than in the United States (Lammy, 2017).

Like broader patterns of over-representation in the criminal justice system, the starkly disproportionate presence of racialised and working-class people drawn into the system following the riots was, in public discussion, often ‘(mis)read as criminological fact’ (Williams and Clarke, 2018: 2); interpreted as a straightforward reflection of differences in criminality along the lines of race and class. Rather than reading these figures as a depiction of the demographics of ‘the rioters’ or those who commit criminal offences more broadly, I maintain that they reveal less about ‘crime’ than about the cultural and political conjuncture within which the riots and the response to them emerged.

In the wake of the riots, popular representations of the rioters evoked racialised and classed images of criminality that licensed and legitimised the criminal justice system and its discriminatory practices. These representations of the rioters are an important element of the cultural political economy that helps us to make sense of the criminal justice backlash against the rioters. The excessively punitive responses to the unrest were made possible, as Lamble writes, ‘in part because they disproportionately targeted disenfranchised populations… that were already so widely demonized that the public was willing to accept their mistreatment’ (Lamble, 2013: 582–583; see also Sim, 2012). As well as procuring public consent for the harsh punishment of rioters, I argue that specific imaginations of the rioters – and specifically their class and race positioning – were important in shaping criminal justice practitioners’ accounts of their responses to the riots. Yet my interviews, as I show below, reveal a different configuration of ideas about race, class, responsibility and criminality, requiring a distinctive analysis.
Part 2. ‘The range of people caught up in it was extraordinary’: Diversity and the surprising rioters

In contrast to media and political representations that squarely blamed the disturbances – in explicit or tacit terms – on racialised and working-class ‘culture’, if not directly on marginalised communities, the practitioners I interviewed were often keen to emphasise the role of a contrasting demographic. I draw here on my interviews with solicitor Roger, senior civil servant Martin and prosecutor Jason, showing how each of them expressed the idea that the rioters were strikingly diverse and heterogenous, and drew distinctions between their usual clients (or ‘suspects’ or ‘offenders’), implicitly figured as working-class and often racialised, and the unusual rioters, positioned as middle-class and white. Yet rather than subverting the classed and racialised imaginations of criminality that I have discussed, practitioners’ accounts of these ‘extraordinary’ rioters in fact subtly reproduce and shore up long-established imaginations that connect working-class and racialised communities to criminality. Though my interviewees’ interpretations were undoubtedly more nuanced than the ‘scum semiotics’ (Tyler, 2013b) that prevailed in media representations of the riots, my analysis reveals the persistence and pervasiveness of cultural connections between race, class and criminality within professionals’ accounts.

I turn first to my conversation with criminal defence solicitor Roger, who I introduced briefly in the previous chapter. Roger was one of the first people I interviewed for this thesis. Heading up a large law firm that his uncle had started in the 1920s, he seemed to be an integral part of the London legal landscape. We met at the firm’s offices on a busy main road in East London. Dressed smartly in a three-piece suit, Roger greeted me warmly, and was keen to show me the pieces of art that he had bought from a friend of his son’s. ‘Did I promise you coffee?’ he asked, leading me into a small but neat and tidy office, while the young receptionist fetched our drinks. As we sat down, Roger prompted me to get out my phone and switch on the audio recorder, completely unfazed by being having his words recorded. He spoke fluently, articulately and confidently, drawing on his long career and rich experience as a criminal defence lawyer for over forty years.

For Roger, there was an important differentiation to be made between two categories of people who were involved in the disturbances, one expected and one very surprising. On the one hand, there were those who made up the ‘normal client base’ that made up the bulk of business for Roger’s East End criminal law firm:
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I mean, for our normal client base it was something to do, you know. Something was happening in their rather boring lives – ‘Ooh, let’s have a bit of that.’

For these individuals, Roger said, the riots were simply a diversion from their ordinarily ‘boring lives’:

Being unemployed is not fun, and we don’t have the facilities we used to have in the East End. The boys’ clubs and things, they don’t exist anymore, there’s no fun things. And so if something’s happening, ‘Gosh, let’s go and be part of it.’

This ‘normal client base’ – figured as working-class – are the seemingly unremarkable, unsurprising rioters who understandably took advantage of an opportunity for excitement. Emphasising the structural challenges facing young people, Roger’s characterisation of these rioters contrasts with the demonised figures portrayed in the media. For Roger, ‘they were just ordinary kids, most of them’, whose prospects had been made worse by the loss of jobs, local leisure and social amenities in recent years.

But Roger was quick to point to the unexpectedly wide variety of people who were involved in the unrest: ‘The range of people caught up in it was extraordinary,’ he said; ‘I mean, every social group got caught up.’ In contrast to his regular clientele, Roger had been surprised to come across a more incongruous group of people who’d been arrested for their participation in the riots:

You know, there were middle-class kids in there, getting involved; there were kids who’d never have got involved except for the atmosphere of the time.

Roger recalled one particular defendant he had represented who seemed to fit in the category of those who would ordinarily ‘never have got involved’ were it not for the exceptional conditions.30 In the autumn of 2011 this young man had been identified in CCTV footage taking cigarettes from a newsagents during the riots, and had come back from Abu Dhabi, where he had since moved for work, to face charges. Roger’s description of this client, who he pointed out was a young professional working overseas, the son of a consultant cardiologist, and from ‘such a nice family’, bestowed on him a solidly middle-class and respectable identity. As Roger explained,

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30 I have changed the identifying details of this case.
The lad from Abu Dhabi just went into a shop and stole a couple of packets of cigarettes. He’d never have thought of doing that in normal circumstances.

His getting ‘caught up’ in the disturbances, stealing ‘a couple of packets of cigarettes,’ seemed to Roger an anomaly, a deviation from his normal life, something he’d ‘never have thought of doing’ in his ordinary life. This case had really stuck in Roger’s memory, partly because he had worked for the family on a previous occasion, and felt personally invested in securing an acquittal or lenient sentence:

I can remember… putting an enormous amount of personal effort into that case which is why I’m boring you with it. Not least because I’d actually had, his father was a consultant cardiologist who had kissed his niece at a party and was prosecuted for indecent assault. It’s one of the very few occasions that I’ve cried when a jury came back. You know, they just got it right – they knew it was rubbish. And then for his son to come in, having done something really stupid during the riots, you know, you really wanted to get a good result for them. They were such a nice family.

For Roger, this young man had done something ‘really stupid’ and entirely out of character, that could be explained only by the extraordinary circumstances. This was in stark contrast to Roger’s ‘normal client base’ for whom the disturbances were simply ‘something to do’, an opportunity for entertainment to alleviate the mundanity of their lives.

Like Roger, Martin, a senior civil servant at the Ministry of Justice with responsibility for managing the prison estate’s response to the disturbances, had been surprised by some of the people who were coming into the criminal justice system, and in particular, being put into prisons:

It did cause us to think about some of the people coming in. You know, lots of people from stable, decent families with good educations who had got caught up in the moment. ‘Cause a lot of these places were, you know, they were student locations.

Though Martin didn’t talk explicitly in terms of social class, his reference to people with ‘good educations’, from ‘stable, decent families’ in ‘student locations’ evoked middle-class
identity and respectability. Like Roger, Martin framed these unusual rioters as having ‘got caught up in the moment’:

(Conspiratorially) And of course a lot of the people were caught up in the rioting rather than active in creating it. They anticipated, but they weren’t the sort of people who you would demographically have picked out as those most likely to be part of a riot… Which is a bit of a shame, to ruin your life like that, isn’t it really?

For Martin – as for Roger – the middle-class rioters were positioned as passive participants in the disturbances, having been ‘caught up in the rioting rather than active in creating it.’ They might have ‘got caught up,’ but presumably would not have got involved were it not for those who were more instrumental in leading it.

That’s the terrible thing about rioting, isn’t it? You know, it’s created by energy, often, and people do silly things when they’re caught up in it.

For this group, who didn’t fit Martin’s expectation of ‘rioters’, criminal activity was seen as aberrant, anomalous, and out of character, due solely to the dynamics of the moment. Like Roger who was especially keen to secure a good result for his client ‘from such a nice family’, it was the unusual rioters for whom Martin expressed particular concern. For these young people with bright futures, being arrested for riot-related offences held the potential to seriously affect their future prospects or ‘ruin their lives’. Those who they’d expected to see – the ‘normal client base’ who presumably bad been ‘active in creating the unrest’ seemingly elicited relatively little worry (in Chapter 7 I return to this question of discerning care and concern among criminal justice practitioners). By expressing their profound surprise at seeing relatively privileged people involved, and emphasising their lack of intention, I argue that Roger and Martin’s accounts excuse and exculpate these surprising rioters; instead subtly shifting responsibility on to the other rioters, implicitly positioned as working-class. In this way, their emphasis on the diversity of the rioters does not subvert the idea of working-class rioters as essentially to blame for the unrest, but rather reinforces it.

31 In the context of the discussion I presumed Martin was referring to university towns and cities rather than to school pupils.
Like Roger and Martin, Jason, the senior prosecutor at the Crown Prosecution Service who I introduced in the previous chapter, also made a clear distinction between the kinds of ‘offenders’ he’d come across in the riots:

We saw, you know, a significant range of (pause) offenders. You know, from those we would expect, or see more frequently. You know, some of the disad, people who are disadvantaged, generally, who generally unfortunately end up becoming criminals because of the circumstances which they find themselves in, where they live, etcetera.

On the one hand, those who he’d expected to see, and who were in line with those he saw more often in his work as a prosecutor, were described firmly as working-class: those ‘disadvantaged’ people who ‘unfortunately end up becoming criminals because of the circumstances which they find themselves in’. Jason took a clear view on what motivated this group of ‘offenders’:

There would undoubtedly have been a criminal element that would have got involved just to commit crime. You know, I remember reading stories in the press about, you know, people saying ‘Well, this is my opportunity to get my part (pause) get these trainers which I can’t buy,’ basically. You know, people saying that on national television! ‘This is why I’m doing this, because actually I can’t afford this, whereas Joe Bloggs down the road can, and I’m committing this because I can’t [afford it], and this is, taking my bit is my entitlement.’ But I suspect those people would probably be involved in crime anyway.

Though these rioters claimed to be motivated by a sense of inequality embedded in income and opportunities to acquire consumer goods – or at least, by a sense of ‘entitlement’ – Jason made clear that in his view they had ‘got involved just to commit crime’. But Jason, too, had been surprised by encountering a number of people who were demographically different from those he saw more frequently in his work as a prosecutor:

Actually, we found a lot more people you wouldn’t normally expect, just joining in. So a lot more, weirdly, sort of educated, er, middle-class (pause) white people. Probably more of a proportion of those, probably again, were getting caught up in it as well.

Jason, unlike Martin and Roger, explicitly pointed out that he had been surprised to see so many white people being arrested and charged. While race remained stubbornly unspoken in Martin and Roger’s accounts, this brief and somewhat hesitant emergence in Jason’s account of race as a key category in how the unusual rioters were figured, helps
us to better understand the imagination of the *typical* rioters. Like Martin and Roger, Jason drew a clear distinction between these two groups of rioters, seeing this group of conspicuously middle-class, educated, white people as ‘getting caught up in it’, ‘just joining in’ with behaviour that they would not ordinarily have been involved in; subtly shifting culpability back to the ‘disadvantaged’ and implicitly racialised majority.

Jason went further, suggesting that middle-class rioters perhaps had more noble, legitimate reasons for getting involved in the riots:

> You know, there were clearly those who actually became involved in it because it was opportunistic, um, criminal activity, who may have been involved in crime anyway. As opposed to those who perhaps took a political stance and were doing it to demonstrate, because of the, their perceived concerns about politics, society and their motivation for sort of getting involved in it.

For Jason it was specifically the middle-class rioters who he saw as having political concerns:

> So when I say about the sort of more educated, middle classes, that may have been because they’re politically more, um (pause) motivated by political concerns, and may have found themselves embroiled in it… ’Cause actually those people probably would not normally become embroiled in criminal activity themselves, but actually would get swept up in it.

In stark contrast to the ‘criminal element’ who ‘got involved just to commit crime’ and ‘would probably be involved in crime’ regardless of the specific circumstances, it was striking to see Jason’s complex and somewhat contorted efforts to draw a clear dividing line between white, middle-class identity on the one hand, and criminality and immorality on the other. Framing the middle-class rioters as more politically motivated than other rioters was a somewhat novel strategy of delegitimating working-class rioters. More often, in a context where the riots had already been decisively defined as meaningless and apolitical (as I discussed in the previous chapter), highlighting the involvement of middle-class rioters simply served to further reinforce the reading of the riots as an outburst of sheer criminality. By focusing on the ‘unlikely mob’ (Kelsey, 2015) – those like the ‘millionaire’s daughter’ who seemed to have no discernible economic or political grievance – journalists were able to undermine the unrest as a whole; denying that anybody involved was motivated by structural inequalities (Kelsey, 2015). While the media invoked
this unlikely mob to delegitimise all the rioters, in contrast Martin, Roger and Jason instead draw distinctions between these two groups: the middle-class, educated, white rioters who would never ordinarily be involved in crime but were simply ‘caught up in it’, or were in fact protesting about legitimate political concerns, and the ‘normal client base’ or ‘criminal element’ who were essentially responsible for the riots.

In my interviews, the participation of white people in the riots was often contrasted to the episodes of unrest in the 1980s. Probation manager Adam pointed out that in his view, the 2011 riots were ‘much more multi-racial than the 80s’ and for civil servant Martin, unlike earlier episodes of unrest, 2011 ‘wasn’t felt to be race riots.’ Rather than reflecting a clear distinction in terms of the demographic constituency of the rioters across these two periods, I argue, this imagination of the unique diversity of the rioters in 2011 reflects the shifting cultural and political ground on which understandings of social unrest are formed. As scholars in the 1980s pointed out, ‘rioters’ in Brixton and Toxteth were in fact mixed in terms of ethnicity and social class (Benyon, 1987a), though this diversity was largely marginalised in public debate, with media coverage portraying the rioters as almost entirely black (Hirsh and Swanson, 2020). In that instance, ‘race, read as black, became the co-ordinate that the 1980s urban unrest was positioned and explained through’ (Murji and Neal, 2011, emphasis in original). As I have argued, media representations of the 2011 disturbances similarly framed the unrest in racialised terms, if in more indirect ways, reflecting a moment where old cultural assumptions about black criminality could not be said aloud, but continued to filter through words and images that portrayed the riots as essentially a race problem.

In contrast, in practitioners’ accounts in 2018 it was precisely the diversity of the rioters that came to the fore. On one level, practitioners’ emphasis on the involvement of a wide range of people in the disturbances echoed the narrative in more liberal media outlets, providing a challenge to the starkly racialised depictions in the right-wing press (in Part 3 of this chapter I show how some practitioners drew on the diversity of the rioters to criticise political and media rhetoric that held marginalised communities accountable for the disturbances, and for crime more broadly). The Guardian for example reported that while the debate in the aftermath of the unrest ‘could easily have left the impression that those involved were exclusively young, black gang members with long criminal histories’, the data that emerged revealed that ‘the makeup of those involved in the disorder was far more varied’ (Ball et al., 2011). But, I argue, practitioners’ accounts of this diversity warrant deeper critical attention. The seemingly surprising diversity of the rioters in 2011
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that is, the presence of middle-class and white rioters – is less remarkable than the meaning that came to condense around them. Tracing how practitioners make sense of these ‘unusual’ rioters – positioned as anomalous and out of place – points to deeply ingrained assumptions about ‘normal’ offenders. These surprising rioters, then, came to carry a set of messages about race, class and criminality that serve to normalise and legitimise the racialised and classed violence of the criminal justice response to the riots, and more widely.

While some have argued that the marked heterogeneity of the rioters – and, in particular, the highly visible and often noted presence of white and middle-class people – posed a serious challenge to established imaginations of riots as entwined with black culture and criminality, I argue that these racialised ideas retain ideological power even where the diversity of the rioters is foregrounded. Gargi Bhattacharyya (2013) argues that the application of the term ‘riot’ to such a heterogeneous set of events as took place in August 2011 served to unsettle the ‘racialised coding’ of the term. In Britain, Bhattacharyya points out, ‘riots’ have come to signal events that are understood as intrinsically related to race, and so the ‘revelation’ of a multi-ethnic constituency of rioters in 2011 signalled ‘a move away from [the] more usual formulation of the riot as an always somehow racialised event’ (Bhattacharyya, 2013: 188). However, my analysis suggests that in professional criminal justice discourses, racialised schemas of criminality and culpability are in fact intensely durable and flexible. While the visible presence of relatively privileged and white rioters posed a challenge to established notions of racialised criminality, practitioners effectively neutralised, absorbed and incorporated the ‘diversity’ of rioters into existing structures of meaning that connect criminality to racialised and working-class identities, while subtly absolving white and middle-class people of responsibility. Rather than disrupting the fiction of white innocence (Bhattacharyya, 2013) or the ‘myth of black criminality’ (Gilroy, 1982b), distinguishing between the typical rioter and the extraordinary or surprising rioters, who had ‘got caught up’ in it, the practitioners I interviewed effectively placed the blame for the unrest firmly back onto racialised and working-class groups, normalising the response that targeted these groups.
Part 3. ‘It wasn’t just lower income or BME people’: Contesting classed and racialised accounts of the disturbances

While Roger, Martin and Jason characterised the ‘unusual’ rioters in terms that I have argued reproduced racialised assumptions about criminality and culpability – interpreting the presence of middle-class and white rioters in ways that allowed them to maintain an imagination of working-class and racialised rioters as responsible for the unrest – other practitioners actively sought to use the diversity of the rioters to counter these cultural constructions of crime. In this part of the chapter I consider how Ashley, Claire and Adam, who had all been working in probation and youth offending services in 2011, pointed to the involvement of a wide range of ‘rioters’ to challenge and critique the representations of rioters in mainstream media and political rhetoric. But, I argue, the organisational and political contexts within which they work constrain their ability to resist these discourses, and instead pull them into policy agendas that actively reproduce them.

Ashley, who I introduced in the previous chapter and who had managed youth offending services across London, highlighted how the media had portrayed the rioters as overwhelmingly black and working-class, and wanted to counter this representation:

The media did try to portray it, particularly [in] London, that it was more of a BME or black issue… they would just show the black kids in Hackney. And there was quite a few white children that were involved as well. So to me, it wasn’t about race, but it became like that in a way, in terms of how it was sensationalised and portrayed… It’s like ‘well, we’re getting blamed again’.

Ashley’s characterisation of the involvement of white and middle-class ‘children’ (a term I rarely heard used by other professionals) and young people in the riots was qualitatively different from those I heard from Roger, Martin and Jason, who had been surprised by the diversity of the rioters. In contrast to Roger, Martin and Jason who acknowledged the participation of white, middle-class rioters but found ways to excuse them of responsibility, Ashley actively resisted this configuration of blame. For Ashley, himself a black man in his thirties who had worked for many years with criminalised young people, this seemed to reflect personal, political and professional commitments. It seemed important for Ashley to resist the condemnation that had been heaped upon young, black, working-class people, not just for the riots, but for crime more broadly (‘we’re getting
blamed again’). Asserting that many white and middle-class people were in fact involved in the riots seemed to be a strategy for challenging the demonising and stigmatising associations between working-class identities, blackness and criminality that were reproduced and reinforced through right-wing political and media framings of the rioters.

Ashley’s account, however, revealed a tension between these critical personal views and the demands of his professional position. In the wake of the riots Ashley had been responsible for implementing the council’s ‘troubled families’ agenda. Launched in December 2011, the government’s nationwide Troubled Families Programme mobilised the riots as ‘evidence’ of ‘a culture of disruption and irresponsibility that cascades through generations’ (Cameron, 2011c) and the need to ‘turn around’ the lives of 120,000 families. The programme funded a raft of punitive policy interventions, conducted by local authorities on a payment-by-results basis, to tackle unemployment, crime, antisocial behaviour and educational exclusion and truancy (Crossley, 2016, 2018). This was a controversial social policy response that was made possible by, and actively bolstered, the political narratives that explained the riots in terms of problematic and deficient working-class culture and parenting (Allen and Taylor, 2012; De Benedictis, 2012). As in the 1980s, when black communities’ familial pathology was central to media and state interpretations of the riots and the measures supposedly needed to address them (Barker and Beezer, 1983; Gilroy, 2013), the family has been a crucial node in political and cultural discourses that, in turn, legitimised a set of vindictive policy responses to the riots (Allen and Taylor, 2012; Bristow, 2013; De Benedictis, 2012). David Cameron’s diagnosis of the riots as a symptom of a ‘slow motion moral collapse’ and ‘broken society’ (Cameron, 2011b) established the family as the key locus of responsibility for the riots, obscuring the role of structural inequalities, ‘worsening poverty, burgeoning social and economic polarisation [and] fiscal policies that hit the poorest hardest’ (Angel, 2012: 24). This discourse was also starkly gendered, placing parental responsibility – or, conversely, irresponsibility and failure – firmly on mothers, with particular vitriol reserved for single mothers (Allen and Taylor, 2012). The blaming of the riots on irresponsible, reckless and ‘feral’ parents has been vital in catalysing targeted intervention that aim to push parents

32 Other commentary also bemoaned a moral crisis in authority and personal responsibility caused by, among other things, growing social disapproval of parents ‘smacking’ their children (Durodić, 2012).
into work, however poorly paid and insecure, and ‘to inscribe middle-class values of parenting’ on working-class mothers (De Benedictis, 2012).

For Ashley, the linking of the unrest to ‘troubled families’ had placed responsibility onto working-class families, and obscured the fact that middle-class young people had also been involved:

It wasn’t just the ‘troubled families.’ It’s such a horrible term, to call it the troubled families. Some of the people involved were middle-class. It wasn’t just lower income families or children who were part of the disturbances. It wasn’t just BME people either.

Ashley also acknowledged the limitations of the project to make a tangible difference:

There were deeper social issues within those children’s lives, which caused them to become involved with the disturbances, in a way, so I think that the launch of that programme was useful but it didn’t necessarily deal with the social issues, really, that still exist… it didn’t deal with those issues at all.

Despite Ashley’s critical reading of the way that the media had ‘blamed’ working-class and racialised communities for the unrest, this very blame had made possible a programme of much-needed funding for local authorities:

The troubled families funding was quite controversial, but it gave local authorities the opportunity to spend money on early intervention and prevention in a way that they saw fit… local authorities received quite a lot of money initially to actually deliver what they felt was required to those families.

While Ashley recognised the problematic politics of the project, he also appreciated the financial opportunities it afforded for services that he saw as valuable and necessary, posing a tension between his personal views and a pragmatic approach to the political and policy context he was working in. While resisting the classed and racialised framing of the rioters, Ashley’s professional position meant that he implemented a programme directly responsible for perpetuating the regimes of responsibilisation and blame he was critiquing.

My conversation a few weeks later with Ashley’s colleague Claire, who headed up the council’s programme of youth and community services, similarly highlighted the intrinsic tensions facing practitioners trying to reconcile their personal, critical stances with the broader context of their work. Claire, like Ashley, was quick to point out that popular
perceptions of who had been involved in the riots were not necessarily accurate. While immediate media and political interpretations placed a great deal of emphasis on the role of organised criminal activity in the riots, Claire’s team had quickly found that gangs had actually been peripheral to the rioting in the borough:

We said, hang on a minute, let’s actually look at what happened here; who was involved. And the stuff that’s being said in the media isn’t necessarily true – especially around, ‘it’s all gangs, and it’s all organised.’ And that wasn’t our experience, certainly.

Other practitioners also pointed out the connection that was quickly made between the riots and gangs. Adam, who had in 2011 been a senior manager for the probation service in South London, with responsibility for their gangs work, told me that:

When the riots occurred, obviously the big debate for us was whether gang members, particularly the most serious ones who – and we were working with Trident\(^{33}\) in the Met at the time – were instrumental in causing the conflict.

The scale of the events and the almost simultaneous eruption of unrest and looting across a number of cities and towns meant that the police and other organisations were quick to conclude that there must be a network co-ordinating and facilitating the disturbances. As Adam explained:

It was thought at one point, are these events being orchestrated? And if they are being orchestrated, the only people who could do that are gang members because they are clever enough to already have sorted out some sort of institution… But really we didn’t find that was the case. And as a result we were very much telling our troops on the ground to sort of keep calm, and not pander to the panic that seemed to be going on amongst some of the rest of the criminal justice system.

Like Claire’s team, Adam’s probation service found that only a very few individuals with connections to gangs were involved in the unrest. Rather, their view, Adam said, was that ‘gang members used the literal smoke screen of the riots to actually get up to their daily criminal business – selling drugs, settling scores, doing that sort of stuff’ while the police were preoccupied with the disturbances.

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\(^{33}\) Trident was a Metropolitan Police Service unit established in 1998 to tackle gun crime and homicide in black communities.
But despite the marginal, even negligible, role of organised criminal groups in the disturbances (Amnesty International, 2018; Lewis et al., 2011; Williams, 2018), gangs played a central role in political and media discourses around the riots and were a focal point for the state’s punitive response. Cameron’s speech to the House of Commons during the disturbances asserted that Duggan’s death had been ‘used as an excuse by opportunist thugs in gangs, first in Tottenham itself, then across London and then in other cities’ (Cameron, 2011d) and days later he announced a ‘concerted, all-out war on gangs and gang culture’, ‘a major criminal disease that has infected streets and estates across our country’ (Cameron, 2011b). This narrative licensed a major acceleration in highly controversial measures purportedly targeting organised crime. In 2012 the Metropolitan Police Service introduced the Gangs Violence Matrix, a database to monitor and manage people purportedly involved in criminal activity. The matrix has attracted strident criticism for its overwhelming targeting of black young people: over three quarters of those on the database are black, while even the Metropolitan Police’s own data suggests only 27 per cent of people accountable for serious youth violence are black (see especially Amnesty International, 2018; Williams, 2018).

This focus on gangs was a key node in connecting the riots to ideas about racialised criminality. Rhetoric around gangs in contemporary politics is inextricably entangled with ideas about race; an important site for securing and strengthening ties in political and public imaginations of race and criminality (Angel, 2012; Brotherton and Hallsworth, 2011; Williams, 2015). The figure of the gang member has provided a potent ‘black folk devil’ that legitimises increasingly excessive police and penal powers (Elliott-Cooper, 2016); ‘an ideological device that drives the hypercriminalisation of black, mixed, Asian, and other minority ethnic (BAME) communities’ (Williams and Clarke, 2018). The focus on gangs and gang culture as a ‘cause’ of the 2011 riots, then, became a pivotal moment in the contemporary moral panic around black youth (Elliott-Cooper et al., 2014).

The political rush to explain the riots as the result of gang activity led to a host of projects and programmes to tackle gangs. As Claire put it, the riots ‘did kind of get caught up with the gangs thing, because that was so just so high on people’s agenda at that time’. While Claire was aware of the inaccuracy of the political rhetoric around the role of gangs in the riots, she was also strategic, and saw the opportunities it presented for her team. As a result of the intense political focus on gangs in the wake of the riots, Claire was able to secure funding for a new service to provide social and therapeutic support to young people involved in gang activity:
Surprising and typical rioters

The thing about the riots for us… [was] that it did create a lot of noise, and it helped make the case for this new team and new way of working, even though when we unpicked the data it wasn’t really about the gangs at all.

For Claire, this situation presented a certain amount of dissonance. With gangs and gang culture serving as effective bywords for black culture, countering the idea that gangs were central to the riots was an important means of resisting these racialised constructions of the rioters. While Claire was keen to correct the inaccurate representations that pinned the blame for the riots on racialised and marginalised young people and stigmatised those she worked with, this misrepresentation also provided a means of making the case for a project she believed in.

For Claire and Ashley – who framed their work in terms of supporting young people drawn into the criminal justice system – challenging the inaccuracies of media and political representations of the rioters as overwhelmingly black and working-class, or as gang members, was a way to shield the young people they worked with from blame and censure. Yet these attempts were constrained by the broader circulating meanings around the riots, crime and criminality. Though Ashley was keen to counter the way the media had represented the rioters as largely ‘black kids’ from ‘lower income families’, simply highlighting the diversity of the rioters, as I have argued throughout the chapter, does not on its own necessarily override or disrupt the blaming of the riots on racialised and marginalised groups. Rather, the exceptional diversity of the ‘surprising rioters’ in some ways simply reaffirmed the longstanding idea of the usual rioters as racialised and working-class. The structures of meaning that shaped debate about the rioters, in my interviews as well as in political, media and public discussions, reveal ingrained myths of black and working-class criminality that are less easily undone.

These conversations also speak to the often-uncomfortable fit between practitioners’ personal convictions and the institutional politics and organisational priorities that they work within. The problematic constructions of the rioters provided opportunities for projects that – though controversial – practitioners saw as valuable. For Claire, the renewed prioritisation of gangs in the months following the riots – though misinformed and potentially damaging – allowed her to launch a new service for young people, and for Ashley, the contentious troubled families agenda afforded some additional support for his clients. At a structural level these agendas have been vitally important in shoring up revanchist race- and class-based neoliberal politics at odds with the personal positions
and intentions of those individuals whose day-to-day work involves coordinating and delivering these programmes. This signals both the complex ways in which neoliberal ideology is translated into practice, not directly but through a series of negotiations, compromises and bargains (Billig et al., 1988); and the complex emotional and cognitive work that practitioners engage in to square their own views with the demands of their roles.

Conclusions

This chapter has argued that representations of ‘the rioters’ were crucially important in legitimising the criminal justice response to the riots. I have shown how practitioners’ accounts, in different ways, shore up long-standing imaginations of criminality that place the blame for crime on working-class and racialised communities; thereby positioning the targeting and punishment of these communities as rational and reasonable.

For the last half a century ‘riots’ have been key moments in the creation and articulation of long-standing common sense ideas that connect race, culture, violence and disorder (Camp, 2016; Gilroy, 2002). Media and political representations of the rioters in 2011 foregrounded racialised and working-class communities, framing the riots as a result of a pathological and infectious black culture and reproducing and reinforcing ‘the idea that any black, all blacks, are somehow contaminated by the alien predisposition to crime’ (Gilroy, 1982b: 52). I have examined how criminal justice practitioners’ accounts draw on and perpetuate this racist common sense. Though the professionals I interviewed did not use the starkly stigmatising language we saw in media and political discourse; practitioners’ descriptions of who was involved in the riots nevertheless subtly reinforced these racialised imaginations of crime and criminality, constituted and revitalised not just through discourses or images of blackness, but through articulations of the apparently remarkable heterogeneity of the rioters.

Far from challenging or unravelling entrenched cultural conceptions of race-and-crime, shared understandings of ‘the rioters’ as unusually heterogeneous in many ways reinforced racialised imaginations of criminality and culpability. While Martin, Roger and Jason noted the surprising presence of middle-class, educated and white rioters, they contrasted this with their ‘usual client base’, a ‘criminal element’ positioned tacitly as working-class and racialised. Practitioners imbued these two distinct figures with very
different kinds of responsibility, motivation and concern. In different ways, Roger, Martin and Jason’s accounts of the white, middle-class rioters each absolved them of blame and responsibility for the disturbances: by emphasising their passive role in the riots, by highlighting how it was only the extraordinary circumstances that led to them committing offences, and by imbuing their actions with political legitimacy. It was striking to see the complex and somewhat contorted efforts to which professionals went to draw a dividing line between white, middle-class identity on the one hand, and criminality and immorality on the other.

The imagination of this surprising rioter as out of place relies upon an understanding of the involvement of others as unsurprising. What remained unremarkable in these discussions was the participation in the riots (and the subsequent arrest, prosecution and sentencing) of the imagined majority of rioters, positioned (usually tacitly) as non-white and working-class; the ‘normal client base’ whose involvement in crime and entanglement in the criminal justice system is seen not as troubling or aberrant but as unsurprising and almost inevitable. The subtle ways in which professionals drew distinctions between their usual clients, and the unusual rioters reveals the persistence and pervasiveness of long-established links between racialised, working-class identities, culpability and criminality. Framing the participation of white, middle-class people as anomalous, atypical and out of character, minimising their involvement as passive and peripheral, and diverting responsibility for their actions, in some ways reaffirmed the idea that the riots were essentially a black, working-class issue. Rather than disrupting or overturning the myth of black criminality, the focus on the diversity of the rioters leaves entirely intact, and reinforces, long-standing imaginations of race, class and crime, and in particular ‘the ideological construction of black and brown people as exceptionally crime-prone’ (Williams and Clarke, 2018: 2), normalising a punitive response that predominantly targeted poor and racialised people.

Moreover, the race- and class-delineated criminal justice reaction and the suite of punitive social policy ‘solutions’ to the unrest played an important role in shoring up this construction of crime and further rationalising and legitimising discriminatory criminal justice practices more broadly. The overrepresentation of racialised people in court in the wake of the riots lent support to a deep-rooted and ingrained ‘public consciousness in which non-white people are disproportionately engaged with and predisposed to criminality’ (Williams and Clarke, 2018) and legitimises a criminal justice system that regulates and controls them accordingly. As my discussions with Claire and Ashley
showed, the framing of the rioters in racialised and classed terms had tangible implications; legitimising projects like the gangs agenda that have further entrenched the criminalisation and punishment of racialised communities while ‘the systemic and rampant criminality of the powerful, inside and outside of the state, mostly perpetrated by well-educated individuals from allegedly well-integrated, functional and respectable families’ remains marginal to political debates about crime and punishment (Sim, 2018: 167–168).

Finally, my analysis has raised questions about how we can make sociological sense of practitioners’ accounts by remaining attentive to their own positions in relation to the structures of power that their accounts reproduce. Roger (heading up a long-established law firm), Martin (a senior civil servant), and Jason (a Senior Crown Prosecutor) were all in high status professional careers; all three were middle-aged white men, and all, to different extents, offered glimpses of middle-class (or in Roger’s case, upper middle-class) subjectivities, through accents and modes of speech, and references to their homes, their schooling and other markers of class position. In some ways I was not surprised that they echoed narratives that exculpated white, middle-class young people while shifting the blame to marginalised groups. Yet in Chapter 4 I argued that Kofi and Amar, as people of colour with backgrounds rooted in migration from former British colonies, also told stories that served to legitimise the racist practices of the CPS and the criminal justice system more broadly. This raises the question of what it means for people of colour to be at the heart of a system that targets black and brown people for punishment. Not least, this highlights the need to think more carefully about how race and class are imbricated and entwined, and to consider how inequalities of race are intersect with and are refracted through privileges of class, education and gender.

Practitioners’ reproduction of depoliticising and demonising discourses points to the complex ways that people navigate discourses that demean or devalue them. Like Fanon’s (2007 [1952]) work on how people of colour become drawn into and reproduce racialised and institutionalised discourses and hierarchies, sociological literature on stigma highlights how people resist and contest – but, crucially, also internalise and reproduce – cultural narratives relating to intersecting structures of class, gender, race and migration status that blame and stigmatise them (Chase and Walker, 2012; Dhaliwal and Forkert, 2015; Jensen, 2014b; Paton et al., 2017; Pemberton et al., 2015; Shildrick and MacDonald, 2013; Skeggs, 2011; Taylor-Gooby, 2013; Walker, 2014). It also prompts us to think critically about the current emphasis on the importance of the representation of
racialised people as professionals within the criminal justice system. Government efforts to tackle racial discrimination in the criminal justice system have focused significantly on increasing the presence of black, Asian and other ethnic ‘minority’ groups among workers (Ministry of Justice, 2020). The CPS’s strategy for example emphasises ‘the link between a diverse workforce and inclusive culture, and public confidence and trust in the CPS… particularly… for BAME groups where trust in the Criminal Justice System is low’ (Ministry of Justice, 2020: 38). The CPS prides itself on having one of the most diverse workforces of all the civil service agencies (Ministry of Justice, 2020), and yet its practices and the narratives that sustain it, I argue, are deeply imbricated with racism. Tracing how these narratives are rehearsed and reproduced by people of colour points to the limitations of diversity initiatives that, in practice, may have little effect on the structure and culture of institutions, or their implication in racist practices. In a context where the ‘insertion of minorities into white spaces is governed in a way that sustains [their] very whiteness’ (Saha, 2018: 83), representation is far from a simple solution to the racism of the system and its practices.

In the following two chapters I further develop these themes. In Chapter 6 I consider how practitioners’ imaginations of the public, like their descriptions of the rioters, were bound up with imaginations of class, race and Britishness that were mobilised to legitimise the criminal justice response. In Chapter 7 I examine how professionals assigned concern and vulnerability to different people brought into the criminal justice system (and prisons in particular) after the riots, tracing how these discriminating patterns of care and concern played out in our discussions about the extraordinarily severe sentencing of rioters.
Chapter 6

Summoning the punitive public: Configuring citizenship in the wake of the disturbances

I’m afraid society expected condign punishment.

Leonard, District Judge, London

Introduction

The previous two chapters have explored how practitioners drew on shared cultural ideas about the nature of the disturbances, and the demographics of those involved, to naturalise and legitimise the severely punitive criminal justice response against them; and how others have resisted these meanings. In this chapter, I examine how practitioners articulated a third set of interrelated ideas and assumptions, about the imagined audiences for the state’s display of criminal justice might. I argue that a shared imagination of a punitive public animated and underpinned my discussions with practitioners and was essential in justifying the unusual practices of the courts in the wake of the unrest.

I focus on the most spectacular element of the criminal justice response to the disturbances: the courts’ ‘lightning-fast and brutal’ reaction (Slater, 2011: 107). The courts’ response to the unrest was highly unusual in many ways, marked by an exceptionally rapid process of bringing those arrested before the courts, the use of all-night and weekends courts, the remanding of an extraordinary number of ‘rioters’ to custody, and exceptionally harsh sentencing (discussed in more detail in Chapter 7). Alongside claims that the courts’ response was necessary to deter rioters, the idea that the public demanded a swift and severe punitive reaction from the courts flowed through many of my interviews with practitioners, imbuing the response with a kind of popular legitimacy. The claim that ‘society expected condign punishment’, as district judge Leonard put it, was a powerful means of rationalising the courts’ unusually severe treatment of people charged with riot-related offences, while simultaneously providing a way for practitioners to disavow moral responsibility for their and their organisations’ punitive actions in the wake
of the riots. Moreover, I argue that this imagination of a monolithically punitive public, defined in opposition to the ‘rioters’, served to obscure the deep divisions of race and class that the criminal justice response to the unrest both reflected and further reproduced.

The chapter is structured in three parts. In Part 1 I show how this imagination of a public that demanded harsh punishment served as a powerful rhetorical device in practitioners’ accounts, allowing them to normalise, and defer responsibility for, their organisations’ unusually punitive responses to the riots.

Questioning the idea that the criminal justice system was simply responding to public desire for law and order, in Part 2 of the chapter I show how media, political and criminal justice discourses worked together to produce, reinforce and instrumentalise a politically and ideologically potent imagination of a punitive public. I argue that popular rhetoric around the riots conjured a public that was shaped by contemporary cultural configurations of citizenship and the nation, drawing in particular on regressive and exclusionary imaginations of Britishness, positioning the public firmly against ‘the rioters’ and, more importantly, on the side of the state and its harsh penal reaction.

Part 3 considers how this cultural context came to shape the criminal justice response. While practitioners spoke of the need to show the public that the system was responding swiftly and severely to the riots; I argue that they were also reacting to the intertwined pressures, explicit and implicit, exerted directly and indirectly, on the criminal justice system by media and political discourses.

In the chapter’s conclusion I contend that this limited understanding of ‘the public’ as monolithically supportive of the criminal justice system, obscures the startling severity of the courts’ reaction in comparison to empirical measure of ‘public opinion’ and elides the profound inequalities that the state’s response to the riots engendered and entrenched.

Part 1. ‘The public expected a tough response’

In this part of the chapter I introduce the concept of the imagined punitive public that flowed through practitioners’ accounts. I show how practitioners articulated a shared assumption that the public demanded a harshly punitive reaction from the courts; and argue that these ideas of the public as monolithically retributive served to naturalise and justify the courts’ response to the disturbances; characterised by the highly unusual use
of all-night sittings, the swift processing of cases and the extraordinarily harsh approach to remand (see page 15 for detail); as well as the uncommonly long sentences handed down, which I discuss in Chapter 7.

Practitioners’ imaginations of the public were most often articulated in terms of the courts’ need to ‘send a message’ to society. Though practitioners argued that the courts needed to send a specifically deterrent message to rioters and potential rioters, at least as important was the notion of sending a message to a more amorphous ‘public’ (but one with specific boundaries, as I will argue). Showing the public that the criminal justice system was in control – thereby reasserting its legitimacy in the face of a serious challenge to it – was absolutely central to professionals’ justifications for the courts’ harsh response.

Sending a message to the rioters

First, practitioners talked about the need to use the criminal justice apparatus to send a message to those who were already involved in the disturbances, or who might be tempted to join in; effectively using the courts as a means to help bring the disorder to a swift end.

For Leonard, who had been a district judge in 2011, the courts’ response to the unrest had been wholly positive: ‘my overwhelming view’, Leonard told me, ‘is that this was a great success’. Leonard had retired in 2016, having worked for twenty years as a legal aid defence solicitor in East London at the start of his legal career, then spending some years as a prosecutor before becoming a judge in the 1990s, presiding over cases at magistrates’ courts in South East London. In 2011 Leonard had played an important role in coordinating the magistrates’ courts during the disturbances, as well as sitting as a district judge in London.

I met Leonard on a bright spring morning in 2018 at Westminster magistrates’ court. Opened in September 2011, shortly after the riots, this new court had replaced the previous one at Horseferry Road, which had since been demolished to make way for ‘The Courthouse’, a development of 129 high-end luxury flats. The new court on Marylebone Road, a modern building of light stone and expansive glass, houses ten courtrooms, and deals with all of the country’s extradition and terrorism-related cases in addition to its local cases. After passing through the security scanners at the entrance to the court building, a smartly suited middle-aged man met me, and escorted me to the area of the court building inaccessible to the public. He led me to a large, sunlit office – the brass plaque on the heavy wooden door told me this was the office of the Deputy Chief
Summoning the punitive public

Magistrate, whose formal black and white robes hung from a hat stand in the corner of the room – and introduced me to Leonard. I noted the walls lined with shelves of books and files; and a framed cartoon with the caption ‘Law: the only game where the best players sit on the bench.’ In contrast to the pared-back furnishings of the public waiting areas with their basic metal and plastic chairs, the back offices were ornate and plushly carpeted. Leonard sat at a large, polished wooden table in the centre of the large room, reclining in his chair and sipping a cup of tea from a white china cup and saucer. I was nervous about the interview – while researching Leonard’s background in preparation for the meeting, I had come across photos of a stern-faced judge in gown and wig, or an austere charcoal suit and tie. I had read some of his sentencing remarks in which he had admonished defendants and had rather assumed he would have the same brusque manner in our meeting. However, he immediately got up to greet me, with a warm smile and handshake. In a gingham brushed cotton shirt, open at the collar, and a blue-grey tweed jacket, Leonard was dressed smartly, but a world away from the intimidating images I had come across. Almost immediately the Chief Magistrate – dressed in robes and with a cut-glass accent befitting her aristocratic background – popped her head round the door to say hello, clearly pleased to see her old friend and share some jokey chat. Leonard bashfully excused his casual appearance and apologised for not having had a shave that morning.

After I briefly introduced myself and my research, Leonard took the lead in the interview, saying ‘I’m sure you’ve got questions you want to ask, but would it be helpful if I gave you some background?’ It was only when I went back to the recording of the interview to transcribe it that I realised that Leonard then proceeded to talk for nearly twenty minutes without further prompting about the response of magistrates’ courts to the 2011 disturbances. Leonard must have been the best-prepared of all those I interviewed, his answers being comprehensive and carefully structured; perhaps a result of the extra time and leisure afforded by his recent retirement, as well as a long career spent honing the craft of convincing and authoritative speech.

For Leonard the courts’ response was justified by the need to bring the riots to a swift end:

There was a real risk, we felt in the very, very early days, of people going back, re-joining the riots. And really until the riots were over, you know there was a feeling that people who’d – forgive me for putting it this way – got the balls to join in the riots, burn people’s
properties and steal things in that way in the first place, probably would be prepared to go back if they were let out.

The courts’ widespread denial of bail, then, represented to Leonard a pragmatic means ‘to stop people reoffending’: the courts, he said, had ‘hoped that if enough of the rioters were off the streets and in custody, [the rioting] would stop, and it did. It stopped almost immediately.’ In part, this was about physically detaining those who were involved in the unrest; a pragmatic measure to keep those arrested from going back out and ‘re-joining the fray’, as barrister Lawrence had put it in another interview.

Others saw remanding rioters not just as an effective way of incapacitating those already arrested; but as a means of sending a message to others who might be considering getting involved. Defence solicitor Roger, despite his concern about the disproportionately long sentences handed down, had been greatly impressed by the spectacle of the courts staying open throughout the night to deal with the huge influx of cases resulting from arrests. The night courts, he said, ‘were brilliant, I have to say. I mean, that was a real message’:

They were incredibly effective. That you would be arrested and be in court at two o’clock the next morning, and on your way to prison and serving your sentence before twenty-four hours had gone by, was a very, very clear message that was sent.

For Roger, the value of the night courts was in their ability to show potential rioters that the courts were responding quickly and effectively to the disturbances. District Crown Prosecutor Jason similarly saw the courts’ controversial approach to remand as an effective deterrent. He felt that during the riots there was deep concern among the criminal justice system that the unrest ‘would actually get worse and be a significant issue across the country.’ As he explained:

Part of the thing about making sure that those cases got prosecuted effectively and efficiently and quickly was to send out that message to society that actually if you commit these offences then actually this is the eventual outcome.

The pace at which people were brought into court, then, and the rate at which they were remanded to custody, was seemingly intended to discourage others from joining the disorder:

I think to some extent keeping as many people remanded on first appearance probably assisted with that, because it was sending out that message that actually you will be
remanded in custody if you commit these offences, even if on the face of it it’s, what, you know, shoplifting, effectively.

Like bringing rioters into court ‘effectively and efficiently and quickly,’ Jason framed the courts’ exceptionally harsh attitude to granting bail as a way of ‘sending out a message to society’; in particular, to deter people by showing that they could not rely on the courts to deal with them according to normal policy and procedures. The idea of sending a message was used to rationalise and legitimise the courts’ controversial actions, not least remanding to custody very young people with no previous convictions, and no risk of evading justice, for minor offences like shoplifting. The need to show that ‘you will be remanded in custody if you commit these offences’ seemed to trump considerations of the nature of the offences and the circumstances of the individual that normally determine decisions around remand, where deterrence should not be a factor (Bail Act, 1976).

Similarly, practitioners justified the court’s extraordinarily punitive approach to sentencing in terms of its supposed deterrent power. David, who had been a magistrate in 2011, saw the swift and severe sentencing – starting while the unrest was still ongoing – as an important means of discouraging people from continuing the disturbances or getting involved:

I think the feeling was, we’ve got such a large number [of cases], we can’t put these off for six weeks, to deal with, if we can deal with them quickly to show that if you continue these riots, this is the sort of punishment, strong punishment, that you might receive.

District Crown Prosecutor Amar explained that the idea of the courts handing down the kind of lighter, non-custodial sentences that offences like shoplifting would normally attract was, in the context of the riots, laughable:

If we’re dealing with, for example, people still smashing and burning things, I mean the last thing we want to do is say ‘actually, carry on; well, it’s a conditional discharge’ (laughing). It’s simply not going to happen.

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34 A conditional discharge is a sentence whereby the ‘offender’, having been found guilty, is released and the offence registered on their criminal record, but no further action taken unless they commit a further offence within a time decided by the court (https://www.cps.gov.uk/cps-page/sentencing).
For Amar, handing out a less punitive sentence would have effectively encouraged and permitted people to commit further offences. Practitioners rationalised the courts’ exceptional approach to the riots, then, partly as a means of sending a message to those already involved in the disturbances, or those who might be tempted to get involved. This was a relatively targeted message, aiming to deter further ‘offending’ and bring the riots to an end. Other practitioners, however, were highly critical of the idea that the courts could send an effective message to rioters or potential rioters. Defence barrister Sadie doubted that harsh sentences would work as a deterrent:

Someone who has otherwise behaved well in the course of their life and got caught up in something is not deterred by a prison sentence, because either they wouldn’t behave like that again because they are generally a law-abiding person; or entirely possibly, if there was such a big event they would be equally sucked into it.

For Sadie, the peculiarly affective and spontaneous nature of disturbances meant that severe punishment was particularly unlikely to deter. Literature on the 2011 unrest also casts doubt upon the deterrent role of sentencing. Becky Clarke (2012b), in her in-depth research with young people who had been involved in the 2011 rioting in Manchester, also expressed doubt that the sentencing would work as a deterrent; instead highlighting that for many of the young people who were already caught up in the criminal justice system, the harsh sentences they received for riot-related offences simply entangled them deeper in a cycle of marginalisation and criminalisation. For the young people she worked with, the loss of stability, accommodation and employment caused by a prison sentence was likely to increase, not decrease, the risk of re-offending.

Defence barrister Lawrence, too, was doubtful that long sentences would act as a deterrent, echoing an established body of research literature that argues that more severe sentencing has little deterrent effect on potential offenders (Pina-Sánchez et al., 2017):

Whether there actually is any deterrent effect, I’d be very surprised. I mean I doubt that any of your average rioters have the faintest clue what the ordinary sentence for, say, aggravated trespass or burglary or affray is, or indeed the fact that it’s more serious if you commit it in a public order context… And that does suggest that maybe the motivation behind it was more showing the public that something was being done.

The logic of deterrence, Lawrence points out, depends on people knowing the likely consequences of their actions and making a rational, calculated decision about whether
to commit an offence or not. For these practitioners, then, the ‘message’ the courts were
sending was not really intended for the rioters, but, as Lawrence put it, to show the public
that something was being done. While practitioners invoked the deterrent effect of the
courts’ extraordinary practices, this imagined public, I argue, worked as a powerful
discursive resource that allowed practitioners to legitimise the harsh reaction.

**Sending a message to the (punitive) public**

In my interviews, professionals from across the system emphasised the need to show the
public that they were taking the disturbances seriously and responding effectively; not
just to act swiftly but to be seen to be in control. In part, as I have argued, practitioners drew
on ideas of incapacitation and deterrence, justifying the courts’ unusual practices in terms
of their potential to prevent or discourage people from ‘offending.’ But my interviews
also revealed a deeply ingrained assumption that the public demanded to see order
reinstated and, crucially, that they expected the rioters to be punished, regardless of
whether this would have an effect on the situation on the streets. There was, then, a
distinctly retributive or vengeful dynamic at play in how practitioners imagined the public.
In our discussions about the riots, an imagined punitive public seemed to outweigh or
surpass other considerations about whether harsh punishment was necessary or
appropriate. Rather than reflecting an objective reality, I contend that this punitive public
is a cultural, political and ideological construction – but with real consequences.

District judge Leonard pointed to a widely held belief among the judiciary that the public
expected and wanted to see the courts not just stopping the riots but also handing out
harshly punitive prison sentences:

> There was a widespread feeling that if people took part in riots where people died, you
> know, where buildings burned, where properties were trashed, shops, shopkeepers went
> out of business; then I’m afraid society expected condign punishment… And, you know,
> there is an element of which the offence is so serious that people would be outraged if a
> person didn’t go to prison.

For Leonard, the potential ‘outrage’ of the public seemed to leave the courts with little or
no choice but to take an extraordinarily tough stance. Invoking the imagined punitive
public provides an important way for Leonard to justify the courts’ harsh treatment of
rioters and to position himself as somewhat helpless, his hands tied by society’s presumed
desire for punishment.
The idea that the public expected offenders to be punished posed a profound challenge for other practitioners too. Claire, who managed a local authority youth offending service, grappled with this tension in her day-to-day work:

It’s that conflict all the time, between understanding [and punishment]. And I really get that, ’cause I think if any of us were victimised tomorrow, we’d be really angry and we’d want something. Unless you’re a really big person, especially if something really bad happened to you, you would want that person to be punished, wouldn’t you?

For Claire, this common sense understanding of the public’s desire for punishment normalised, or at least rendered inevitable, a system that she personally felt would be more effective focusing on supporting vulnerable young people. While Claire’s work aimed primarily to support young people and to keep them from being drawn into the criminal justice system, she was troubled by what she saw as almost a natural or universal impulse to retribution or vengeance.

Martin, a senior civil servant at the Ministry of Justice, similarly expressed a contradiction between his own professional or personal views, and public opinion. He explained that he suspected the custodial sentences handed out by the courts probably had not been effective in either deterring further rioting or ‘rehabilitating’ the rioters but saw them as necessary in the circumstances: how, he asked, could the criminal justice system ‘be seen to be doing anything else?’ In particular, it was the public who had to be shown that the system was in control:

A system response to the events that happened had to be seen to be strong. Yeah. Swift and sure, you know. I can’t remember what the term was that was used at the time, it was ‘swift and sure justice’, wasn’t it?  

Chloe: So you’re thinking about public perception, or?

Martin: Well, public perception and public desire. Because, you know, politicians – and everyone else, actually – were behind the idea that ‘this isn’t right, this has to be dealt with and it has to be dealt with head on’. So it wasn’t that politicians were getting up and

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35 A year after the riots the Ministry of Justice (2012b) published a report entitled ‘Swift and Sure Justice’, setting out its plans for reform of the criminal justice system. The report framed the criminal justice response to the disturbances as a benchmark for this work and set out an aim of ‘normalising’ the speed at which cases had been dealt with during the unrest.
Summoning the punitive public

saying something for effect. It was that they were reflecting, I think, what the vast majority of the population were saying, which is 'you've got to deal with this'.

Martin points to the role of political rhetoric in shaping and legitimising the criminal justice response (which I discuss in more depth in Part 2 of this chapter), but also makes an important claim about the public: that ‘everyone else’, too, wanted the disturbances to be dealt with ‘head on’. In calling for an immediate and decisive response, characterised by exceedingly severe sentences, he felt politicians spoke on behalf of ‘the vast majority of the population’. This is a powerful assertion and a compelling means of legitimising the state’s highly unusual and punitive reaction to the riots, framing it not as a set of actions carried out by a disconnected state, but a direct reflection of popular will. Invoking public opinion and desire in this way is an effective way of ‘closing the consensual circle’ and ‘providing the lynch-pin of legitimation’ (Hall et al., 2013 [1978]: 136). But it is important to consider what, exactly, the criminal justice system had to be seen to be doing. In professing to represent the public, itself a contentious claim, practitioners asserted that what the public wanted was a retributive or vengeful reaction. Across practitioner’s accounts, this imagination of a punitive public seemed to be so obvious as to require no further substantiation.

But we must be cautious about accepting without question the notion acting on behalf of the public meant not just bringing the disturbances to an end but punishing those involved. It is not at all clear that society did expect and want to see condign punishment, as Leonard put it; or that the vast majority of the population would have been outraged if harsh custodial sentences had not been handed out so widely. Research on popular attitudes to riot-related sentencing found that the public were much less punitive in their approach than the courts, and that the courts’ extraordinarily punitive response to the riots far surpassed the public’s desire for severity (Roberts and Hough, 2013). A public opinion survey commissioned by the Prison Reform Trust shortly after the riots found far higher levels of support for ‘restorative’ sentences than for punitive custodial sentences. An ‘overwhelming majority’ (94 per cent) wanted people who had committed offences such as theft or vandalism during the riots to be required to do unpaid community work; and there was widespread support for ‘better mental health care’ (80 per cent); ‘making amends to victims’ (79 per cent); and ‘treatment to tackle drug addiction (74 per cent). In contrast, less than two-thirds (65 per cent) considered that a prison sentence would be effective in preventing crime and disorder (Prison Reform Trust, 2011b). Yet regardless of the veracity of this claim that the public expected
retribution, it provided a powerful cultural resource that practitioners drew on to legitimate the extraordinary treatment in the courts of those charged with rioting.

Even if the public had been as punitive as practitioners imagined, we might ask whether such views should be reflected in the criminal justice system’s treatment of rioters. Public opinion about crime, note Hall and colleagues (2013), does not simply form at random. Rather, it ‘exhibits a shape and a structure,’ it ‘follows a sequence’ and is ‘structured by the dominant ideologies about crime’ (Hall et al., 2013 [1978]: 135). Moreover, public attitudes to punishment are notoriously rooted in ignorance and misinformation: people simultaneously tend to overestimate the prevalence and seriousness of crime, and underestimate the harshness of existing criminal justice policy and practice (Cheliotis and Xenakis, 2016). Where public attitudes do lean towards punitiveness, then, this cannot be separated from the cultural context in which these attitudes are formed. As I have pointed out, the meanings that were constructed around the riots and the rioters, created a moment in which many might well have expected condign punishment. I have argued that the excessively punitive response we saw in 2011 was made possible in part by the profoundly depoliticising and stigmatising, starkly classed and racialised representations of the riots and the rioters that dominated media and political rhetoric. These representations, and the pervasive and popular hostilities they licensed, meant that the public were primed to accept such extraordinary punishment. If the public were willing to see rioters punished so excessively, then, this was not a natural or inevitable fact that the courts simply had to respect and reflect; but was made possible by a very particular combination of cultural and symbolic forces.

Some practitioners were clearly aware of this. As civil servant Martin remarked,

The vast majority of the population, we know, is both infinitely well-informed but infinitely ill-informed [about crime]… Everybody’s got an opinion, but not everyone’s opinion is actually right (laughing). And it’s ill-informed as to the facts of the matter and what was going on at the time [of the riots] in those localities.

Though Martin felt that the politicians’ calls for punitive penal reaction to the riots were directly reflecting the public’s desire for a strong response, and used this as a means of justifying the courts’ harsh response, he was also acutely aware of the inaccuracy of public opinion.

District judge Leonard, too, noted the mismatch between reality and popular perceptions of crime and justice:
There are often swings, pendulum swings that you’re not aware of until it’s all happened… People didn’t believe there was a fall in crime, people didn’t believe drug consumption had gone down significantly… it was only, you know, as the facts come through that it becomes obvious that that has happened.

This highlights a significant tension in these accounts of public opinion: Leonard and Martin both acknowledged the ignorance underlying public views on criminal justice; while at the same time maintaining that criminal justice responses to the riots had to meet the public’s demands for a tough response. Their own personal and professional judgements about sentencing were subsumed or made secondary to public punitiveness, figured as a regrettable but inevitable force to which the courts simply had to respond.

I argue, then, that we should read practitioners’ appeals to public punitiveness as a potent cultural resource which allows them to legitimise the criminal justice response to the riots. In some ways, whether the public did in fact want or expect ‘condign punishment’ was less important than the ability to call upon an assumed or imagined public desire for punishment. Professionals and politicians evoked a punitive public whose desire for harshly retributive sentencing must be met, regardless of practitioners’ own views, or the effects that the courts’ approaches to remand and sentencing would have on individuals. ‘What society wanted’, or the risk of the public being ‘outraged’, appeared to work as a seemingly inevitable and immovable force that proscribed and curtailed what sentencers could do, and provides a kind of way out of the weighty political and ethical considerations inherent in prosecution and sentencing. Invoking the public works as a powerful claim to legitimacy and, at the same time, a disavowal of moral responsibility. The idea of a punitive popular opinion shifts accountability for the state’s actions away from its organisations, institutions and individuals, instead placing responsibility with the public.

Moreover, I argue, this construction of the public as punitive is highly selective and discriminating: it does not encompass or evoke society at large but, rather, a strictly delineated public that actively excludes and side-lines those outside its boundaries. Practitioners were invoking and responding to a very particular imagination of the public; one that was constituted and refracted through political and media renderings.

**Part 2. Configuring the punitive public**

‘Those thugs we saw last week do not represent us’
In this part of the chapter I show how practitioners’ imaginations of a punitive public were made possible by the specific cultural and political context in which the disturbances, and our subsequent conversations about them, took place. The idea of the punitive public that was so ideologically powerful in my interviews is not simply factual or ‘neutral’ but is entangled with contemporary cultural constructions of citizenship and morality. Although declarations about public opinion seem ‘to promise an unmediated window onto “how the public really feels”’, in fact we must read them as part of a process that ‘involves pulling ordinary, normally invisible, people into a staged public conversation, something that looks like public debate but in fact a highly structured exchange’ (Jensen, 2014a). Public opinion ‘is orchestrated via cultural sites… far from being “spontaneous” or “organic”, it is powerfully structured and editorialised’ (Jensen, 2014a). I argue that practitioners’ claims that ‘the public wanted punishment’ emerged in a moment when shared meanings around the public were being renegotiated and remade, and when shifting configurations of citizenship and Britishness created the conditions of possibility for practitioners to invoke a public that definitively excluded the ‘rioters’ and which demanded their punishment and exclusion from the social body.

My conversation with prosecutor Amar underscored the question of precisely who is encompassed in this rendering of the punitive public, and crucially, who is excluded. Discussing the CPS’s unusually severe approach to prosecuting riot-related cases, bringing before the courts cases that ordinarily may not have met the public interest test, Amar said:

You can understand why it’s a tough response. If it’s a need for law and order to be, er, maintained, then you would expect – well, you may not necessarily – but the public would expect, say, quite a tough response from those in authority.

For Amar, an important justification for the CPS and the courts’ reaction was that the public expected a ‘tough response’. But his casual, off-hand qualification of this point – that I personally might not expect or want to see a punitive response, but nevertheless the public would – raises important questions about the constituency and politics of the public that is being summoned. It wasn’t clear on what basis I was excluded from Amar’s idea of the public; whether as an academic researcher with a specific understanding and critical perspective on crime and justice, or on the basis of my own class position, or otherwise;
but Amar’s comment suggests an imagination of a punitive public that is bounded and delimited.

Media and political rhetoric around the disturbances was vital in creating the common sense or self-evident notion that the public demanded retribution. Simplistic and unsubstantiated assertions about public desire for a punitive response abounded in media and political debate in the wake of the riots, licensing and legitimising a whole range of policy decisions that targeted the rioters. The Riots Communities and Victims Panel report, for example, stated that:

*People want rioters to be punished*, but they also want to make sure we do all we can to stop those people from continuing to offend in future. Victims and the wider public deserve a justice system that is effective at both.

(Riots Communities and Victims Panel, 2012: 10, emphasis added)

The report offered no evidence to support the repeated claim that ‘people want rioters to be punished’; rather the idea of punitive popular opinion is presented as so self-evident that it does not require empirical backing. Yet, as I have shown, the public were by no means monolithically punitive in their attitudes. How, then, were such statements made possible and rendered legible, both in 2011 and in the period in which I was conducting this research?

Media and political discourses around the riots created an important symbolic bifurcation between the rioters, on one side, and the public on the other. David Cameron’s statement to Parliament on Thursday 11th August 2011 neatly encapsulates the way that political rhetoric summoned and convened a public in support of the state’s punitive backlash:

To the law-abiding people who play by the rules, and who are the overwhelming majority in our country, I say the fightback has begun… We are on your side. And to the lawless minority, the criminals who’ve taken what they can get. I say this: We will track you down, we will find you, we will charge you, we will punish you.

(Cameron, 2011d)

Cameron addresses a law-abiding majority, reassuring them that the government and the courts are on *their side*. Cameron evokes a distinctly punitive public: it is on their behalf that the criminal justice system will track down, charge and punish the ‘criminals’. Being ‘on the side’ of the public means not only bringing the unrest to an end but punishing the lawless minority. In another speech a few days later, Cameron (2011b) made clear that
the ‘security fightback’ led by the criminal justice system was to be matched by a ‘social fightback’; a set of policy measures (including the work on gangs and troubled families mentioned in Chapter 5) to tackle the ‘slow-motion moral collapse’ and ‘broken society’ on which he blamed the riots; epitomised by ‘children without fathers, schools without discipline, reward without effort, crime without punishment, rights without responsibilities, [and] communities without control’ (Cameron, 2011b). Cameron framed this fightback, too, as a project mandated by the public:

I have the very strong sense that the responsible majority of people in this country not only have that determination [to confront all this]; they are crying out for their government to act upon it.

(Cameron, 2011b)

In Cameron’s rhetoric it wasn’t just the government ‘fighting back’ but a ‘responsible majority’ of citizens ‘crying out’ for it; clamouring for a punitive penal and policy response against the rioters. The imagination of the punitive public, I argue, hinges upon a strict division between the immoral, irresponsible and uncivilised rioters on the one hand, and on the other, a public who embodied all the virtues the rioters were so sorely lacking: responsibility, morality and civility.

Conservative papers like the Daily Mail echoed the rhetoric of a ‘fightback’ against the riots (Figure 9) and similarly addressed a public that was decisively against the riots and rioters, and, moreover, aligned with and in support of the punitive state backlash. This process perhaps reached a pinnacle in the ‘name and shame’ campaigns run by local papers and by the national right-wing press (Figure 10), encouraging readers to identify rioters from CCTV images, echoing those coordinated by police forces (Figure 11) and illustrating the right wing press’s increasing role in ‘inciting a “vigilante state of mind”’ (Cheliotis, 2010: 175). Such campaigns aimed not only to win legitimacy for the state’s law and order response, but to recruit the public into it, configuring and constructing a public that was not only calling for surveillance and punishment but actively enlisted in pursuing it, ‘summoning the public as citizens to aid the reprimanding of those deemed responsible’ for the unrest (De Benedictis, 2012).
More broadly, right-wing papers rallied in support of a public mobilising against the riots and the rioters. Groups of residents and business-owners ‘defending the streets’ were broadly praised as ‘heroes’, particularly in the right-wing media (Figure 12; Figure 13). The Telegraph praised the Turkish shopkeepers in Hackney – who guarded their businesses against looters during the riots, armed with knives and baseball bats – as ‘decent citizens’ and ‘the heroes of recent days’, linking their actions explicitly to Cameron’s ‘big society’ rhetoric (Moore, 2011).
Those who assisted in the prosecution of their own children received particular approval, in contrast to the irresponsible and feckless parents who were blamed for allowing their children to riot (Figure 14). The parents of Chelsea Ives, an 18-year-old athlete and ‘Olympic ambassador’ from East London (Figure 15) were celebrated in the media as responsible individuals, epitomising neoliberal ideals of active, entrepreneurial citizenship (De Benedictis, 2012). Having turned their daughter in to the police after spotting her in TV news coverage of the looting, Chelsea Ives’ mother reportedly said ‘These riots happen because good parents do nothing… As parents we had to say, “She can’t get away with that”… I had to do the right thing’ (Daily Mail, 2011). The teenager was subsequently jailed for two years after being convicted of burglary and damaging property (Freeman and Moore-Bridger, 2011).

In this way the right-wing press created and proliferated punitive discourses, that in concert with political rhetoric worked to assert a punitive common sense that made it possible for criminal justice practitioners to state they were doing what ‘everyone’ wanted them to. At the same time these representations worked to draw a solid and impermeable line dividing ‘rioters’ from society at large, providing a powerful rhetorical resource for criminal justice practitioners to reframe their work as on behalf of and with ‘the vast majority of people’.
The best of British

Discourses of nation and citizenship played a vital role in creating this cultural cleavage between the dangerous rioters and the fearful, punitive public; a binarisation that underpinned practitioners’ claims to be acting in response to the demands of society. The way in which questions of nation, citizenship and belonging were being reconfigured in 2011 provided a set of cultural resources that practitioners drew upon to align the public closely with the punitive reaction to the riots.

Divisive and exclusionary discourses of Britishness, in particular, were vital in the construction of a public defined in opposition to the racialised and othered rioters. Cameron (2011b) made a clear distinction between Britain, figured as ‘a great country of good people’, and the rioters who had committed ‘the most sickening acts on our streets’:

Last week we didn’t just see the worst of the British people; we saw the best of them too. The ones who called themselves riot wobblies and headed down to the hardware stores to pick up brooms and start the clean-up. The people who linked arms together to stand and defend their homes, their businesses. The policemen and women and fire officers who worked long, hard shifts, sleeping in corridors then going out again to put their life on the line… Because this is Britain. This is a great country of good people. Those thugs
we saw last week do not represent us, nor do they represent our young people – and they will not drag us down.

(Cameron, 2011b)

This rhetoric – symbolically casting rioters outside of the borders and boundaries of citizenship – was ubiquitous across media and political commentary. While the rioters decisively did not represent British people, or Londoners (Evening Standard, 2011) those who mobilised against them, either as cosy, local ‘riot wombles’ or as part of the criminal justice system, were the epitome of national character.

These regressive and exclusionary discourses of citizenship coalesced most clearly around the ‘clean-up’ operations (Jensen, 2013). Characterised by some as a symbolic ‘social cleansing’ of the city by a gentrifying ‘broom-wielding bourgeoisie’ (Himmelblau, 2011) the clean-up was refracted through a rhetorical division between the rioters and those who cleared up, figured as the ‘real’, ‘true’ Londoners, the ‘respectable middle-class’ who came ‘to clean up the streets, to sweep away the dirt and debris, and to cleanse the events that shook fear into “middle England”’ (Lamble, 2013: 577–578). Representations of the ‘broom army’ (Figure 16) painted a picture of a responsible, entrepreneurial and moral community – a ‘civilised majority’ of broom-wielding citizens ‘reclaiming the streets’ (Castella, 2011) – that stood in direct opposition to the irresponsible, immoral and pathological ‘scum underclass’ of the rioters (Tyler, 2013).

![Daily Express, 10th August 2011](image)
Reported on social media using the hashtags #theRiotWombles and #OperationCupOfTea (Evening Standard, 2011), coverage of the clean-up was saturated with regressive and nostalgic notions of the nation. An Evening Standard journalist reported ‘the blitz spirit was in evidence all day… The broom, raised aloft, plus cups of tea carried on riot shields seemed so very English’ (Evening Standard, 2011). As Tracey Jensen (2013) argues, the ‘mythology of Blitz spirit is periodically reanimated in times of crisis’ and is always saturated with classed and racialised meanings (see also Kelsey, 2013). In 2011 this nostalgic rhetoric was mobilised to evoke the virtues of ‘resilience, community, and Londoners uniting in response to a common enemy’; highlighting ‘urban antagonisms between the respectable gentrifiers of the so-called “broom army” and the “feral underclass” of the rioters’ (Jensen, 2013).

The criminal justice system’s response, too, was cast in this patriotic light. My discussion with prosecutor Amar echoed this rhetoric of the backlash against the riots as a reflection or expression of national character. He described how the CPS’s response to the riots (characterised by an extraordinary diversion from ordinary policy and practice) had really brought the organisation together, and turned out to be an enjoyable moment of cooperation and solidarity:
There was a lot of work, a lot of work to do. But yes, we all got stuck in, and actually, you know, we enjoyed it at the time. I mean it was quite frightening, obviously… but it was good, it was good work.

For Amar this response, stoic and steadfast in the face of adversity, was also quintessentially British:

I think that the challenging aspect for us, and the good thing for us, was that we came together… which is something, I think, very British, I think, in many respects… At moments of adversity people seem to sort of get together. Rather than people saying ‘You know what? It’s five o’clock. Cheerio, goodbye, have a good weekend.’ There was none of that nonsense… People were like ‘Right, what do we do?’ People volunteered to go and cover courts in places that you probably wouldn’t want to go to in the middle of riots… So, there was all that, but people went off and did it. They did it, and I thought it brought people together. I mean, in terms of us here, it was a great atmosphere.

What specific imaginations of the nation are at play here, making it possible for Amar to understand his organisation’s extraordinary approach to prosecuting riot-related offences as indicative of a particular national character? In some senses Amar seems to be appealing to the same traditionalist and conservative view of Englishness that Policing the Crisis identified in 1973: an imagined national character typified by shared values and moral codes of responsibility, hard work, discipline, respect for authority, tolerance and practicality – especially at moments of crisis and most notably in wartime (Hall et al., 2013 [1978]: 144–145). In 2018 this image of national identity was still at work and, as I argue below, had taken on an additional set of meanings in relation to the context of austerity.

My interpretation of Amar’s recollection of the riots was undeniably shaped by a small detail: as we talked, he sipped tea from a mug emblazoned with a now-faded, red-and-white ‘Keep Calm and Carry On’ motif. The mug had been a gift from his manager after the riots, Amar explained as we sat down to start the interview. It was a memento to thank him for his team’s good work during the riots, when ‘keep calm and carry on’ had been something of a motto for Amar and his colleagues. I suggest that Amar’s account of the criminal justice response to the riots as typically British draws on a romanticised and backward-looking imagination of what it means to be British that is typified by the ‘keep calm’ motif. The message – taken from an unused 1939 Ministry of Information poster designed to stiffen British citizens’ resolve in the event of a Nazi invasion (Hatherley, 2016) – has, alongside a host of other references to Britain’s imagined ‘golden
Summoning the punitive public

age’ of the second world war, become ubiquitous across popular culture in the last decade. ‘Tapping into an already established narrative about Britain’s “finest hour”’ such emblems hark back to the war as ‘a moment of entirely indisputable – and apparently uncomplicated – national heroism’ (Hatherley, 2016). This nostalgic discourse is imbued with a very particular imagination of citizenship and nation that is ‘implicitly defined by a ‘racial’ characteristic, that is, whiteness’ (Bowling and Phillips, 2002: 30). The ‘blitz’ has maintained a peculiar symbolic potency, representing a glorious moment ‘before the country lost its moral and cultural bearings’ (Gilroy, 2004: 97), painted in stark contrast to the anxious and insecure state of contemporary national identity engendered by multiculturalism.

The disturbances took place at a moment in which questions of citizenship, belonging and national identity, and the imaginations of the public that it engendered, were being contested and reconfigured (Bhattacharyya, 2013). The riots occurred in the midst of a series of ‘very public and highly staged enactments of shared identity’ that started with the royal wedding of Prince William and Kate Middleton in April 2011 and included the Queen’s jubilee and the London Olympics (Bhattacharyya, 2013). It is against this background that responses to the unrest (and specifically revanchist reactions against the rioters) came to be framed, and indeed celebrated, as symbols of ‘British’ values and character. Popular cultural imaginations of the public, filtered through racialised discourses of the nation were central to representations of the disturbances, and in particular to the configuration of the punitive public demanding a tough reaction from the courts. It is this cultural context – in which notions of citizenship were increasingly figured as exclusive and exclusionary – that made it possible for practitioners to imagine and invoke a punitive public whose priority was the removal of the dangerous and threatening rioters who represented the antithesis of Britishness.

Backward-looking notions of Britishness configured a public that was defined by its racialised others, embodied in the figure of the rioters. The riot clean-up, in particular, was popularly cast in terms of ‘blitz spirit’, evoking a regressive imagination of ‘middle England’ of which rioters were not a part. The exclusionary and racialised ideas of nation that animated this discourse were echoed in Amar’s memories of his organisation’s ‘very British’ response to the riots, and his ‘keep calm and carry on’ souvenir. What this discourse signalled was not only the marking of the rioters as outsiders; but the imagination of those mobilising against the riots – whether as riot wobblies proclaiming ‘looters are
scum’, as prosecutors working late into the evening to bring rioters to ‘justice’, or as ‘the public’ demanding ‘a tough response’ – as the real embodiment of British values.

I contend that practitioners’ imaginations of the public were refracted through these popular anxieties about national identity and increasingly exclusionary notions of citizenship. Practitioners, recollecting events from the vantage point of 2018, construed a ‘Middle England’ public that has in some senses come into being with the seismic social and political events of the last few years, in particular Brexit and the cultural reconfiguration of notions of nation, citizenship and belonging that it has entailed. Popular understandings of the riots and the courts’ response to them mobilised a regressive and nostalgic idea of Britishness that cast the rioters firmly outside of the closely policed categories of the city and the nation, and structured a specific imagination of ‘the public’. Exclusionary notions of citizenship ran through representations of those ‘fighting back’ against the rioters – either as clean-up wobblers or participants in the media-led vigilante campaigns – casting them as the embodiment of civilised, moral, responsible citizens. As well as providing the cultural resources for practitioners to frame their own work in bringing the rioters to ‘justice’ as peculiarly ‘British’, this configuration of ‘the public’ made it possible for practitioners to invoke a public who demanded a tough response from them.

In the final part of the chapter I consider more carefully how these circumscribed and delimited imaginations of ‘the public’ filtered through practitioners’ accounts.

**Part 3. Mediating ‘public opinion’**

In this part of the chapter I consider the mechanisms through which the imagination of the punitive public, which I have mapped out above, came to shape the courts’ reaction to the riots. Criminal justice practitioners do not have a direct, unmediated view on public attitudes; rather, their understandings of the public are culturally and ideologically contingent. Imaginations of what the public wanted – which are so powerful in legitimising punitive policy – are refracted through and entangled with sources that claim, explicitly or implicitly, to speak for ‘society’. Despite practitioners’ emphasis on their neutrality, objectivity, and independence, I argue that political and media discourses were crucial in moulding practitioners’ ideas about what the public wanted, and in doing so, set the scene for a punitive reaction to the unrest.
As I have argued, right-wing media and political rhetoric orchestrated an imagination of the public that was defined in opposition to the rioters, and which celebrated those who mobilised against the riots, whether as vigilant citizens, responsible parents or as ‘tough’ prosecutors and judges. This construction of the public as opposed to and in conflict with ‘the rioters’ put pressure on the criminal justice system to be seen to be taking a punitive stance; but this pressure, I argue, was exerted through and orchestrated by media and political discourses.

Prosecutor Amar highlighted the media scrutiny that he thought had played a part in the courts’ extraordinary approach to remand and sentencing:

Nobody likes to be accused of being soft on crime, do they, especially the judges, as you know. So you do feel that perhaps in that time they were being super tough, and then as the months go by and the dust has settled… the anger and the upset caused by the disturbances etcetera lessens, doesn’t it?

For Amar, the judges’ ‘super tough’ treatment of defendants was a direct response to the public’s ‘anger and upset’, but also – crucially – was a means of avoiding being accused of being ‘soft on crime’. Not being seen to be taking the riots seriously seemed a significant source of anxiety for the criminal justice system at such a moment of crisis, and the media played an important role in stoking this fear. Indeed the first mention of sentencing on the front pages of the major newspapers came on Friday 12th August, with the Evening Standard proclaiming the police’s ‘fury at soft sentences’ (Figure 18); and the Telegraph’s indignation over ‘child looters freed by the courts’ to go ‘back on the streets’ (Figure 19). This demand for punishment – not from the public but from the media – was explicit, with commentators calling for ‘zero tolerance’ from the criminal justice system.

One Telegraph journalist stated that

the only immediate response to this kind of mindless violence is zero tolerance from the police and the government in power, and a willingness to put those responsible behind bars… Britain is on the precipice of unprecedented levels of public disorder which must be decisively met with a firm determination to quell the riots and bring every one of these violent thugs to justice.

(Gardiner, 2011)
Such media discourses – in which lenient sentences are framed as a failure of justice and essentially enabling the riots to continue – contributed to the pressure on the courts to respond quickly and harshly to the disturbances. My conversation with Claire, the local authority manager I introduced in Chapter 5, pointed to the nature of the particular media constructions that put pressure on the courts to show themselves to be acting ‘tough’:

It was a bit of a PR thing, wasn’t it?… It was like, they have to, we have to act, and we give out this message, but we know that locking up young people doesn’t deter them… It’s having the courage to say that, isn’t it, when you’ve got all that media pressure… They say ‘they’ve got PlayStations’, or ‘they’ve got that’, or ‘they’ve got this’… And I think it is that narrative you get in the press and the media, isn’t it? ‘It’s soft on crime’… It’s this constant thing in the media, isn’t it? And it’s a constant thing in politics – all that ‘hug a hoodie’ stuff.

36 In 2006, as Leader of the Opposition, David Cameron gave a speech widely heralded as a new, more progressive approach to crime and justice, in which he criticised a shopping centre’s ban on young people wearing hooded tops. Cameron pointed to the need to address the social causes of crime, and emphasised the need for young people to be shown love (Cameron, 2006). The Labour Minister Vernon Coaker immediately retorted that ‘Cameron’s empty idea seems to be “let’s hug a hoodie”, whatever they have done’ (Hinsliff, 2006) and the speech became widely derided as a...
For Claire, the media played a vital role in driving the courts’ approach to the disturbances.

Similarly, barrister Lawrence saw pressures from the media as a key factor in punitive sentencing:

> If your real motivation is to show *Daily Mail* readers that the criminal justice system is taking this seriously, then I suspect a bunch of headlines saying ‘so many years in prison for X’ and ‘so many years in prison for Y’ may well do the trick.

Judges’ *real* motivation in sentencing, Lawrence suggested, was to *show* that they were taking a tough stance, and to demonstrate this to a very specific audience. ‘*Daily Mail* readers’ seems to act as a byword for the imagined ‘Middle England’ public I described earlier in the chapter, embodying all the social anxieties and highly conservative, punitive values that the courts were under pressure to play to. ‘*English tabloid readers*’ David Green argues ‘have arguably become at once the most uninformed yet most politically influential segment of the population’, driving increasingly punitive penal policy (Green, 2008: 126).

Though Claire and Lawrence pointed in abstract terms to ‘media pressures’, in other cases practitioners recalled a clear and direct link between the intense media focus on the courts during the riots, and the courts’ unusually severe policies and practices. Defence solicitor Roger recalled how the tabloid papers had picked up on an early case where the defendant was treated relatively leniently, in that they were not given a custodial sentence:

> We represented somebody at Camberwell, and it was a lay bench, and we got a fine, which was remarkable at the time of the riots. And it got into the *Daily Express* or one of the media, and from very shortly afterwards lay magistrates weren’t allowed to hear riots cases anymore, and they stopped deputy district judges hearing them – it had to be a district judge.

Roger saw the reporting of this particular case leading to a change in how the courts dealt with riot cases, with most cases appearing before district judges, who are known to take a harsher approach to both remand and sentencing than magistrates (Ipsos MORI, 2011).

For Roger then, pressure from critical press coverage had directly shaped the judiciary’s approach to dealing with riot-related offences at court.

misguided move towards being ‘soft on crime’; one from which Cameron soon retreated, returning to the Conservative’s traditional tough on crime agenda.
As Claire points out, the fear of being accused of being ‘soft on crime’ is ‘a constant thing in politics’. The kind of law and order rhetoric espoused by David Cameron, along with media discourses, created an ideological atmosphere in which the courts were under immense pressure to display unusual severity. In this way we might read the courts’ reaction as an example of a theatricalised performance of state power and legitimacy (Rai, 2015; Jones et al., 2017). As Jones et al. (2017) note in their work on the government’s efforts to be seen as ‘tough on immigration’, such performances do not necessarily succeed in delivering their message of solid sovereign power, since the population is in reality diverse and divided in its views on issues like crime and immigration, so that these messages may in fact have unintended effects. Yet what such performances reveal or help us to understand is the imagination of the audience – the public – that is at work.

Unsurprisingly, prosecutors and sentencers were keen to disavow any notion of direct political pressure on the decisions they made in responding to the riots. District judge Leonard recalled that journalists in 2011 had suggested ‘the administration seemed to have an evil hand’ in judges’ decisions about sentencing, but stated emphatically that this criticism was absolutely mistaken:

One of the key things is that nobody from the government administration contacted me. The contact that I got was from a judge, a senior presiding judge, and I wouldn’t have expected it any other way. It would be quite wrong for there to be an inference that the administration was taking any part in this, and I didn’t hear from them until after it was all over, when I got a phone call from a senior official to thank us for the work that we’d done. But no administrative suggestion as to how we should deal with the matter at all.

Returning to this point towards the end of our conversation, Leonard expressed regret that the judiciary hadn’t made this clearer in 2011, and said his key recommendation if disturbances were to occur again would be that ‘It should be absolutely crystal clear to everybody that the decisions on what was happening in court were judicial decisions’. In parallel to this, magistrate David was equally quick to refute any notion that magistrates had been ‘unduly influenced’ by government.

The Crown Prosecution Service, too, were keen to deflect suggestions of improper influence from the police or government. Kofi explained that ‘A lot of people don’t really understand that the CPS are completely independent from the police’, emphasising the CPS’s role in:
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making sure that the innocent are acquitted and the guilty are convicted, and being, if you like, it’s a rather cliched term, but a minister of justice, which is what prosecutors are. I will get paid irrespective of the number of prosecutions we do, or irrespective of the number of convictions we secure. That’s something that I’m very proud of.

Rather than working for the interests of the police, Kofi was clear that the CPS were a neutral entity who served the public and the public only. Similarly, prosecutor Amar emphasised the CPS’s independence from both the police and the government department whose offices they shared:

There was never a sense that, you know, ‘gosh, we must lock everybody up’. Even riots aside, we are independent. I mean, you know this – we’re not part of the police force. We may be in this building now, the Ministry of Justice, but we’re nothing to do with them.

Prosecutor Jason, however, who’d led the CPS’ Crown Court work, dealing with the more serious riot-related offences, painted a rather different picture. He described how the CPS had been under pressure to act quickly as the riots unfolded:

There was a lot of political pressure on us as an organisation, from the Prime Minister’s office to make sure actually that those cases were being dealt with correctly, er and quickly. So we were trying to keep a real tight control on [riot-related] cases.

This seemed to me a surprisingly frank acknowledgement from an organisation whose decisions are explicitly made ‘independently of the police and government’ (Crown Prosecution Service, 2018a). Whether or not the courts were unduly influenced by direct government interference; politicians applied a more insidious kind of pressure by publicly promising that the criminal justice system would respond in a certain way. In a public statement outside 10 Downing Street on 9th August David Cameron promised to ensure that

court procedures and processes are speeded up and people should expect to see more, many more arrests in the days to come. I am determined, the Government is determined that justice will be done and these people will see the consequences of their actions. And

37 However, my contact at the CPS, in the process of approving the thesis, emphasised that although prosecutors’ decision making is strictly independent, this does not preclude the CPS being expected to act as part of government and respond to government priorities.
I have this very clear message to those people who are responsible for this wrongdoing and criminality: you will feel the full force of the law and if you are old enough to commit these crimes you are old enough to face the punishment.

(Cameron, 2011a)

Speaking to the House of Commons two days later, he took an even more retributive tone, and set out specific sentences that rioters could expect:

You will pay for what you have done… Anyone charged with violent disorder and other serious offences should expect to be remanded in custody, not let back on the streets, and anyone convicted should expect to go to jail.

(Cameron, 2011d)

On the same day, Home Secretary Theresa May echoed this sentiment, stating unequivocally that ‘the courts should hand down custodial sentences for any violent crimes’ (May, 2011). The CPS and the courts were to a great extent bound to meet the expectations of the executive, publicly stated and reinforced by the media, which as defence barrister Sadie put it, was characterised by a kind of ‘lock ‘em up and throw away the key’ attitude:

I mean, in some ways, what were they gonna do? You know, no judge was gonna stand there and say ‘It’s fine, we’ll just let you all go home.’ Can you imagine the political (laughing) crisis that would have caused? I mean, it would’ve been horrendous.

This political rhetoric on the riots, then, in many ways set the tone for the courts’ response, and it is difficult to conceive of the courts being entirely unaffected by these kind of proclamations about how they should and would react. After the ‘extraordinary lapse’ in authority that the riots posed, there was ‘an urgent political need’ to re-establish and maintain order (Gilson, 2011). The failure to do so carried a ‘huge and potentially fatal political cost’ (Barker, 2011). But the courts were under pressure to do more than restore order. To secure its own legitimacy, the state was under to pressure to show it was ‘tough on crime’ (Gilson, 2011), and it was primarily through the courts that this would be demonstrated.

Though prosecutors and sentencers were keen to emphasise that they were acting on behalf of the public, free from political interference, the notion of what the public wanted, and indeed, what was in the public interest, was configured through media and political
processes that framed the public in very particular – and peculiarly punitive – terms. Though criminal justice practitioners claimed to be responding primarily to the public’s desire or demand for punitiveness, these imaginations of what the public want are refracted through and entangled with media and political discourses. The courts and the criminal justice system more broadly do not directly respond to public opinion or desire regarding how crime should be treated; rather, public attitudes ‘are filtered, shaped and moderated before they are translated into penal policy’ (Matthews, 2005: 189). Public opinion on crime does not emerge in a vacuum, as a fact that policy makers and politicians must simply reflect, but as a complex social process that both draws on and actively reinforces ideas about crime and punishment that circulate in political rhetoric and in the media (Hall et al., 2013 [1978]). Moreover, in many ways, whether or not society actually expected or demanded to see a tough punitive reaction was less important than the ability to inscribe this punitive impulse on an imagination of ‘the public’. Far from accepting it as a straightforward appraisal or reflection of public sentiment, we should look more critically at this configuration of the outraged and punitive public, where it emerges, and what it allowed practitioners to do and say. I have argued, then, that the ‘tough’ and ‘swift’ criminal justice reaction might be better understood as a response to pressures that were mediated by and through the media and politicians. It was largely via these institutions that ‘the public’ received information about the riots and how the state was responding; but it is also through these institutions that those working in the criminal justice system built an understanding of what people wanted and expected. Media and political reactions to the riots were vital in configuring a fearful and outraged public that practitioners felt they were speaking to and for.

Conclusions

This chapter has critically examined the claim that society demanded harsh punishment, and the putative public consent that was choreographed to justify the courts’ unusual and controversial approach to the disturbances. I have explored the ways that criminal justice professionals framed the courts’ response to the unrest as ‘sending a message’, not only to rioters or those who might have got involved, but – more importantly – to society at large. The idea that society expected and demanded to see rioters severely punished worked as an important cultural resource that practitioners drew on to legitimise the courts’ actions, and to absolve themselves (and the criminal justice system more broadly) of
moral responsibility for the incredibly harsh treatment of thousands of people. Claiming to represent and act on behalf of society was a means of claiming legitimacy of a particular kind; the legitimacy bestowed by acting in accord with ‘common sense’; or giving voice to ‘what everyone is thinking’; but we also need to look more closely at what is at stake in asserting that ‘the public’ wanted to see such a reaction.

I have shown how this notion of the punitive public emerged in my interviews with criminal justice practitioners, allowing them to subtly shift moral accountability for these punitive practices away from the criminal justice system itself and onto the public at large. But, as I showed, the courts’ response far surpassed any empirical measure of public punitiveness. The courts, then, were not simply reflecting what the public wanted, but invoking a peculiarly punitive citizenry. The notion of the public on which practitioners drew, and claimed to represent, in fact referred to a very specific public orchestrated and imagined through media and political discourses. This public was defined primarily in opposition to the rioters and was demarcated along racial and classed lines.

The riots offered a screen onto which ongoing anxieties around Britishness, in particular, could be projected and its lines redrawn. The disturbances brought to the fore a discourse that positioned ‘the rioters’ firmly outside of, and in opposition to, the moral majority. This divide between the rioters and the rest of society was cast clearly in terms of the nation and national character: the rioters were positioned as outside of the limits of community and society, while those who rallied against them and sought to punish them were feted as ‘the best of British’. The various punitive responses to the riots – whether the courts’ vindictive approach to sentencing or the clean-up operations that became coded as white, middle-class citizens ‘reclaiming the streets’ – were celebrated as emblematic of a vigorous and resilient national character. This ‘blitz spirit’ rhetoric convened and configured a regressive and exclusionary imagination of Britishness, defined in opposition to, and based on the exclusion of, the rioters who were positioned as racialised others.

I have mapped out some of the mechanisms through which this cultural configuration of the punitive public came to shape practitioners’ accounts of what society wanted, arguing that practitioners were not simply responding to public desire for punishment, but to a constellation of forces exerted by and mediated through political rhetoric and media narratives. Though professionals argued the criminal justice response was concerned primarily with meeting society’s expectations, this was inherently entangled with pressures
from within the criminal justice system; from central government and from the media. In particular, dramatic public proclamations about how the courts would and should respond made it very difficult for them to respond in a different, less punitive, way. While practitioners’ appeals to the public’s purported desire for punishment provided a powerful means of legitimating the courts’ harsh treatment of rioters, the courts’ treatment of rioters in fact emerged from a field of intense pressure from many directions.

Claims to represent a punitive public are potent, productive and self-fulfilling. Politicians and media – but, I have shown, also prosecutors, civil servants and judges – stake claims to popular legitimacy by positioning themselves ‘solidly in the groove of popular thinking’, claiming to simply be articulating “what everybody knows”, takes-for-granted and agrees with’ (Hall and O’Shea, 2013). But in fact,

what they are really doing is not just invoking popular opinion but shaping and influencing it so they can harness it in their favour. By asserting that popular opinion already agrees, they hope to produce agreement as an effect.

(Hall and O’Shea, 2013)

But it is not only that media and political discourses shape public perceptions of crime and justice, priming the public to accept and support punitive penal policy. Rather, we might better think of public opinion as another part of the looping and spiralling flow of collective meanings around crime and justice, whereby political and policy rhetoric, media narratives and public opinion constantly interact with and reinforce each other (Ferrell et al., 2015), such that we cannot meaningfully separate public opinion from political rhetoric or professional discourse. In this way, the logic that rioters must be punished works as a kind of ‘amplifying spiral that winds its way back and forth through media accounts, situation action and public perception’ (Ferrell et al., 2015: 158). Reframing invocations of popular desire for punishment not as a fact but as part of this swirling flow of collective meanings around the riots, and as a resource for claiming legitimacy, draws attention to why particular meanings have become attached to ‘the public’.

By staking a claim to reflect what society wants and needs, criminal justice practitioners draw on and add to a widespread common sense that positions the criminal justice system as an essentially benevolent entity; precluding discussions about whether it actually serves the public – and if so, which public. Claiming public support for punitive policy shores up the image of the criminal justice system as essentially concerned with public safety; while obscuring its actual effects, maintaining and reproducing profound economic,
political and social inequalities. Invoking public demands for the criminalisation and punishment of disproportionately marginalised, poor and racialised people ‘enable the state elite to legitimate itself by “responding to the demands of the “people” while at the same time exculpating its own historic responsibility’ in producing and entrenching profound social iniquities (Cooper, 2012: 14; citing Wacquant, 2008). By framing the punishment of rioters as a response to what the public – figured as monolithically fearful and vengeful – wanted, practitioners disavow the criminal justice system’s own accountability for reproducing and reinforcing these inequalities.

Building on my analysis in the previous chapters on the role of ignorance, denial and silence in naturalising and normalising the criminal justice response to the riots, I suggest that invoking this highly selective idea of the public – one that wants punishment – involves actively ignoring and silencing other, more critical, voices that called for different kinds of responses to the unrest. Recognising this opens up the possibility of thinking about a response to the riots that might have reflected very different kinds of public attitudes to the unrest; not motivated by outrage against the rioters but perhaps reflecting the well-documented and widely shared frustrations at the roots of the disturbances. Rather than legitimising more law and order, listening to this public would necessitate a state response that actually addressed the structural and systemic inequalities that the courts’ response ignored and silenced. But doing so would require a different set of cultural resources from those that came to shape the 2011 response.

Further developing this argument, the next chapter focuses in on one particularly violent aspect of the criminal justice response to the riots – the handing out of custodial sentences – to explore in more depth the moral and political complexities of the law and order reaction to the riots, and to think through how practitioners who designed and delivered this response negotiated the ideological and ethical dilemmas it posed.
Chapter 7

Justifying imprisonment: Denial and disavowal in judges and magistrates’ accounts of sentencing

As a purely personal view, I hate prison… If I was convinced that prison had no deterrent effect, I’d think it was a cruel thing to do, an unnecessary thing to do.

Leonard, District Judge, London

Introduction

Over the preceding chapters I have discussed how criminal justice practitioners drew on and reproduced very particular understandings of the riots, the rioters and the public, showing how they positioned their work as vitally important, fair, and legitimate. In this final empirical chapter, I turn my focus to how practitioners invoke different imaginations of the criminal justice system itself – and prisons, in particular – that allow them to normalise and justify the imprisonment of thousands of people in the wake of the riots. I argue that agnosis is vital in allowing practitioners to frame custodial sentences as an appropriate and just response to the disturbances. By disavowing responsibility for sentencing decisions, denying the harms inflicted by custodial sentences and ignoring the structural inequalities that prison exacerbates, professionals who had been centrally important in imprisoning rioters were able to normalise and justify this strikingly violent penal reaction to the unrest.

The prison was absolutely crucial to the state’s response to the disturbances. Both the courts’ punitive approach to remand and the startlingly widespread use of custodial sentences handed down to those convicted, meant that prisons served both as holding pens and as sites of exceedingly harsh punishment. Over half of those arrested for involvement in the disturbances (including those arrested for minor offences) were remanded to custody; compared to around ten per cent of people arrested for the most serious offences in normal circumstances (Curtis, 2011). The courts’ approach to
sentencing was even more severe: 66 per cent of those convicted of riot-related offences were sentenced to immediate custody (an increase of 24 per cent compared to similar offences in 2010), serving sentences on average four times longer than comparable crimes would attract in non-riot contexts (Ministry of Justice, 2012a).

Almost as soon as the first defendants were sentenced (while the disturbances were ongoing) serious concerns were raised about not only the length of the sentences being given, but the way that sentencing decisions were being made and sentencing policy formulated. There was a great deal of controversy around judges purporting to issue ‘guidelines’ on sentencing to other judges: Judge Andrew Gilbart QC, the first judge to pass sentences on riot-related cases, stated that riot offences were ‘outside the usual context of criminality’ and so should receive harsher sentences than those the sentencing guidelines set out and listed suggested sentences for a range of offences, prompting England and Wales’s most senior judge, the Lord Chief Justice Igor Judge, to call this a ‘recipe for chaos’ (Binham, 2011). The week after the riots, the chair of Camberwell Green magistrates’ court, Novello Noades, claimed to have received a ‘government directive’ to sentence rioters to prison; a claim she quickly retracted in the face of an outcry about the compromise of judicial independence (Baird, 2011). Yet a freedom of information request revealed there had been direction from the Courts and Tribunals Service in the form of an email sent to justices’ clerks38 the week of the riots, instructing them to advise magistrates to disregard the sentencing guidelines (Bowcott, 2011b). It was also reported that the Metropolitan Police asked the government to take steps to ensure that sentencing was adequately harsh: a Metropolitan Police deputy assistant commissioner expressed ‘disappointment’ among the police about some of the early sentences handed out, which they felt were too lax, and said that the police had agreed with the Home Secretary the need for sentences to ‘reflect the crimes and the hugely devastating impact on the people of London’ (Ford Rojas et al., 2011).

Two of the most widely reported cases were those of Perry Sutcliffe-Keenan and Jordan Blackshaw, aged 22 and 20. The young men, who had no prior convictions, were each sentenced to four-year custodial sentences for setting up Facebook pages to arrange ‘riots’ in their respective hometowns of Warrington and Northwich. In both cases, the posts had been quickly removed and no unrest broke out in either location (Travis, 2011). These

38 Justices’ clerks are lawyers employed by Her Majesty’s Courts and Tribunals Service and provide legal advice to magistrates.
sentences were extraordinary when compared to sentencing in non-riot contexts, in comparison to earlier disturbances, and even in relation to the sentencing of other ‘rioters’ in 2011. As the Guardian pointed out, had the two men left home and actually taken part in a riot, it is likely they would have been charged with violent disorder, an offence which during the riots attracted an average sentence of 25.7 months; significantly shorter than the four-year sentences the two men received (Travis, 2011). Highlighting the harshness of the sentences in comparison to the approach taken in previous riots, Jordan Blackshaw’s lawyer pointed out that following the 2001 Bradford riots similar sentences were handed to ‘those carrying crossbows and wielding scaffolding poles’ (cited in Bowcott, 2011a). To qualify for a four-year sentence in ordinary circumstances, one would have to commit an offence such as kidnapping (with an average sentence of 47 months in 2010), killing someone while drink driving (45 months), or sexual assault (48 months) (Travis, 2011).

The exceptionally harsh approach to sentencing was vindicated and encouraged by Lord Judge’s Court of Appeal judgement in October 2011. The ‘Facebook rioters’, along with eight others, appealed against the ‘manifestly excessive’ custodial sentences they had received (Travis, 2011); eight of these sentences, including Blackshaw and Sutcliffe-Keenan’s, were upheld. The Court determined that those who deliberately participated in the disturbances had committed aggravated crimes; that the sentencing guidelines did not take into account the riot context and could be departed from; and that sentencers should impose severe sentences intended to punish and deter (Lightowlers and Quirk, 2015). As a result of the large numbers of people arrested, the extraordinary approach to prosecution and remand, and the high rates at which custodial sentences were imposed, in the wake of the riots the already-overcrowded prison system in England and Wales was stretched beyond precedent, rising above 88,000 for the first time in history in December 2011 (Prison Reform Trust, 2011a). A year on from the riots, there were still 692 people in prison for riot offences, including those on remand (Rogers, 2012).

For some practitioners, custodial sentences seemed a somewhat obvious and unproblematic response to an exceptional breach of law and order, requiring little further justification. But for others the imprisonment of rioters posed perhaps the most serious challenge to their efforts to present the response to the riots as reasonable and proportionate. For those whose work brought them into close proximity with the prison, especially, it played an often complex and contradictory role, their professional positions putting them in the distinctly uncomfortable position of delivering a response that they
felt was either ineffective or immoral. I show how those involved in sentencing rioters to prison and those responsible for managing the prison system used techniques of denial and disavowal to manage the cognitive and moral dissonance that their role in imprisonment posed, allowing them to justify and rationalise a profoundly violent, discriminatory and ineffective reaction to urban unrest. Drawing on Scott’s (2018) notion of ‘penal agnosis’ and building on work by researchers who have noted how political and media discourses distort and diminish the harm and suffering that prisons inflict upon those inside (Mason, 2006; Stanley and Mihaere, 2018), I argue that ignorance and denial, in various forms, are vital in allowing practitioners to legitimise prison as the primary response to the unrest.

This chapter builds on the arguments I have developed in the previous chapters. In Chapter 4 I showed how framing the riots as a law and order issue, and forgetting or ignoring the political content of the events, paved the way for a harsh law and order response. The discourses around the meaning – or meaninglessness – of the riots licensed and legitimised a response that aimed simply to remove, contain and punish the ‘criminals’, rather than seeking to understand or address the structural or systemic context in which they occurred. Here I show how the prison epitomises this exclusionary impulse. While Chapter 6 focused on how media and political pressures for a ‘tough response’ came to be understood as public demands for punishment; in this chapter I explore why the prison in particular seemed to meet this need for a strong show of state power. In Chapter 5 I suggested that practitioners drew on and subtly reinforced racialised and classed imaginations of crime and criminality that positioned ‘the typical rioter’ as somehow inevitably or naturally entangled in the criminal justice system. This chapter builds on this analysis, showing how practitioners’ accounts ignored but also normalised and naturalised the starkly racialised and classed lines along which the prison targets populations.

The chapter is divided into three parts, each examining a distinct way in which practitioners’ accounts mobilised forms of ignorance and denial to legitimise the courts’ widespread use of custodial sentences in the wake of the riots. First I trace how participants used detached, abstract and bureaucratic language and logic that transformed the mass imprisonment of rioters from a political or ethical question into a technical problem that required relatively little moral consideration. In Part 2 I draw on my discussion with district judge Leonard, identifying how his self-exculpatory account allowed him to deny and disavow responsibility for the incarceration of rioters. In Part 3
I show how practitioners effectively minimised and obscured the profound harms inflicted by prison, and in particular, elide the starkly racialised and classed dimensions of this harm.

**Part 1. ‘That is their job’: Disavowing responsibility for imprisonment**

In this part of the chapter I show how prosecutors Amar and Kofi, and civil servant Martin, absolved themselves of responsibility for the imprisonment of ‘rioters’. While prosecutors were able to position themselves at a distance from prisons and disavow responsibility for its harms, for others more closely implicated in imprisonment, like Martin, framing his role in strictly technical or logistical terms allowed him to obscure the profoundly political and ethical complexities of his work. Drawing on Bauman’s (2000a [1989], 2000b) concepts of social distantiation and bureaucratic rationality, I argue that these processes enabled practitioners to effectively neutralise the profound moral burden of incarcerating thousands of people in the wake of the riots.

In Chapter 4 I argued that framing the riots as an unprecedented outburst of unprovoked violence was a powerful means of legitimising a punitive penal response. For some practitioners, like prosecutor Amar, the widespread use of prison sentences to punish riot-related offences was simply a proportionate and appropriate response to these highly unusual events. I asked Amar if he had any apprehensions about the extent to which prison sentences were handed down in the wake of the riots:

Chloe: Was there any concern that custodial sentences were being used perhaps too widely?

Amar: Not really. I think we as a collective, I think we all took the view that the sentences were tough… you know, three weeks, four weeks’ custodial sentence immediately imposed. But I don’t think we thought it was bizarre or anything. We just thought, well, that’s what met the circumstances at the time.

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39 The average custodial sentence handed down for riot-related offences was in fact 17.1 months (Ministry of Justice, 2012a).
For Amar, the unusually long prison sentences were ‘tough’ but not concerning; simply a rational and justified response to the riots themselves; and, in particular, their unique character:

They were very unique circumstances. I don’t know how else the criminal justice system was supposed to respond to it.

In this sense Amar simply did not see the prosecution practices that ultimately led to prison as morally complex, let alone ‘dirty’ work for which he had to account. In part, I argue, this was because as a prosecutor, Amar did not see himself or his organisation as bearing the burden of responsibility for sentencing or for the administration of sentences.

Chloe: To what extent would you, as the CPS or as prosecutors in court, to what extent, and forgive my ignorance, do you have a kind of a say around sentencing or,

Amar: (overlapping) Well we don’t, we don’t have, we don’t generally. Our job at that time- and we do have a bit more say about sentencing as time’s gone on, but sentencing is generally the province of the magistrates or the Crown Court judges, that is their job. Our job is to charge cases.

Although he qualified this somewhat – ‘When it comes to sentencing, we will make representations, so you mustn’t, you know, say to you that we don’t have any role; we do, we do have a role in sentencing’ – for Amar this was not really his responsibility.

Similarly, When I asked prosecutor Kofi whether he had any concerns about the suitability of prosecution and sentencing decisions that had led to so many going to prison, he seemed to find it easy to brush this off:

Chloe: Were there any cases that either you worked on or you remember hearing about, where you did think ‘that was too harsh’… in terms of either deciding to prosecute, or the sentencing?

Kofi: Not really, no (laughing)

Like Amar, Kofi was clear that the sentences handed down were beyond prosecutors’ remit:

Chloe: Do you kind of get a sense of whether the sentences that people get as a kind of end result, whether they do have a deterrent effect, or rehabilitation, or?
Justifying imprisonment

Kofi: That’s not really a question for me; it’s more a question for probation, who actually see these people through, past sentence… I would only see those people again if they re-offend and come back into the system. And unless it’s a name that stands out, or I actually recognise them: ‘hold on a minute, I remember this guy from last year when I prosecuted him.’

For Kofi, moreover, he simply did not know what happened to people whose cases he had prosecuted and would only find out were he to recognise them in a future case.

Though the CPS made extraordinary decisions about prosecution that directly fed into the penal backlash (Lightowlers and Quirk, 2015) I argue that the separation of prosecutors from the end results of their work, and from prisons in particular, enables prosecutors to distance themselves from and disavow responsibility for the punishment of rioters. For Kofi and Amar, the defined boundaries of their professional roles as prosecutors seemed to relieve them of the moral burden of the eventual outcomes of cases, and to position their work in singularly positive terms. As Amar put it, what happened to defendants beyond the stage of prosecution was simply not his responsibility: ‘that is their job. Our job is to charge cases.’

David Green argues that the ‘bureaucratic compartmentalisation of the systems of criminal justice ensures that no single individual group holds any sufficient responsibility’ for the harmful cumulative effects of punishment (Green, 2015: 57). Rather, the strict division of labour allows criminal justice professionals and organisations to remain ‘cogs in a great machine’ (Weber, 1968), in which ‘everyone and no one’ is responsible for punishment (Green, 2015: 57). The estrangement of practitioners like Amar and Kofi from the practice of punishment and the prison itself ‘reduces, thins down and compresses the view’ (Bauman, 2000b: 27) of those whose lives are impacted by criminalisation and punishment, and in particular, the pain that prisons inflict on them. For those whose work keeps them on the peripheries of the prison, the inherent ineffectiveness and violence of prison can simply be overlooked or disregarded, ‘simply not discussed or treated in the context of the functioning of the penal system as a whole. The prison as such is conveniently forgotten’ (Mathiesen, 2006: 144).

Transforming prison into a logistical problem

For other professionals who were more directly responsible for imprisonment – either as sentencers or within the prison system itself – this kind of ‘convenient forgetting’ was
impossible. Instead, I argue, it was necessary to confront the prison head-on, acknowledging the complexities it posed and finding means to legitimise it.

Martin, a senior civil servant at HM Prison and Probation Service positioned his work in bureaucratic and logistical terms that enabled him to rationalise and normalise the imprisonment of rioters despite his personal misgivings. When Martin and I met, having been put in contact by the chief executive of his department, Martin was in his last week in the job, leaving the civil service to take up a role in the private prison sector. Martin had joined the prison service as a graduate on a fast-track scheme, he told me (‘it doesn’t sound very fast, you know: six years of taught input, and six years to “realise your potential”, apparently’) starting as a prison officer and working his way up to become a junior prison governor. After this Martin had moved into the civil service, taking up national policy and operations roles relating to the prison system, and in 2011 he had been responsible overseeing the functions of the prison system in processing those remanded and sentenced to custody for riot-related offences. Martin’s account of that time was, on the whole, a measured and dispassionate description of the practical challenges that the riots had posed for the prison service. But there was also a hesitancy in Martin’s recollection of the time. For Martin, his personal opinion on the efficacy of the sentences handed out to rioters was at odds with the way the courts had sentenced so many to custody:

My personal opinion is that short sentences don’t tend to work very well (laughing)…

Often what we do is we take people who do abnormal things, we put them in an abnormal place, we do abnormal things to them in terms of programmes and activity, and then we shoot them out the other end of it saying ‘Well, you’re normal now.’

For Martin, then, there was an uncomfortable mismatch between his personal opinion that prison sentences often don’t work, and the job he was doing in managing and facilitating these same sentences. Martin navigated this tension in a number of ways. First, he drew a clear distinction between his own view and what needed to be done: ‘I think you have to separate your personal opinion about the use of custody from what was right at the time’. In particular, the criminal justice system needed to be seen to be reacting decisively:

Short sentences don’t tend to work as well as community sentences, interestingly… But at the time was it the right response? I think yeah, actually. Because how could you be seen to be doing anything else?
Martin argued that the criminal justice system had little choice but to hand down custodial sentences since they were the only adequately serious response to the riots. Invoking the putative public demand for punitive sentences, as I argued in Chapter 6, allowed practitioners like Martin to disavow personal responsibility for imprisoning ‘rioters’, instead allowing them to position the harsh sentences as an unfortunate but inevitable outcome.

For Martin, it was custodial sentences in particular that provided an adequately severe response to the unrest, demonstrating to the public that the criminal justice system was taking the disturbances seriously. Imprisonment provides a peculiarly ‘dramatic, tangible and visible’ means of showing the state to be ‘tough, resourceful, and above all, “doing something”’ to ensure safety and security (Bauman, 2000b: 37). In Chapter 4 I argued that the prevailing narrative both in popular discourse and in my conversations with some practitioners positioned the disturbances as a frightening outburst of meaningless violence, and in Chapter 5 I showed how practitioners invoked shared imaginations of the majority of ‘rioters’ as almost inherently or inevitably predisposed to crime. It is against this cultural and political backdrop that the courts’ extraordinarily harsh approach to remand and sentencing came to make sense. When the disturbances were defined not as a symptom of broader social or political problems but as the act of a group of irresponsible and violent individuals, physically removing those people to ‘spaces they cannot escape’ (Bauman, 2000b: 39) seems to offer a logical and powerful response, and publicly legible proof that something was being done to deal with the disturbances. Defining crime and criminals in such depoliticised and decontextualised terms means that prison appears to provide a seemingly simple solution.

For a criminal justice system that felt under immense pressure to demonstrate its authority, the spectacle and immediacy of handing down prison sentences ‘matters more than their effectiveness’ (Bauman, 2000b: 37). But, regardless of its appeal as a show of state power, the widespread use of custody posed a serious challenge for practitioners whose experience and expertise meant that they knew that the response would likely be ineffective at best, and at worst deeply harmful. This uncomfortable position, I argue, required a set of practices of denial that allowed practitioners to distance themselves from the harms of prison. For Martin, the bureaucratic framework in which he worked seemed to provide a layer of insulation from the profound moral and ethical dilemmas of working within a system that he felt was in large part ineffective.
Martin explained his role in 2011:

I was in charge of what was called ‘OSING’ – so, Operational Services and Interventions Group – at the time, and part of that was responsibility for population management and incident engagement.

In this role Martin headed up the Ministry of Justice’s ‘gold suite’, the unit responsible for co-ordinating the centralised national response to major incidents, bringing together staff from the police, the probation service, the courts, and other partner organisations. The role had two key tasks, Martin explained:

One, just be able to respond, because we expected lots of police remand and courts to create a sort of bump up in our population of remand prisoners. But also then in the aftermath, how were we going to logistically manage what would be a sort of big inflow of maybe several thousand people going through the courts, and then into prisons as a result of that.

Martin’s job was to ‘make sure that we were set up to do that in the early days, in order to set the platform for doing that in a stable way thereafter’. As much as dealing with the immediate ‘inflow’ of remand prisoners, Martin’s team was responsible for the longer-term project of dealing with the processing of those convicted. ‘That’s when our work really begins’, he explained, ‘because that’s when you’re pushing people through the courts, into prisons.’ His team, he said, was well set up to ‘manipulate the capacity’ of the prison system to deal with this increase:

We have our PECS [prison escort and custody services] contracts, so we have a PECS contractor [that] is really slick at these things… They know how to manipulate the capacity around the system. We always know where we can deploy contingency spaces.

The systems and processes in place meant that the prison system was able to ‘click back into pretty routine business, really, just with a few extra people’, as Martin put it:

I mean, I wouldn’t want to underplay that it caused difficulty, because it did, but it didn’t cause catastrophic change in strategic direction… Whilst there would be a sort of peak in the population in prisons and on community orders, effectively in the short term, that would trail off… The main rump was quite quick in terms of working its way through the system.
Martin’s emphasis on the normality and routineness of the detention of rioters seemed to position the penal response as ordinary, unexceptional and unproblematic: the riots were a ‘moment in time’, Martin said, primarily a logistical challenge that was incorporated into the prison system’s broader ‘strategic direction.’ I was particularly struck by the bureaucratic and technical language that Martin used to describe his work. His team had been concerned with the ‘logistical management of people from place to place’, as he explained it; describing those sent to prison as an inflow, an influx, a population, even a ‘rump’; and articulated the problem in terms of volume and backlog, systems, processes, flows and management.

Drawing on Bauman’s (2000a [1989]) analysis of the vital role of the logic and language of bureaucratic processes in facilitating and normalising profound acts of violence40, I argue that the detached, abstract terms that Martin used to talk about the courts’ and prisons’ reaction to the riots obscured and obfuscated the profound political and moral implications of his work, effectively neutralising its potential taint. For Martin, the management and coordination of the imprisonment of thousands of people – many for minor offences, many of them children and teenagers – was transformed into a logistical puzzle for civil servants to solve. When Martin talked about the problems in prisons, acknowledging that the sentences handed down would likely be ineffective – ‘we put them in an abnormal place, we do abnormal things to them’ – the solution was cast in terms of adjusting the process: ‘the more we can actually normalise people’s transition through the criminal justice system, the better’. The technical, overtly politically ‘neutral’, jargon-laden language of policy makers and managers belies and obscures the deeply political and problematic work they are engaged in; providing the moral distance that allows them to ignore the harm and human suffering inherent in their work. Rather than requiring

40 See also Green (2015) who argues that the same social processes that Bauman identifies as having enabled the Holocaust serve to perpetuate the monstrous growth of the American prison system. Through diminishing the public’s emotional proximity to, and sense of moral responsibility for, ‘collective human mistreatment’ the twin processes of bureaucratic rationality and social distanitation function to facilitate American society’s tolerance or acceptance of (and even support or enthusiasm for) extraordinarily expansive penal policy; and public indifference to the suffering it engenders. In his later work, Bauman also develops this connection between the Holocaust and prison, noting the functional parallels of prisons and concentration camps in their tactics of exclusion, isolation, extremely circumscribed mobility and invisibility (Bauman, 2000b).
professionals to think in moral, ethical or political terms about the eventual effects of the work they are engaged in, the management of prisoners is framed as technical problem, calling for ‘better, more rational designs, not for soul-searching’ (Bauman, 2000a [1989]: 195). Bauman’s concepts help to make sense of how criminal justice practitioners like Martin came to understand the imprisonment of ‘rioters’ as largely unremarkable, or as unpleasant but ultimately necessary or inevitable. Approaching the imprisonment of rioters as solely a logistical challenge, I argue, allowed Martin to ignore its deeply problematic aspects, and to legitimise it as key response to the unrest.

**Part 2. Sentencing the rioters: Denying moral responsibility for the harms of prison**

In this part of the chapter I turn to my interviews with sentencers Leonard and David, who unlike prosecutors and civil servants, were directly responsible for imposing custodial sentences, to examine how they navigated the moral complexities of the prison. For retired district judge Leonard, in particular, techniques of denial were crucial in allowing him to obscure and deflect from the profound harms his sentencing work implicated him in, to rationalise and resolve the dissonance he felt about prison, and ultimately to disavow the burden of moral responsibility for imprisoning rioters.

At the outset of our conversation, Leonard was overwhelmingly positive about how magistrates’ courts had responded to the riots. He praised the justices’ clerks, the court administrators, defence lawyers and the Crown Prosecution Service as well as the district judges and magistrates. In terms of sentencing, Leonard was very clear that the judges and magistrates dealing with riots cases had ‘got it right’. In part, Leonard drew on the same technique as civil servant Martin, invoking public demands for harsh punishment. As I argued in Chapter 6, Leonard’s claim that ‘society expected condign punishment’ and that ‘people would be outraged if a person didn’t go to prison’ was an important means of legitimising the courts’ punitive reaction to the riots. This idea that it was really the public who wanted harsh prison sentences, and the judiciary really had little choice but to reflect this public punitiveness, also echoed through Leonard’s broader account of the rising rates of imprisonment in recent years. ‘There undoubtedly has been a trend to lock up more people,’ he told me: ‘I mean, the figures are undeniable on that.’ But for Leonard this increase, too, could largely be explained in terms of public punitiveness. A key driver behind the increase in the prison population in recent years was the
introduction of sentencing guidelines, in various guises from the 1980s onwards, which Leonard thought had removed the ability of judges to use their individual discretion to sentence leniently.

Every time we developed a guideline on the panel we’d send it out for consultation. And by and large the response would be ‘This is wet, you’ve got to tighten it up.’

For Leonard, it was the public who had compelled the judiciary into imposing harsher punishments by calling for sentencing guidelines to be ‘tightly business’ The idea of the punitive public again acts as a decoy onto which those in positions of responsibility can transfer accountability for punitive criminal justice practices.

Alongside this emphasis on public punitiveness, Leonard was keen to highlight the relative leniency of the courts’ approach to sentencing in 2011, appealing to other times and places in which, he said, courts would have taken a more punitive stance:

Judges, Crown Court judges and high court judges particularly, are far more liberal than the generation that went before me. There were lots of quite punitive people in the sixties and seventies.

As Leonard pointed out, going further back in England’s history, his predecessor’s response to riots in London in 1780 had been much more severe:

There were condign punishments when the Chief Magistrate’s office was burned in the Gordon riots.\textsuperscript{41} The fourteen-year-old who was caught was hanged on a lamppost nearby. We didn’t do that.

Other practitioners similarly juxtaposed the criminal justice response to the 2011 riots with other, supposedly less liberal, reactions. Prosecutor Amar had recalled that during the 2011 riots in Croydon there had been:

police officers standing by watching as [the rioters] were busy throwing petrol bombs at cars, so they’re sort of trying to contain it. Whereas in other groups of society, or

\textsuperscript{41} The 1780 Gordon riots were London’s ‘longest-lasting and perhaps most terrifying’ riots (Mullan, 2001), a week of violence sparked by proposed legislation granting greater freedom to Catholics. Crowds destroyed Catholic religious buildings, attacked the Bank of England and released prisoners from jails. In response, 15,000 troops were brought into London to quell the disturbances and nearly 300 rioters were shot dead.
countries, whether it would have been dealt with in a different way, perhaps far more severe, there would have been water cannons and all sorts. So our approach is very different here.

David, who had been a Magistrate in 2011, was likewise adamant that:

the British justice system is one of the best in the world, if not the best in the world, warts and all. So the way in which these riots were handled in this country, I know how they would have been handled in many other countries. On the ground there would have been people more seriously hurt and loss of life.

Comparing the criminal justice response to the 2011 riots to other, more violent, responses – whether in other jurisdictions or at earlier historical moments – was a way of ‘recalibrating’ or ‘adjusting the implicit standards’ (Ashforth and Kreiner, 1999) by which the courts’ response to 2011 was measured. This effectively cast the courts’ actions in 2011 as moderate and restrained, drawing attention away from the violence and excess that was inherent in imprisoning so many people.

Having begun on a rather defensive tone, highlighting the judiciary’s liberal position relative to the public and compared to judges in the past, Leonard became much more contemplative as we talked. When I asked him what he thought about the widespread use of custodial sentences as a response to the riots later in our discussion, I was surprised by his response. After a few seconds of consideration, he told me: ‘As a purely personal view, I hate prison’. This was a striking statement when the magistrates’ courts’ response to the riots had been remarkably punitive and had handed out prison sentences for often minor offences. For Leonard to say he hated prison suggested a significant tension between his own values and his professional actions.

In part Leonard’s feelings about prisons had been shaped by his personal familiarity with them. Leonard had had relatives in jail in the past:

My brother, last time I saw him, was in prison; other family members, and so on. So you know, I’ve got quite a lot of experience, one way or another.

These profound cleavages between ‘purely personal views’, which might be highly critical about custody as a response to crime, and professional cultures, policies and practices that maintain the central position of prisons in the criminal justice system, I argue, require professionals to find ways to manage this tension, which I explore below. By framing his
work as vindicated by a larger network of (highly credible and knowledgeable) professionals; as the only feasible option; and as necessary for deterrence, Leonard was able in some ways to neutralise and manage his intensely contradictory and complex feelings about the morality of imprisonment.

The judiciary as a thought community

Leonard was surprisingly pragmatic about the process that judges go through to decide on prison as a punishment:

I don’t want to be too philosophical about this. You don’t sit there in each individual case sort of weighing these things in your mind. You have the experience. I’ve probably sentenced ten thousand people in my life. You know, they come in front of you, you put together the facts and you try and treat them the same way as everybody else in treating everybody else… So, we don’t on each individual case sit there thinking about what the pros and cons of prison [are].

This acknowledgment that judges do not systematically consider the ‘pros and cons of prison’ or the likely implications of a custodial sentence on a defendant was surprising to me. It was revealing of a deeply ingrained penal common-sense whereby prisons are seen as the automatic and default response to crime, one that is so natural and obvious as to need no positive rationale or justification. It also spoke to an entrenched organisational ideology that pushed judges to toe the line regardless of their own personal opinions. Leonard might have ‘hated prison’, but was clear that this would not radically change his approach to sentencing:

I don’t really approve of judges who go off on a tangent on their own and do things differently. You don’t want a view to grow up that if you appear in front of judge ‘A’ you’ll get probation, and judge ‘B’ you’ll get four years. You don’t want that, so you go along, if you like, a common line… Because we’re a fairly tight-knit group… a common view does tend to develop. And people who are out of line are very gently, sometimes, made aware of that.

The judiciary, in this sense, seems to work as a powerful ‘thought community’ (Douglas, 1986) that works to define itself and create a highly selective narrative about its own work. Situating himself as part of a wider group with which he had to fit in provided Leonard with an effective means of disavowing individual responsibility for his sentencing decisions. This appeal to the need for consistency with his colleagues worked as an important means of resolving the tension that Leonard identified between his ‘personal
views’, which were critical of prison, and the continuing centrality of imprisonment in his professional role. Leonard emphasised the credibility of the judiciary as a moral community to which he was happy to defer. Judges – particularly those who, like Leonard, had practiced as defence lawyers – had real experience of prisons:

We’re the ones who’ve been in the cells, we’re the ones who’ve been running up and down the stairs in the court… You know, we’ve got all that experience… All my judges, nearly all my judges, are independent prison adjudicators and go to prisons very frequently and see prisoners in prison.42

Judges, then, are positioned as a credible and authoritative community. For Leonard, there had been ‘universal agreement’ among judges that rioters should go to prison:

There was I think pretty well universal agreement that this was a severe public disorder, that the existing sentencing guidelines didn’t really cater for riot and that people actually arrested in the riots were, if they were clearly guilty, almost certainly going to receive a custodial sentence.

Being ‘in line with’ this community of judges also offered potent retrospective justification for sentencers’ decisions. Leonard also pointed out that fellow judges in the higher courts had vindicated magistrates’ courts’ sentencing decisions:

We had no sentencing guidance at all, really until the Lord Chief gave a decision in a case called Blackwood or something similar43 in October… We got it right. If you look at that seminal decision of the Lord Chief Justice, we were sentencing within, almost entirely and exactly within the range that the Lord Chief later said was right.

Magistrate David made a similar point, stating that magistrates’ courts’ decisions are overwhelmingly upheld on appeal and that in the wake of the riots ‘the sentencing philosophy of magistrates was supported, generally speaking, in the Crown Courts, and if it ever went further than that, was supported at a higher level.’ For Leonard and David as sentencers, situating themselves within a wider community who agreed that sentencing

42 Some judges, in contrast, will have less direct experience of prisons. Though judges are required to visit prison and probation services once (though some older judges may not have even done this bare minimum) these visits are announced and planned for, unlike inspections; similarly when lawyers visit prisons they may only see conference areas (Dyer, 2001).

43 R v Blackshaw (EWCA Crim. 2312; [2012] 1 WLR 1126., 2011)
rioters to prison was right – legally if not according to their personal moral codes – seemed to provide a means of lightening the load of their responsibility.

**There is no alternative**

Leonard’s positioning of custodial sentences as the only feasible option available to judges worked to frame prison as necessary and inevitable, and to minimise personal responsibility for imposing such sentences.

As Leonard explained, the structure within which judges work is that ‘you do not send someone into prison if there is an alternative’. But in the context of the decimation of community sentences, judges were left with little alternative but to sentence to custody:

> There is, I’m afraid, considerable lack of confidence among the judiciary that I work with, that any form of rehabilitative penalty actually works. There’s a fear which I think is worse now than it was in 2011, that you know, probation is broken and that you know, frankly if you were imposing a sentence other than a custodial sentence it wasn’t going to be in any way effective… This is all fairly unscientific and anecdotal, but it feeds back into the way you think.

For Leonard, the problems facing the probation service meant that judges simply *had no choice* but to sentence to custody. Prison was, in practice, a last resort: ‘I suppose a typical decision is, is there any realistic alternative to prison? If there is, that’s where you go.’ But these alternatives to custody, said Leonard, were often ineffective:

> What you’re often faced with in the magistrates’ court is someone who’s been through the alternatives, erm, hasn’t responded to them, very often hasn’t undertaken the courses, just not bothered. What’s the point in imposing another community order they’re not going to do, and that’s not going to stop them offending?

Moreover, Leonard pointed to the fact that judges sometimes were faced with people who *wanted* to go to prison:

> In private practice as a defence lawyer, of course, I came across plenty of people who were content to be in prison for a period of time. It took them away from pressures outside.

In some ways this seems the starkest disavowal of judicial responsibility of all, suggesting that some of those he had sentenced to prison would willingly have chosen that outcome.
Retired magistrate David had similar recollections. Magistrates had to consider alternatives to custody, he said:

But what do you do when a forty-two-year-old man is standing in front of you and says ‘Send me back to prison’… Why did he say that? Well, it was getting near Christmas, he’d have a home for Christmas, he’d have no bills to pay and he’d have three square meals a day… The alternatives [to custody] were limited because his reasons for going back were perfectly understandable.

This kind of anecdote points to the urgent need for radical changes in social and economic organisation, and investment in meaningful social justice rather than criminal justice – a prison sentence is an entirely inadequate (and likely counter-productive) response to homelessness, unemployment or hunger; the pressures that might lead people to seek respite from their lives ‘outside’.

Positioning prison as the only available option seemed to work to relieve judges of responsibility of imposing prison sentences, but this is also a highly simplistic and selective formulation of the purposes of the criminal justice system itself. As Leonard explained, sentencers grappled with a constant tension between ‘punishment’ and ‘rehabilitation’:

The law… sets out the purposes of sentencing, but it doesn’t give precedence to any one… So on any given day a judge or a bench of magistrates is having to say, well, you know, ‘Do we go for punishment here, or do we go for rehabilitation?’

When ‘rehabilitation’ is stripped of any real meaning beyond the decimated non-custodial sentences available to the courts, ‘punishment’ becomes the only viable option. Prison is the automatic, default response; one that requires no active rationale or justification other than that there are no alternatives. The stripping back and warping of the notion of justice into this formulation, ‘if not ‘non-custodial’ then prison,’ occludes discussions about what meaningful justice might mean. In the wake of the riots, justice might have meant addressing the structural and systemic inequalities that seemed to underpin the events. Even within narrower terms, meaningfully restorative approaches that addressed the needs and wants of those harmed in the unrest would have looked very different. Prison can only make sense as a response to this situation within the context of a judicial discourse that maintains an incredibly narrow and simplistic division between rehabilitation on the one hand (in the form of an underfunded and overstretched
Justifying imprisonment

probation service) and punishment (i.e. prison) on the other. By selectively framing custodial sentences as the only choice open to judges, Leonard was able to mitigate the weight of responsibility for imposing such sentences.

**Invoking the deterrent value of prison**

Besides the lack of available alternatives to custody, what allowed Leonard to position the prison as the only appropriate response to the disturbances was its supposedly unique deterrent role. For Leonard, the idea that locking up rioters would bring down crime rates (despite, as he acknowledges, this idea being refuted by research on the topic) was a powerful ideological means of dealing with profoundly uncomfortable ambivalence around his own work.

I have to say, that if I was convinced that prison had no deterrent effect, I’d think it was a cruel thing to do, an unnecessary thing to do… I’m not really a believer in punishment unless it can be shown to have a deterrent effect.

Although he ‘hated’ prison, Leonard said, ‘I’m, however, one of those old reactionaries who does believe in deterrence, unlike my academic colleagues’. He did not hesitate to acknowledge that ‘the weight of opinion is against me’ on the question of deterrence; that the idea of imprisonment as a deterrent was at odds with academic expertise and evidence (see Pina-Sánchez et al., 2017 for a review of this evidence), but quickly dismissed the idea that custodial sentences had no deterrent value:

Some academics just don’t really believe [deterrence] is a factor, never mind a proper factor. Incidentally, if it exists in the real world, I can’t say. All one can say is that since the night courts started working and these sentences started being imposed, and people were not being released onto the streets, the rioting ended immediately. Of course, it might have burned its way out, it might have been going to be ending anyway, you can never tell with these things. But that was the reality of it.

Leonard effectively undermined or neutralised the ‘problem’ posed by the academic research with his determined agnosticism toward the question of deterrence – ‘if it exists in the real world, I can’t say’ – and his observation that the sentencing of rioters to prison had *seemed* to coincide with the riots slowing down. Dismissal of this kind is a key strategy that individuals and organisations use to deal with ‘uncomfortable’, ‘dirty’ or ‘polluting’ knowledge – knowledge that, if accepted, threatens to undermine key professional or organisational narratives and principles (Rayner, 2016). For judges, of course, the tenet
that *punishment deters crime*, even when this clearly contradicts the majority of the available evidence, is integral to their work. In some ways practitioners have little choice but to maintain ‘that the prison is a success, though in fact it is not and they more or less know it’; since to do otherwise would be to accept that one’s own work is, in part, ‘meaningless and counterproductive’ (Mathiesen, 2006: 144).

Indeed Leonard’s focus on prison’s supposed deterrent power worked to effectively close down a broader discussion about the harms of prison. When I asked Leonard what his experience of working with defendants had taught him about the longer-term effects that custodial sentences might have on people convicted of riot-related offences, he framed the potential negative effects on the sentencing approach in very limited terms:

As far as I’m aware, two things didn’t happen. I don’t think the prisons became immediately overcrowded… Secondly, there was not, as some people predicted, an increase in the crime rate as people were released.

While I had in mind the well-documented harms wrought by prisons on the people locked up, the profound damage custodial sentences inflict on people’s safety, security, physical and mental health, family relationships, employment, housing and social support systems, Leonard pointed out two very specific effects that he could then swiftly dismiss. First, he responded to the concerns raised by the media about the prison system’s ability to cope with the influx of prisoners, dismissing the risk of overcrowding (despite evidence to the contrary).  

Nor was there an increase in the crime rate, he said:

You know, there’s a section of the population that believes and says very vociferously that… prison is an expensive way of making people worse. So there’s a view that if you use custody, those people come out having learned the tricks of the trade in prison and re-offend. No evidence that that happened at all… Some evidence, though I think most academics don’t accept it, that having those people locked up actually reduced the crime rate rather than increased it.  

In contrast to those critics who had suggested that prison sentences might lead to high rates of recidivism, Leonard thought it possible that ‘having those people locked up’

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44 The prison system was already overcrowded in August 2011, as it consistently had been for decades; the thousand or so people who went to prison in the weeks following the riots pushing the prison population to its highest ever level (Prison Reform Trust, 2011a).

45 See for example Bell et al (2014).
might have brought the crime rate down, whether by simply incapacitating a great number of people who might otherwise be ‘offending’, or by deterring others. As well as a dismissal and devaluing of academic knowledge, Leonard’s formulation of the potential problem reveals an extremely narrow imagination of the purpose and the harms of imprisonment. Leonard’s defence of custodial sentences as a response to the riots did not attempt to make an argument for prison as an effective means of rehabilitation or justice for victims. Rather, it reflected a logic of punishment that is increasingly focused solely on incapacitation and exclusion. ‘Incapacitation with its exclusionary focus does not require an explanation for prisons’ but rather focuses solely on the removal and ‘disposal’ of the criminal (Moore, 2014: 36).

By limiting his conception of the harms of imprisonment to the somewhat detached and abstract notion of ‘crime rates’ – a straw man easily dismissed – Leonard’s account ignored the pressing issue of the harms caused by prison to those inside. By deferring to a wider community of judges, by emphasising the limited options available to them, by insisting on the deterrent effect of prison sentences and only selectively acknowledging the harms of prison, Leonard justified the widespread use of prison as a response to the riots. These techniques proved ideologically powerful, allowing Leonard to rationalise and legitimise a response that was startling violent, overwhelmingly targeting already over-criminalised groups, and in spite of his profound personal reservations about the cruelty of incarceration.

**Part 3. Minimising the structural inequalities of imprisonment**

In this final part of the chapter I argue that for practitioners, obscuring or ignoring the deeply discriminatory way that prisons overwhelmingly target marginalised and disadvantaged communities, and negating the deep structural iniquities of race and class that prisons engender and perpetuate, is a crucial means of normalising them. To some extent I expected professionals like Martin and Leonard to find ways to neutralise the ‘taint’ of prison: for Leonard as a judge with direct responsibility for sentencing people to custody, and for Martin, as a former prison governor and now a senior manager with responsibility for the prison service, the moral weight of their work in relation to imprisonment was evident. But it was not only those whose work implicated them in imprisonment in direct ways who found ways to minimise or occlude the harms of prison.
Roger – the very experienced and established criminal defence solicitor who I introduced earlier in the thesis – did not express the same personal experiences of prison or the philosophical considerations that Leonard did, and Roger’s remarks on prison and its likely effects on those caught up in the riots, were less morally fraught than Leonard’s. Roger did not advocate in any way for prison; but his account was full of more subtle and mundane means of eliding and dismissing its harms. Roger’s account highlighted how denial about the harms of prison is widespread throughout the criminal justice system: not just among sentencers but among those whose work is to keep people out of prison, too.

Like Leonard, Roger framed the negative effects of imprisonment in narrow terms which avoided confronting its inherently classed and racialised violence. Roger did this, in particular, by framing the harm of prison only, or at least primarily, in relation to the implications of criminal records for individuals’ future job opportunities. I asked Roger what he felt the consequences of prison would have been on those sentenced to custody for riot-related offences:

I think it probably will have changed some people’s lives… In times of low employment, if I’m faced with three people, two of which have got a [criminal] record, which one do you go for? It’s easy… [A long prison sentence] has consequences. I mean, it looks worse on the record, takes longer to become spent, takes longer to become protected, than if the sentencing had not been [so severe].

This was, undoubtedly, a very pertinent point, given the system whereby unspent convictions must be disclosed to potential employers. The extraordinary severity of the sentences handed down to rioters – and the length of time they would take to become spent – would have serious implications for the work prospects of many young people, particularly, as Roger suggests, in a context of economic recession and high unemployment. But while Roger expressed disquiet about the consequences of criminal convictions on job opportunities, this is a myopic view of the harms of imprisonment, eliding the other profound personal, psychological, social implications of prison sentences.

Moreover, Roger’s unease about the consequences of custodial sentences was primarily targeted towards the surprising, middle-class rioters I described in Chapter 5:
I think the consequences for a working-class kid, the sort of kid we’re representing around here much of the time… I don’t know how much difference that makes. But one of the girls, you know, university – I think she was still at uni, I think she’d done two years of uni – and gets a big sentence for burglary! You know, is middle-class ability to talk your way around something going to overcome what appears on the record?

While Roger was somewhat indifferent about the effects of prison sentences on working-class young people’s opportunities and futures – ‘I don’t know how much difference that makes’ – he expressed more serious concern about a middle-class university student receiving a serious conviction and prison sentence and its potential impact on her employment prospects. In this way Roger frames privileged people as more vulnerable than others to the harms of imprisonment, echoing the pattern I noted in Chapter 5 whereby practitioners showed particular concern for middle-class young people who were ‘caught up’ in the exceptional circumstances of the riots, while working-class and racialised young people were seen to be almost destined to become involved in crime.

The idea that ‘the sort of kid Roger’s firm was representing ‘much of the time’ would be relatively unaffected by a custodial sentence seemed to reify the idea that the working-class majority of those imprisoned for riot-related offences were already beyond help; and that a prison sentence could do little to further harm their prospects. This focus on the experiences of, and consequences for, middle-class people sentenced to prison, I argue, obfuscates the way that prison actually inflicts its harms, with people from ‘minority’ ethnic groups, people who are homeless or unemployed, disabled and learning disabled people, people with mental health problems and those with alcohol or drug addictions all greatly overrepresented in the prison population (Prison Reform Trust, 2016). There are particular concerns about racial disparity in the youth justice system: the last decade has seen a dramatic rise in the overrepresentation of black, Asian and ‘minority’ ethnic children and young people, who now comprise 41 per cent of the population in Youth Offending Institutions (Lammy, 2017), ‘incarcerated and present as an ever-ready cohort to transition to the adult estate when they become 21 years of age’ (Williams and Clarke, 2018: 2).

Civil servant Martin had similarly seemed to express greater concern for relatively privileged people criminalised in the wake of the riots. He acknowledged that ‘Everyone’s vulnerable in prison… let’s not dress that up’:
You might make yourself vulnerable by playing king of the castle, because you put yourself in a place to be shot down, so that makes you vulnerable but in a different way to someone who is frightened of coming into prison.

But in this understanding, those ‘outwith the normal demographic’, as Martin put it (and largely figured as middle-class and white, as I discussed in Chapter 5) would be especially vulnerable. He expressed particular concern for ‘those people who got caught up in this, and to that point had led relatively law-abiding lives, never been in trouble with the police’. For those people:

They’re very, very quickly going from nine-to-five jobs, holding down that job, family, house, whatever, to a position where you’re locked in a room. That’s not – that’s a shock to the system, as opposed to some. We’re not talking about people who went out with a swag bag and a crowbar with the intention of burgling houses or premises. We’re talking about people who got caught up in the moment, picked up bricks, threw them though windows, stole TVs and were walking down the street with them and got picked up by the police. Probably thinking ‘Well everyone’s doing it; I’ll have a bit of that,’ and all of a sudden, they’re in prison. (Emphasis added)

What is implicit in Martin’s account is the imagination of the hardened criminal who is relatively unaffected by prison. This figuring of the ‘normal demographic’, ‘the majority of people’ in prison as somewhat less susceptible to harm and less deserving of care works as a way to delimit and curb the moral taint that practitioners felt about their own work regarding prisons.

Other practitioners also expressed this kind of discerning or distinguishing concern towards not only young, middle-class people but also for women, in particular. Prosecutor Amar had been surprised by the frequency at which women were sentenced to custody during and immediately after the riots:

It’s not a sexist view but it’s a view that I have, is that a lot of female defendants, first time offenders as far as I could see, were being locked up… I do remember thinking that was unusual – not unusual, but that was quite harsh… So it did have an impact, I would have thought… Whereas male offenders – I don’t think anyone sort of bats an eyelid about that sort of thing (laughing)
As Amar put it lightly, no-one bats an eyelid at a young man going to prison and the effects of this on their family and community; despite men making up 95 per cent of people in prison in England and Wales (Prison watch, 2019).

Criminal justice professionals’ concern for those figured as the most vulnerable, those who do not belong in prison – whether this is women or middle-class ‘kids’ – ignores the inherent violence of prisons, and that this violence is targeted overwhelmingly not at women or middle-class people but at working-class and often racialised men. Underpinning the continuing place of, and widespread acceptance of or at least resignation to, the central place of prison as the response to crime is an unwillingness to acknowledge the lived realities of the harm it inflicts on all of those inside. This denial was perhaps crystallised most clearly in a comment Roger made when I asked him what kind of impact prison might have had on those who were sentenced to custody after the riots:

I think very long prison sentences undoubtedly have an effect. Short prison sentences? I don’t know. It’s very unpleasant. But I went to public school, and the circumstances in which I lived were far worse than even the worst of the prisons. And you know, my grandfather was paying a lot of money for the privilege.

My surprised laughter captured on the audio recording of our discussion reveals my incredulousness at this appraisal. I had assumed that Roger, having worked as a legal aid criminal defence solicitor for several decades, would have a sharply condemnatory view on the effects of prison sentences on his clients, of whom he must have represented hundreds if not thousands. It was perhaps a flippant and somewhat tone-deaf comment reflecting a lack of self-awareness as much as his deep political views; but comparing imprisonment favourably to elite private education struck me as incongruous. The week that I met Roger, it was widely reported that two-thirds of prisons in England and Wales were providing inmates with inadequate conditions or unacceptable treatment, with two in five deemed to be unacceptably unsafe (Townsend and Savage, 2018). Self-harm and assaults in prison were at a record high, with 42,837 recorded incidents of self-harm and 28,165 assaults in the 12 months to September 2017 (Townsend and Savage, 2018). Against this background, Roger’s characterisation of prison sentences as merely ‘unpleasant’ seemed seriously out of touch, reflecting either a surprising level of ignorance or an unwillingness to acknowledge or confront the stark reality of the harms inherent in imprisonment.
For Roger, moreover, rather than seeing prison as inherently and systemically alienating and harmful, whether or not people were affected by prison was framed as a matter of character. I asked Roger whether he had been concerned about the impacts of prison sentences beyond their implications for employment prospects. Roger agreed that prison could ‘change people’s perception of life’. But for him, whether or not it would profoundly affect somebody was ‘a personality thing’: ‘If you let it beat you, yes, it’s disastrous’. This framing of vulnerability to the harms of prison as (in part, at least) a matter of personality and resilience places the onus firmly on those in prison to be tenacious and tough; to resist its harms and not ‘let it’ defeat them; positioning the harm of prison as a matter of individual and moral responsibility, and obscuring the inherent and structural violence of prison as an institution. It simultaneously elides the fact that the ability to deal with the harms of prison is highly classed: those with support networks and professions may have the resources to return to their life relatively unscathed. The notion that working-class people would be less susceptible or vulnerable to long term effects on their prospects is at odds with what we know about how access to social and economic resources and networks mitigates the effects of prison on futures.

Roger’s account, then, draws on a number of techniques that obfuscate the violence of prisons. He dismisses the idea that imprisonment posed a serious danger to those sentenced to custody after the riots, framing prisons as relatively benign, and coping with imprisonment as a matter of individual character. When he did acknowledge the harms of prison, they were cast primarily in terms of the impacts on middle-class employment prospects; entirely avoiding or ignoring the structural dimensions of the violence perpetrated predominantly on working-class and racialised populations by the criminal justice system. This reflects broader patterns of ignorance in media, political and policy discourse whereby the violence of prisons is distorted, reduced to a matter of individual character (Scott, 2018; Stanley and Mihaere, 2018).

For defence lawyers, as well as for prosecutors and sentencers, I argue, the stark and well-documented harms of prison pose a profound challenge to professional identities and processes of legitimation. Though solicitors like Roger are not implicated in imprisonment in the same way as those whose roles are to push for prison, to hand down sentences or to manage the prison system, their role nevertheless entails a degree of complicity with a broader system in which the prison is the primary response to crime. My conversation with defence barrister Sadie brought to light the ambiguous nature of the role of defence lawyers, and her sense of unease at being involved in the criminal
Justifying imprisonment

justice response to the riots. She recalled her conversations with Lawrence who had been a colleague in 2011. The two used to commiserate after tough days in court:

You’d get back to chambers and we’d say ‘How was your day?’ and the running line we’d have is the line from Blackadder, you know: ‘Defence fined 50 pounds for turning up’ (laughing). And so that was our kind of code for ‘It’s been really horrible and I got battered around the court by a judge.’

The riots, Sadie recalled, ‘were just like that writ large, basically,’ with the courts largely disregarding defence lawyers and handing out custodial sentences almost indiscriminately:

When you make however many bail applications on end, and it doesn’t matter what you say, every single one of them the judge is like ‘No, send them down’, there comes a point where you think, like, what’s the point? I may as well not bother. Like, I’m just, I’m a fig leaf for this, right?

For Sadie, her role was essentially ‘pointless’ because judges had already decided that riot-related offences would receive prison sentences. Moreover, she felt that her presence as a defence advocate in this context was actively harmful, as it obscured the courts’ unfair treatment of defendants:

I’m adding the illusion that there is some kind of fair trial going on here, but the reality is it doesn’t matter what I get up and say, because you’ve already made a decision.

This had profound political and moral implications for Sadie’s understanding of her professional role. ‘As a lawyer,’ she felt she was ‘adding a kind of (pause) I don’t know, a sort of a gravitas’ to a deeply flawed system:

I often thought there was an ethics question about the extent to which, you know, one’s mere presence as a defence advocate is adding a sense of (pause) a system that operates as it should, and protects the innocent, and convicts the guilty and all the rest of it, and in actual fact it’s not really doing any of those things at all.

Sadie had since stopped practicing criminal law, the decimation of legal aid having made it impossible for her to make a living or to feel that she was working within a legitimate or functioning criminal justice system. Her comments highlight the complex ways in which criminal defence lawyers are entangled in the system; not fighting against it but an integral part of it. For Sadie, whose views were profoundly at odds with the prevailing penal direction of the criminal justice system, working within it became morally
impossible. For others, as I have shown, techniques of denial, dismissal and disavowal allow them to reach a position where they are able to continue.

Conclusions

This chapter has considered the discursive strategies that practitioners employed to justify the exceptionally punitive penal response to the riots, characterised by the courts’ high rates of remand and widespread custodial sentences. The idea that the riots warranted – indeed, necessitated – the widespread imprisonment of those involved seemed to achieve a kind of common-sense status in 2011, almost so obvious as to require little argument. But, I argue, imagining custodial sentences as a reasonable and proportionate response to the riots relies upon a very specific set of assumptions. This chapter has built upon the concept of ‘penal agnosis’ (Scott, 2018) showing how criminal justice practitioners mobilised techniques of ignorance and denial in order to rationalise and normalise the extraordinary use of imprisonment in the wake of the riots.

Prisons are a site of constant contestation and struggle for legitimacy (Sparks and Bottoms, 1995). ‘Given their violent and coercive nature,’ prisons ‘require a degree of popular (and prisoner) consent to allow them to operate’ (Boyle and Stanley, 2017: 2–3). Such consent, and the legitimacy it confers, is never fully secured but must be actively maintained. Scholars have explored how governments attempt to secure both public consent for prisons (see e.g. Cheliotis, 2010; Boyle and Stanley, 2017) and to negotiate and reaffirm legitimacy among people in prison (Carrabine, 2005; Crewe, 2011; Liebling, 2011). My analysis builds on this work by assessing the discursive processes by which professionals within the criminal justice maintain a sense of the prison as fair and necessary. By exploring how criminal justice practitioners rationalise and defend the sweeping penal backlash against the rioters, this chapter points to the narratives, claims and assumptions that allow professionals who are, in different ways, responsible for imprisoning people, to justify their own work. Contributing to literature on criminal justice work as ‘dirty work’, I argue that the violence of imprisonment poses a potential ‘taint’ for professionals’ sense of their roles as morally sound and show how practitioners ‘neutralise’ this threat by variously disavowing and denying the harms their work inflicts.

For practitioners whose work kept them at an adequate distance from prisons it was possible to simply overlook the violence inflicted by the criminal justice system. Although
the CPS’s punitive approach to prosecution undeniably contributed to the surge in custodial sentences, prosecutors emphasised the organisational division of duties that meant they were not directly accountable for imposing prison. For others, the prison seemed to pose a trickier challenge to their accounts of their work as morally sound. Far from failing to notice the ‘fiasco of the prison’ (Mathiesen, 2006), people who have worked for many years in the criminal justice system know very well that the prison fails to meet even its own stated aims. Civil servant Martin told me he doubted prison sentences would be an effective response to the riots, while district judge Leonard made clear that he ‘hated prison’ and thought it ‘cruel’. These views posed profound challenges to their sense of their work as just and legitimate – for Leonard sentencing people to custody, and for Martin managing prison policy and operations. Yet, as I have shown, by mobilising techniques of disavowal and denial, professionals were able to neutralise this troubling tension, normalising and naturalising what was an exceptionally violent penal response to the riots.

That participants like Martin and Leonard expressed grave personal reservations about prison – that it is ineffective, unnecessary and cruel – while maintaining roles as key figures with direct responsibility for sentencing and penal policy, speaks to the potency of an organisational, institutional and cultural will to ignore or elide the violence of imprisonment. I have argued that the judiciary, in particular, constitutes a ‘thought community’ (or inhabit a ‘thought world’) (Douglas, 1986), drawing on a shared set of narratives that serve to legitimise its own power. Institutions perpetuate certain kinds of knowledge while remaining ‘impervious to unpalatable information’ (Rayner, 2012: 114) shaping and delimiting the kinds of stories and claims that its individual members can make.

But the tensions within Leonard and Martin’s accounts also highlight the importance of attending to conflicts within individuals’ accounts. Martin and Leonard’s framings of prisons did not fit neatly within the bounds of the prescribed logic and language of their respective organisations, but rather were characterised by deep contradiction; holding together their personal misgivings about prison with an insistence that the courts’ approach to sentencing was ‘right’. In this sense, their accounts point to the way that institutional ideology and common sense, as Billig et al. (1988) argue, is not simply imposed from above or unquestioningly absorbed and reproduced by unthinking individuals. Rather it is regenerated in everyday discourse through its contradictory elements; not as ‘singular positions that people consistently occupy’ or ‘as a closed system
for talking about the world’, but as ‘an incomplete set of contrary themes, which continually give rise to discussion, argumentation and dilemmas’ (Billig et al., 1988: 6). For Martin and Leonard, it was through this complex dilemma and deliberation that the handing down of long prison sentences was positioned as a rational and appropriate (or at least inevitable) response to the riots. The ‘uncomfortable knowledge’ that threatened this position – their personal feelings that prison sentences were ineffective and cruel – was not simply dismissed but incorporated and absorbed into institutional ways of thinking.

These strategies of neutralisation and negotiation allow practitioners whose work renders them complicit in imprisonment to construct meanings around their work that make it liveable, and to position their work in 2011, in particular, as necessary and reasonable. Identifying these processes of normalisation and legitimation, I argue, reveals something significant about the broader cultural and ideological politics of the prison. It points to the centrality of ignorance, disavowal and denial in the cultural political economy of punishment whereby the prison is considered legitimate, inevitable, and ‘so “natural” that it is extremely hard to imagine life without it’ (Davis, 2003: 9-10) even in the face of its well-documented failure to meet even its own aims of crime reduction and rehabilitation.

In the next chapter I draw together the arguments I have made in the preceding chapters of the thesis and consider what my analysis as a whole suggests about the modes of consent underpinning the criminal justice system in the current moment.
Chapter 8

Conclusions: Riot talk and the cultural political economy of punishment

In the preceding chapters I have explored how criminal justice professionals who were at the heart of designing and delivering the extraordinarily punitive state reaction to the 2011 ‘riots’ legitimised, defended and criticised it. This riot talk, I contend, is vitally important; both in helping us to understand the cultural and ideological context from which a moment of startling state violence emerged; and in helping us to trace a series of shared narratives and imaginations of crime, criminals, society and punishment that justify and legitimise the criminal justice system more widely.

I began the thesis by highlighting some of the most striking dimensions of the criminal justice response to the 2011 disturbances, from the CPS’s unusual approach to prosecuting riot-related offences, to the controversial overnight court sittings, the high rates of remands to custody and the hugely inflated sentences handed down. While the unrest received a huge amount of academic attention, most of this work aimed at explaining the various social, economic and political factors that were seen to have caused them, while relatively little research has focused on the state’s spectacularly violent backlash. This response, I have argued, was just as remarkable as the disturbances themselves, and warrants sustained sociological attention.

I have aimed to address three research questions: How did the criminal justice system respond to the ‘riots’? What are the moral claims, shared understandings, narratives and imaginations that legitimised, normalised and naturalised this response? And, lastly, what does this reveal about the cultural and ideological processes by which the criminal justice system sustains itself? In this concluding chapter I revisit these questions and review how the analysis in the intervening chapters has shed light on them. I draw together the key arguments of the thesis and assess its broader significance, explaining how my analysis both enriches existing sociological understandings of the 2011 disturbances and contributes new empirical evidence and original theoretical perspectives to broader academic discussions about criminal justice in the current conjuncture. First I argue that criminal justice practitioners’ riot talk helps us to trace the shared imaginations of the
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disturbances, the rioters, the public and prisons that served to justify the punitive criminal justice response to the unrest; not only those that circulated in media and political rhetoric but those that shored up the response from within the criminal justice system. Second, building on emerging academic conversations about agnosis, I contend that denial, amnesia and obfuscation are vitally important in normalising and naturalising the violent punishment of rioters. I argue that my experiences of negotiating access and consent for this research further highlights the role of ignorance in underpinning the criminal justice system. Lastly, I show how this analysis offers insight into the shared meanings that legitimise the broader racist and class-based criminal justice system.

**Criminal justice practitioners’ riot talk helps us to trace the shared imaginations of the riots, the rioters, the public and prisons that served to justify the punitive criminal justice response to the riots**

The thesis has sought to investigate the discursive constructions that criminal justice practitioners draw on to justify and normalise the penal backlash to the disturbances. While the CPS and the courts’ response to the unrest was startlingly punitive, and targeted racialised and working-class communities especially harshly, most of the prosecutors, sentencers, civil servants and defence lawyers I met expressed a sense that this reaction was more or less necessary and appropriate. The thesis has explored the shared imaginations of the riots, the rioters, the public and the criminal justice system that allowed them to do so; identifying a set of powerful ideological resources that practitioners mobilised to justify and legitimise the extraordinarily harsh criminal justice response to the unrest.

In this way, the research makes a substantial contribution to academic literature on the 2011 disturbances, and more specifically to a body of critical work on the cultural and ideological imaginaries that legitimised the state’s extraordinarily severe criminal justice reaction (among others Gilroy, 2013; Jensen, 2013; Lamble, 2013; Sim, 2012; Slater, 2016b; Tyler, 2013b). While this previous work has analysed how political and media discourses in 2011 legitimised the harsh punishment of those apprehended for their involvement in the unrest, I have focused on how professionals within the criminal justice system justify and make sense of the punitive backlash against the rioters. By attending to practitioners’ accounts, the thesis offers a view on an under-explored arena in which the broader cultural meanings around the unrest were translated into a set of extraordinarily punitive decisions and policies, which in turn further reaffirmed and
bolstered the delimited definitions of the disturbances that have continued to circulate in their afterlife.

Paying close attention to criminal justice practitioners’ accounts reveals a set of shared narratives, moral claims and assumptions that are connected to, but often distinct from, the meanings that dominated political and media discourse in 2011, highlighting the value of my interviews in adding complexity and nuance to existing analyses of the cultural and ideological context that made possible the punitive backlash to the unrest. I have shown how practitioners invoked specific stories about the riots, the rioters, the public and the criminal justice system that served to rationalise and justify their own work in the wake of the riots. I have focused on examining a narrative of the riots as an unprecedented and meaningless outburst of violent criminality; an imagination of the rioters that placed responsibility firmly with marginalised and racialised communities; a fiction of the public as monolithically punitive; and a strictly circumscribed vision of prisons that elides the profound harms inherent in them. These work together to create a set of meanings in which the revanchist backlash against those involved in the unrest came to be seen as a broadly acceptable and inevitable response, and whereby calls for a different kind of response were silenced or dismissed.

In Chapter 4 I argued that shared ideas about the disturbances themselves, why they happened and what they meant were vitally important in allowing practitioners to legitimise the law and order reaction to them. An imagination of the unrest as an eruption of meaningless and unpredictable violence posing an unparalleled threat to the very fabric of society was especially powerful in structuring CPS lawyers’ accounts of their organisation’s approach to the unrest, allowing prosecutors to position themselves as moral guardians with a responsibility to protect and restore order by any means necessary. This narrative, I argued, was predicated on politically powerful patterns of amnesia and elision, relying on highly selective and limited acknowledgements of the events of 2011 and their historical precedents. It was only by ignoring Mark Duggan’s death, dismissing the context of deepening austerity, and forgetting or distorting the deeply troubled history of urban unrest in English cities and the long history of racialised state violence that it speaks to, that prosecutors and other professionals were able to maintain the narrative that the riots were an unprecedented criminal phenomenon necessitating an exceptional criminal justice reaction.
Conclusions

In Chapter 5 I showed how practitioners drew on assumptions about the rioters that normalised the criminal justice response and its targeting of marginalised and racialised communities. I identified two contrasting figures – ‘the typical rioter’ and ‘the surprising rioter’ – that populated practitioners’ accounts, and argued that important ideological claims about race, class and culpability condensed around the distinction between these two very different kinds of rioter. The positioning of surprising rioters (figured as middle-class, educated and white) as passive bystanders who had unfortunately been ‘swept up’ in the unrest, tacitly shifted blame, responsibility and culpability onto the typical rioters; a ‘criminal element’ imagined as working-class and racialised. In this way, I argued that practitioners’ emphasis on the ‘unlikely mob’ of privileged rioters, far from unsettling a long-standing ‘myth of black criminality’ (Gilroy, 1982b), in fact leaves intact and adds ballast to ideological constructions of black and brown people as ‘exceptionally crime-prone’ (Williams and Clarke, 2018: 2). Practitioners’ imaginations of marginalised communities as essentially responsible for the unrest, I argue, allowed them to imagine the criminal justice response – which overwhelmingly targeted working-class and racialised young people – as fair and appropriate.

Chapter 6 set out a third supporting pillar in the structure of meaning that practitioners drew on to justify the harsh criminal justice response to the disturbances: the claim that society demanded draconian punishment. The imagination of an unanimously punitive public allowed practitioners to disavow responsibility for their own and their organisations’ practices, claiming that they had little choice but to cede to (unfortunate, and often misinformed, but inevitable) public outrage and punish rioters accordingly. In claiming to speak and act for the public, criminal justice practitioners effectively shifted accountability for the state’s actions away from themselves and their professions, instead placing responsibility with the public. But, I argued, those making decisions about how to respond to the disturbances were not simply channelling monolithic public desire for law and order, but rather drawing on and contributing to a highly orchestrated imagination of public punitiveness. Rejecting the idea that the criminal justice system was merely responding to monolithic public opinion, I argued that criminal justice professionals were instead conjuring a very specific sector of the public: a fearful and vengeful constituency that was defined in opposition to the racialised rioters. Moreover professionals were not simply reflecting public opinion but were invoking a highly structured notion of public opinion that is intimately bound up with the pressures – imagined or explicit – that pressed upon the criminal justice system from the media and
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from the government. I showed how practitioners’ imaginations of the public were entangled with media and political discourses that summoned a highly circumscribed and selective public that excluded and rendered invisible those with less punitive sensibilities and, of course, the rioters, their families and their communities.

Finally, in Chapter 7 I described how the professionals I interviewed routinely ignored, minimised or disavowed responsibility for the profound harms of imprisonment. Penal agnosis (Scott, 2018), I argued, was a critical means of normalising and justifying the courts’ extraordinarily punitive approach to remand and sentencing for riot-related offences. For some practitioners, the administrative and bureaucratic nature of prisons work kept them at a great enough distance from the lived realities of incarceration to allow them to overlook or avoid engaging with the profound ethical and moral implications of their work. For others, framing prison as the only feasible option, invoking the common-sense claim that prison deters crime, dismissing the harms of prison, or selectively acknowledging them, allowed practitioners to justify the use of custodial sentences for offences that would ordinarily not have warranted prosecution, let alone such serious punishment.

These imaginations of the riots, the rioters, the public and prisons knitted together in practitioners’ accounts to justify and normalise what was in fact a highly unusual, violent and discriminatory state reaction. Taken together, dehistoricised, decontextualised and depoliticised definitions of the riots, classed and racialised constructions of culpability, a delimited imagination of a punitive public, and strategic ignorance about the impact of the criminal justice response licensed a law and order reaction and simultaneously closed down debate about the need for structural or systemic remedies to address the profound economic, social and political inequalities that the riots revealed. In this way, these narratives allowed practitioners to present their work – work that might have been ‘tainted’ or rendered dirty (Hughes, 1962; Ashforth and Kreiner, 1999, 2014) by implications of disproportionality, ineffectiveness or racism – as justified and morally sound.

The more critical voices that emerged in my research open up spaces for thinking differently about the criminal justice response to the disturbances. In Chapter 4 I recalled how barrister Sadie, in contrast to the prevailing political discourse and the narrative I heard from prosecutors, foregrounded a reading of the riots as a reaction of marginalised communities to entrenched patterns of economic inequality and racialised police
harassment and criminalisation. Reading the riots not as mindless violence and looting but rather as ‘a response to repeated stop-and-search, racist policing, deprivation, poverty, unemployment… anger, and inequalities between the haves and the have-nots’ (James, 2011; cited in Slater, 2016b) points squarely to the unfulfilled need for structural and systemic remedies. In Chapter 5 I discussed how practitioners from probation, youth offending and community services challenged the media representations of the rioters as overwhelmingly black and working-class, critiquing and problematising the overwhelming focus of the criminal justice response to the riots on already over-policed and over-criminalised groups. In Chapter 6 I noted how some interviewees questioned the notion that the public demanded punishment and that the criminal justice system simply had to appease them, instead pointing to the ways that this putative ‘public opinion’ is in fact orchestrated through and imbricated with pressures from the right-wing press and populist political rhetoric. Again, recognising this opens up the possibility of thinking about a response to the riots that might have reflected very different kinds of public attitudes to the unrest; not motivated by outrage against the rioters but reflecting the well-documented and widely shared frustrations at the roots of the disturbances.

These more critical perspectives speak to the abject failure of the state’s response to deliver justice in the wake of the unrest. Meaningful justice might have included, at the barest minimum, accountability for Mark Duggan’s killing, a broader acknowledgement of the need for systemic changes in policing strategy, and more radical political and economic measures to reverse the wide-reaching structural violence of austerity. This framing of the disturbances, then, enables a very different interpretation of the CPS and the courts’ reaction; seeing it not as a necessary and adequate response to an outburst of offending, but as a violent and counterproductive backlash that would make future riots more, not less, likely. Yet these interpretations of the riots and the criminal justice response have remained marginal in the afterlife of the riots; overshadowed by the definitions of crime, criminality, society and justice that positioned the immediate penal reaction and longer-term punitive policy agendas as rational and necessary responses.

Agnosis, amnesia and obfuscation are vitally important in normalising and naturalising the violent punishment of rioters

This analysis makes an original empirical contribution to emerging sociological debates on the multifaceted role of agnosis in the contemporary politics of criminal justice. My research, conducted in 2018, offered an opportunity to observe how shared imaginations
of the riots, rioters and the criminal justice response had shifted and settled over the years; to see what had faded, been lost or forgotten; and what had remained and been reaffirmed in the intervening years. In critically analysing the meanings and shared understandings that circulated in practitioners’ accounts of the riots, the rioters, the public and prisons, the preceding chapters have shown how practitioners mobilise structured and strategic denial, amnesia, dismissal and disavowal to justify and normalise the harshly punitive response to the unrest. It was only by omitting England’s long history of unrest and forgetting Duggan’s death, distorting the demographics of ‘the rioters’, summoning a highly selective notion of public opinion, and obscuring the racialised and classed harms that prisons perpetuate, that professionals were able to rationalise and justify the courts’ reaction to the unrest.

The thesis provides an empirically grounded contribution to sociological work that examines how states and powerful organisations mobilise ignorance as a potent political and ideological resource to legitimise their practices (Proctor and Schiebinger, 2008; McGoey, 2016a, 2019; Slater, 2014, 2016a). More specifically, it adds to contemporary academic conversations on the role of ignorance in normalising and justifying the criminal justice system and its harmful and discriminatory effects (Barton and Davis, 2018; Mathiesen, 2004). I have shown how ignorance, broadly conceived, plays an important role in sustaining and upholding widely held ideas about ‘race’ (Mills, 1997; Sullivan and Tuana, 2007) and, in particular, imaginations of racialised communities as disproportionately predisposed to crime and criminality (Gilroy, 1982b; Williams and Clarke, 2018).

The thesis emphasises the importance of critical academic research in tracing how ignorance, amnesia and obfuscation are mobilised to legitimise and reproduce a violent and discriminatory criminal justice system. Yet undertaking this kind of critical research poses significant challenges. As I discussed in Chapter 3, by closely controlling researchers’ ability to access its organisations, the criminal justice system effectively guards itself from critical analysis. ‘Studying up’ reflects an ambition to subvert the traditional power dynamics of sociological and criminological research that has focused largely on marginalised groups. But the practicalities of negotiating access to the CPS, the judiciary and the courts – and, as I describe below, of securing permission to use the material gleaned through this research – mean that powerful individuals and institutions are able to exert their authority to carefully control their exposure to academic critique.
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This closedness in effect constitutes an additional means by which the agencies of the criminal justice system mobilise agnosis and obfuscation to sustain themselves.

The process of finalising the thesis and securing the requisite approval from my participants sheds light on the challenge of conducting independent, critical research when studying sites and practices of power that are shielded from scrutiny. As discussed in Chapter 3, as a condition of securing interviews with prosecutors Amar, Kofi and Jason I had agreed to send a full draft of the thesis to my contact at the CPS so that they could comment on it prior to submission (see page 57 for discussion). Sending these chapters to the CPS in early 2020 caused me considerable anxiety, as I feared that my critical analysis would cause consternation which could have resulted in the organisation simply refusing to grant me permission to use the interviews. At this late stage of the project, after more than a year of analysis, writing and editing, this would have posed a significant problem and required a thorough re-working of the thesis. I was very lucky that my contact at the CPS was gracious and generous, showed an interest in the research, and only asked me to clarify or correct a few details regarding policy and to change a pseudonym which happened to be the name of another prosecutor. Knowing that a representative of the CPS (though not the participants themselves) had read the thesis, checked it for accuracy, and – most importantly – understood the nature of the analysis provided a measure of reassurance that the organisation would be unlikely to respond negatively to the thesis or, more likely, the subsequent publication of the research in a monograph or journal articles. However, it is notable that while I had to sign agreements with extremely unfavourable terms and serious financial and penal implications for me (see appendices on page 238 and 239) I never received anything in writing to confirm that the organisation had approved the draft thesis.

Similarly, securing sign-off from district judge Leonard brought to the fore the challenges facing researchers studying the criminal justice system. While I offered all my research participants the opportunity to review and amend the interview transcript, none except district judge Leonard and magistrate David took me up on this offer – understandably, doing so would be time-consuming, and my assurances that they would be anonymised seemed adequate. Leonard and David, both public figures who were used to speaking on the record, were somewhat bemused by my suggestion that I anonymise their accounts; and turned down my offer to provide a transcript for checking. David asked me to send the quotes I was planning to use and some context of the analysis, which I did but received no response. Leonard requested I send a summary of the key points of our
conversation and, later, a list of quotes I was planning to use in the thesis. Doing so required me to share with him not only the material, but an insight into my own analytical perspective since many of the quotes I had selected captured the moments in which Leonard grappled with the complex political and ethical question inherent in his work as a judge. This raises an ethical issue. Sending these quotes to Leonard in early 2020, I felt cautious, concerned that he might feel I had betrayed his trust by focusing on parts on the conversation he might not have expected me to and might withdraw his consent for me to use the interview. Though he approved the quotes (subject to some minor clarifications and edits), I remained apprehensive about how he might respond to the analysis in the thesis itself; whether he – or indeed other participants – might feel I had misled them by not explicitly explaining my analytical and theoretical approach to the interviews. In part, my decision to anonymise all my participants, even those who suggested I use their real names and roles, reflects this anxiety and wish to mitigate potential feelings of misrepresentation.

In research with powerful organisations there is a peculiar dynamic to the challenge of balancing research ethics with the practicalities of negotiating access and maintaining positive relations with participants while maintaining academic integrity and developing critical perspectives on participants’ accounts (Rice, 2010). In particular, subjecting participants’ accounts to critical discourse analysis, as I have done, arguably poses an ethical dilemma. Research participants typically assume (and are often encouraged by researchers to assume) that the research is aiming to document their experiences, expert insights and views, while CDA in fact focuses primarily on how they talk, the claims they make, and the political implications of this, so that ‘there is a potential for discrepancy between informants’ expectations and what is actually done with the data they provide’ (Hammersley, 2014: 530). This tension is particularly pertinent in ‘upstream’ critical research of this kind because participants are in some ways regarded as representing, or being implicated in ‘the dominant ideology, and the institutional patterns and practices it legitimates’ (Hammersley, 2014: 530).

Yet it is important to contextualise these concerns – my responsibility as a researcher to accurately explain the purpose of the research and its analytical approach, to faithfully represent my participants’ voices and honour their trust – against a background of arguably much more serious power imbalances between myself and those I have written about. In practical terms, this potential mismatch between participants’ assumptions about the nature of the research and the final analysis is an uncomfortable but necessary
element of ‘studying up’, since explicitly disclosing a critical research agenda is likely to
close off opportunities for access, especially when these are mediated by organisations’
oficial processes. My apprehensions about individual prosecutors’ and sentencers’
personal feelings about being misrepresented need to be situated in the context of greater
disparities of control and power that structure the research. Though as a researcher I may
have held ‘the interpretative power over the data’ (Neal and McLaughlin, 2009: 700)
subjecting participants’ accounts to critical discourse analysis poses very little risk for
harm (Hammersley, 2014) and any impacts on organisational reputation represent a more
serious risk to me as an individual researcher than to my participants.

In Chapter 3 I argued that my experience of conducting the interviews seemed to call for
a more nuanced appreciation of power dynamics in the research process. In contrast to
accounts of ‘elite interviewing’ which assume interview interactions directly reflect the
power discrepancy between interviewer and participant, my conversations with
professionals were characterised by complexity, defensiveness and dilemma. Nevertheless
it is vital, I argue, to maintain a critical analysis of the power relations within which
research takes place, beyond those that play out in the immediate interaction between
researcher and the participant as an individual. While research interviews might mean
participants are called to account for their actions; this dynamic is situated within a
broader set of power structures.

This highlights a need to reframe sociology’s ethics frameworks for studying powerful
institutions, balancing the researcher’s duty to honour ethical standards with the integrity
of the project’s critical analysis of a violent and unjust system. While the past thirty years
have seen an unprecedented opening up of the courts and the justice system to academic
research, officially sanctioned studies often produce anodyne and unreflective accounts
that fail to account for structures and practices of power, while researchers who are not
funded by or affiliated with the organisations they study are marginalised and
undermined, their research agendas and dissemination determined by the institutions they
research and seek to hold to account (Baldwin, 2008; Whyte, 2000). While traditional
research ethics frameworks are based on an assumption that the researcher is in a position
of power over their participants, the stark disparities of authority and control inherent in
this research project call for a more nuanced approach to research responsibilities than
those offered by standard ethics frameworks; one that takes into account the challenges,
risks and harms facing researchers as well as participants.
Conclusions

As I have argued throughout the thesis, forms of agnosis, amnesia and dismissal are central to the cultural and ideological processes by which the criminal justice system sustains itself. Strategies of disavowal, denial and obfuscation are vital in justifying ‘justice.’ It was by drawing on a delimited, decontextualised and depoliticised conception of crime; racialised and classed discourses of criminality; the imagination of a monolithically punitive public; and strategic ignorance of the harms of punishment, that professionals were able to rationalise the courts’ reaction to the 2011 unrest. But it is also through erecting and guarding barriers that shield organisations like the judiciary from critical scrutiny by researchers, that the criminal justice system succeeds in managing and mediating the stories it tells, and protects and reaffirm the representations and narratives that justify and legitimise it.

**This analysis offers insight into the shared meanings that legitimise the broader racist and class-based criminal justice system**

Finally, the thesis has a broader set of implications for the sociology of criminal justice in the contemporary conjuncture. Paying close attention to criminal justice practitioners’ riot talk offers an original perspective on the ideological mechanisms that legitimise and underpin the policies and practices of the criminal justice system more widely. As well as allowing us to trace the narratives that served to legitimise the punitive response to the 2011 disturbances as a very specific and situated moment, my interviews and analysis offer insight into the cultural politics that continue to sustain the criminal justice system from within.

My research took place at a moment of profound anxiety within the criminal justice system about its own future. In many of my interviews, taking place in 2018, practitioners lamented what they saw as a catastrophic decline in funding and standards across the system. Defence solicitor Roger told me that ‘the criminal justice system is now in collapse. It is so cash strapped, it barely functions.’ This crisis was endemic, hitting agencies across the system, from the CPS (‘if the public knew how many cases the CPS lost because they just don’t do casework, I think there’d be a riot’, he told me laughing) to the courts. For barrister Sadie it was the decimation of criminal defence that was by far the greatest concern. She described how the defence had ‘been bureaucratised out of existence’ and the magistrates’ courts had become ‘the wild west of the criminal justice system’ in which defendants’ rights had been eroded by a combination of changes in administrative practice. When Sadie and I met, the criminal bar was in the midst of a three-month long strike following further cuts to the legal aid system. Sadie explained the
financial pressures facing criminal defence barristers, who would often end up being paid a standard fee of around £50 – before rent to chambers and tax – for a day’s work at court. ‘There’s just not enough money in the legal aid system, and there’s not enough people who can afford to pay privately.’ Defence solicitor Tanya also emphasised the ‘despair’ that ongoing cuts to legal aid had had on solicitors. Tanya had seen colleagues leaving the profession ‘in droves’, resulting in ‘defence deserts’ where legal representation was unavailable, defendants increasingly representing themselves in court and the defence being left as ‘just this sort of scrambling, unprotected entity’:

You know, all the money they could’ve possibly saved on legal aid they’ve now spent again on wasted court time with everyone trying to represent themselves… It’s absurd. [Defendants] are cross-examining their own victims (laughing). It’s madness. It’s total madness.

In prisons and youth offending institutions, too, as Claire told me, ‘standards have absolutely imploded’:

The violence has gone up exponentially over the last few years. Very, very scary, violent places. They don’t get proper education, they don’t get proper anything in these places anymore.

The probation service, she pointed out, had also ‘been through a terrible time since half of it was privatised’:

It was just like they disappeared (laughing)… You just didn’t see the probation officers anymore, and the good work they were doing all got lost. Loads of people left – all really stressed, people going off sick. It’s just been horrendous.

Equally pessimistically, solicitor Roger concluded that ‘the criminal justice system is just not a primary concern of government. As long as we deal with the big cases, the multiple rapists and the really serious crime,’ he said, ‘really they don’t give a damn what happens with everything else.’

In the midst of this moment of crisis in criminal justice, my analysis offers some clues about how practitioners maintain an imagination of the system as essentially functional and fair, if in need of reform and better resourcing. I have set out the cultural imaginaries, narratives and stories about crime, criminals, society and justice that recur across practitioners’ accounts, media texts and political rhetoric. These elements were not unique
Conclusions

or peculiar to 2011 but have a wider currency; together they work to authorise and normalise the criminal justice system, not just in exceptional moments like 2011, but in its everyday functioning. In particular, my analysis adds to critical work on the discourses of race, class and crime that legitimise criminal justice practices. I have shown how practitioners mobilised imaginations of crime, criminality, society and punishment that served to normalise and justify a criminal justice reaction that predominantly targeted marginalised and racialised individuals and communities. Taking the riots as a moment where underlying logic and language of criminal justice became shockingly visible, I argue that the thesis points to a broader set of discursive resources that procure consent for a racist and class-based system.

The preceding chapters have highlighted four interlocking and overlapping elements of what, drawing on Jensen and Tyler (2015), I have called a cultural political economy of punishment: delimited, decontextualised and depoliticised conceptions of crime, racialised and classed imaginations of criminality, an imagined punitive public, and strategic ignorance of the harms of punishment. These elements – each characterised by ignorance and agnosis – are crucial in legitimising and underpinning punitive penal policy and minimal or regressive reform agendas. My analysis showed how omitting the historical and structural context of the riots allowed practitioners to ignore the racialised and classed patterns of marginalisation, exclusion and police violence that preceded them; how imaginations of ‘typical’ criminals draw on and reify long-established cultural constructions of working-class and racialised people as inevitably or inherently criminal, and normalising their punishment; how a shared imagination of the public similarly legitimises the classed and racialised violence of the criminal justice system by reinforcing traditionalist and exclusionary ideas of society, citizenship and the nation; and how technical and bureaucratic concerns about prison draw attention away from more pressing questions about their role in maintaining and reproducing profound economic, political and social inequalities.

These findings point to a set of imaginations of crime, criminals, society and justice that are powerful in legitimating the criminal justice system more widely. These key imaginaries did not emerge from a vacuum in 2011; rather, the riots worked as a powerful ‘ideological conductor’ (Hall et al., 2013 [1978]: 2) around which already-circulating ideas about crime, justice, citizenship and society coalesced, condensed and became clearly visible. Examining riot talk tells us not only about the discourses that legitimised the state’s harsh reaction against the rioters in 2011, but offers a lens onto the ‘technologies
Conclusions

of consent’ (Jensen and Tyler, 2015: 5) through which a punitive common-sense is crafted and sustained in the wake of the riots.

Moreover, riot talk not only reflected and revealed the narratives and discourse that legitimise class and race-based punishment, but has also actively shaped this cultural political economy. In this way the thesis contributes to work that traces how contemporary anxieties about race, class and citizenship are constituted and reinforced through public conversations about crime, law and order (Hall et al., 2013 [1978]) and how urban unrest, in particular, remains a key site for the reproduction of cultural meanings that legitimise the discriminatory criminalisation and punishment of marginalised and racialised people (Camp, 2016; Gilroy, 2002). The dominant narratives that have coalesced around the 2011 riots have fortified imaginations of riots as a threat to society; ‘reinforced common-sense associations between race, crime and chaos’ (Camp, 2016: 122); provided an important stage for the rehearsal and enactment of exclusionary and regressive ideas about the nation and belonging; and worked as a moment in which penal agnosis could be rearticulated. The riots, I argue, catalysed a set of stories and common-sense claims that have served to legitimise and exculpate the criminal justice system in the years since 2011.

The thesis has demonstrated that these justificatory meanings are not fixed, stable or hegemonic, but rather are a site of constant contestation and negotiation. Practitioners did not uniformly or consistently justify or defend the criminal justice response to the riots, rather, some vehemently challenged and contested these narratives. My participants often grappled and negotiated with competing and contradictory narratives about crime and justice. Meanings around crime, criminality, punishment and justice are always being reconfigured, variously reflecting and contradicting discourses at play in popular media and politics, as well as in professional and policy spheres. As my interviews make clear, this struggle is not just between, say, those who advocate unequivocally for harsh punishment and those who look to more progressive or radical alternatives to imprisonment. Rather, individuals working within the criminal justice apparatus constantly negotiate and balance competing and contradictory ideologies and meanings around their work; working through profound political and moral dilemmas to make sense of their own roles. My analysis provides a glimpse into how those at the heart of the criminal justice system make sense of their place within it and attempt to fix – if momentarily – an imagination of the world in which their work is both vitally important and morally sound, if somewhat flawed or compromised.
Conclusion: Justifying ‘justice’

This thesis has examined how criminal justice professionals justified the vindictive, violent and starkly discriminatory penal response to the 2011 ‘riots’ and made sense of their own roles within it. Despite the state reacting to the unrest with extraordinary haste and shocking violence, for many of those I interviewed, they had ultimately ‘got it right’. I have traced how professionals at the heart of the criminal justice system justify and normalise its power and practices of punishment, rendering the remarkable entirely unremarkable and unquestionable; closing down critique in mainstream media and politics, and reaffirming a view of the system as beleaguered, benevolent and benign.

What I have argued is that political and professional ‘riot talk’ tells us far more about the ideological and discursive processes by which the criminal justice system seeks and secures popular consent for its punitive practices than it does about the nature of the unrest or those who were involved in it. Paying close attention to practitioners’ riot talk, I have argued, affords important insight into the narratives and discursive mechanisms that allow professionals to continue to work within the system – as prosecutors, sentencers, defence lawyers, probation and youth offending managers and policy makers – and to maintain a sense of their work as just and justified. The stories that practitioners tell about the riots, the rioters, society and prisons are vitally important; offering a view onto the imaginations and assumptions that underpinned not only a striking moment of state violence, but an ongoing regime of racialised and classed-based criminalisation and punishment.

This analysis offers an original perspective on how the criminal justice system sustains itself not only through managing its image in public and in political debate – though these spheres are vital – but also from within. The stories that policy makers, prosecutors and sentencers tell are connected to those we can trace through media representations and political rhetoric; but have their own distinctive outlines and features that warrant careful consideration. They are characterised by complexity, contradiction and dilemma that speaks to the political and moral weight of criminal justice work. The discursive mechanisms of self-justification and legitimation inside the criminal justice system illustrate how the system supports and reproduces itself from the inside.

By focusing on those individuals who were responsible for designing and delivering the strikingly violent state response to the disturbances, I have sketched a set of shared imaginations about crime, criminality, society and penal practices that serve to normalise
and naturalise the harms of the criminal justice system. I have situated these imaginations in a broader cultural and ideological moment and milieu, tracing how they replicate and reinforce cultural connections about race, class and nation forged in political and media debates; but also how they invert or modify these meanings. In doing so, the thesis makes a significant contribution to tracing the contours of a cultural political economy of punishment in the current conjuncture, highlighting the forms of ignorance and obfuscation that allow practitioners to justify ‘justice’ – justice that is no justice at all, but is discriminatory, starkly violent and disproportionate even by the system’s own standards.

What is at stake in this analysis is not just an academic appraisal of the semantics of riot talk, but an appreciation of the political implications and potency of such statements. This thesis has argued that depoliticising and dehistoricising understandings of crime; racialising imaginations of criminality; distorting discourses about the public and denial about prisons are vitally important in maintaining the system as it is and resisting meaningful change. Building a critical awareness of the structures of meaning and strategies of agnosis that support and undergird the criminal justice system plays a small but significant part in the process of critiquing, challenging, undermining and ultimately dismantling the apparatus of racialised and class-based criminalisation and punishment.


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References


References


## Appendices

### Appendix 1: Overview of research participants

<table>
<thead>
<tr>
<th>Participant (pseudonyms)</th>
<th>Role at time of riots in 2011</th>
<th>Role at time of interview in 2018 (if changed)</th>
<th>Interview setting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawrence</td>
<td>Defence barrister, central London chambers</td>
<td>Café, central London</td>
<td></td>
</tr>
<tr>
<td>Sadie</td>
<td>Defence barrister, central London chambers</td>
<td>Lecturer/researcher in Law, Central London university</td>
<td>Interviewee’s university office, central London</td>
</tr>
<tr>
<td>Roger</td>
<td>Defence solicitor, East London law firm</td>
<td></td>
<td>Law firm office, East London</td>
</tr>
<tr>
<td>Tanya</td>
<td>Defence solicitor, North London law firm</td>
<td></td>
<td>Participant's home office, North London</td>
</tr>
<tr>
<td>Jenny</td>
<td>Defence solicitor, North London law firm</td>
<td>Café, South London</td>
<td></td>
</tr>
<tr>
<td>Kofi</td>
<td>Senior District Crown Prosecutor, Crown Prosecution Service</td>
<td>CPS offices, Westminster</td>
<td></td>
</tr>
<tr>
<td>Jason</td>
<td>Senior District Crown Prosecutor, Crown Prosecution Service</td>
<td>CPS offices, Westminster</td>
<td></td>
</tr>
<tr>
<td>David</td>
<td>Magistrate</td>
<td>Retired</td>
<td>Skype call</td>
</tr>
<tr>
<td>Leonard</td>
<td>District Judge</td>
<td>Retired</td>
<td>Deputy Chief Magistrates’ office, Westminster Magistrates’ Court</td>
</tr>
<tr>
<td>Martin</td>
<td>Senior civil servant (Prisons), Ministry of Justice</td>
<td>Soon to leave civil service for role in private sector security firm</td>
<td>Ministry of Justice offices, Westminster</td>
</tr>
<tr>
<td>Adam</td>
<td>Manager, adult probation service, London</td>
<td>Head of Youth Offending Service, South London</td>
<td>Local authority offices, South London</td>
</tr>
<tr>
<td>Ashley</td>
<td>Manager, Youth Offending Service, North London</td>
<td></td>
<td>Local authority offices, North London</td>
</tr>
<tr>
<td>Claire</td>
<td>Head of Youth and Community Services, North London local authority</td>
<td></td>
<td>Local authority offices, North London</td>
</tr>
</tbody>
</table>
Appendix 2: Recruitment process for final participants

Chloe

Tom (law firm project officer - not interviewed) - put in touch by mutual friend/colleague

Lawrence (defence barrister) - put in touch by relative

Adam (Probation Service) - initiated contact via email

Martin (Ministry of Justice) - put in touch by his manager who I had emailed

Ashley (Youth Offending Service) - initiated contact via email

Jacob (CPS staff member - not interviewed) - put in touch by mutual friend/colleague

Karen (journalist)

Karen (journalist)

Roger (defence solicitor)

Roger (defence solicitor)

Leonard (district judge)

Leonard (district judge)

Tanya (defence solicitor)

Tanya (defence solicitor)

Jenny (defence solicitor)

Jenny (defence solicitor)

Sadie (defence barrister)

Sadie (defence barrister)

Lawrence (defence solicitor)

Lawrence (defence solicitor)

Tanya (defence solicitor)

Tanya (defence solicitor)

Jenny (defence solicitor)

Jenny (defence solicitor)

Sadie (defence barrister)

Sadie (defence barrister)

Martin (Ministry of Justice) - put in touch by his manager who I had emailed

Martin (Ministry of Justice) - put in touch by his manager who I had emailed

Ashley (Youth Offending Service) - initiated contact via email

Ashley (Youth Offending Service) - initiated contact via email

Clare (Local authority)

Clare (Local authority)

Amar (Prosecutor)

Amar (Prosecutor)

Jason (Prosecutor)

Jason (Prosecutor)

Kofi (Prosecutor)

Kofi (Prosecutor)
Appendix 3: Participant information sheet

Rethinking the riots: Making sense of the criminal justice reaction to the 2011 London riots

Researcher: Chloe Peacock, Department of Sociology, Goldsmiths, University of London

About the research project

This research is being undertaken for a PhD thesis. The research aims to investigate the 2011 London ‘riots’, how various organisations responded to them, and their long-term consequences. In particular, it aims to develop a better understanding of how the criminal justice system responded to the disturbances. While there has been a lot of good quality research into the underlying causes of the riots, there has been much less attention paid to what happened after the unrest. This research aims to explore how the police, courts, and communities reacted to the riots, and the long-term effects of these responses. I would like to include the insights and perspectives of a range of professionals who were involved in responding to the riots.

The research is funded by a studentship from the ESRC (Economic and Social Research Council) and is supervised by Professor Les Back and Dr Emma Jackson at the Department of Sociology, Goldsmiths. If you have any concerns about the conduct of the research, please contact the department’s ethics officer, Professor Marsha Rosengarten (m.rosengarten@gold.ac.uk).

Your participation

- Informal interviews will last approximately 30-60 minutes, depending on your availability, and can be conducted at a time and location that is convenient to you. Interviews may be audio recorded, with your permission.
- The research will feed into a PhD thesis that will be publicly available, and may also be published as academic articles, online blog posts, book chapters etc., and used in teaching materials.
- The data provided will be confidential. All names and identifying information will be removed, unless otherwise requested and it will not be possible to identify you from the resulting thesis or other publications.
- If you decide at any time during the research that you no longer wish to participate in this project, you can withdraw immediately without giving any reason.
- There are no direct (e.g. financial) benefits to taking part. However, your time and expertise will contribute to a project that aims to understand how organisations and communities can better respond to events of unrest in the future.

If you have any questions or would like more information, please contact:
Chloe Peacock, Department of Sociology, Goldsmiths, London SE14 6 NW
Email: chloe.peacock@gold.ac.uk
Telephone: 07813438187
The Official Secrets Act 1989 came into force on 1 March 1990. The 1989 Act replaces section 2 of the Official Secrets Act 1911, under which it was a criminal offence to disclose any official information without lawful authority. Under the 1989 Act it is an offence to disclose information only in six specified categories and only if the disclosure is damaging to the national interest.

The guide gives answers to basic questions about how the new law might affect you. It does not cover everything in the Act, but your Area Business Manager/Head of Division should be able to give you more information and advice if you need it.

Who is affected by the Act?

The Act applies to:

- Crown Servants, including:
  - Government Ministers
  - Civil Servants, including members of the diplomatic service
  - Members of the armed forces
  - The police

- Government contractors, including anyone who is not a Crown Servant, but who provides or is employed in the provision of goods or services for the purpose of a Minister.

- A small number of office holders and the members and staff of a small number of non-government organisations who are treated as Crown Servants for the purpose of the Act, including:
  - The UK Atomic Energy Authority
  - British Nuclear Fuels plc
  - Urenco Ltd
  - The National Audit Office and the Northern Ireland Audit Office
  - The Offices of the Parliamentary Commissioner for Administration and the Northern Ireland Commissioner.

- Members of the public and others who are not Crown Servants or government contractors but who have, or have had, official information in their possession.

What is “official information”?

This means any information, document or an article, which a Crown Servant or government contractor has or had in his or her possession by virtue of his or her position as such.
What are the six specified categories of official information protected by the Act?

It is an offence for a Crown Servant of Government contractor to disclose official information in any of the following categories if the disclosure is made without lawful authority and is damaging. The categories are:

- Security and intelligence
- Defence
- International relations
- Foreign confidences
- Information which might lead to the commission of crime

When is a disclosure damaging?

The Act sets a different test or tests of damage for each of the six categories of information. For an offence to be committed under the Act, the disclosure of information must in general have damaged the national interest in the particular way, or ways, specified in the Act for the category of official information in question. It is ultimately for the jury to decide, when the case comes to trial, whether damage has in fact occurred.

When is a disclosure made without lawful authority?

Crown Servants may disclose official information only in accordance with their official duty. Government contractors may do so only in accordance with an official authorisation or for the purpose of their functions as government contractors and without contravening an official restriction. In any other circumstances a disclosure is made without lawful authority.

What about members of the public?

If a member of the public or any other person who is not a Crown Servant or government contractor under the Act has in his or her possession official information in one of the six categories, and the information has been,

- Disclosed without lawful authority or
- Entrusted by a Crown Servant or government contractor on terms requiring it to be held in confidence

It is an offence to disclose the information without lawful authority.

It is also an offence to disclose the information without lawful authority.

It is also an offence to make damaging disclosure of information relating to security or intelligence, defence or international relations which has been,
Communicated in confidence to another state or an international organisation and,

The information has come into a person’s possession without the authority of the state or organisation.

**It is an offence for anyone to disclose means of access to protected information?**

It is an offence for anyone to disclose official information, which it would be reasonable to expect, might be used to obtain access to information protected by the Act.

**What about the security and intelligence services?**

For

- Present and former members of the security and intelligence services, and

- People who have been notified in writing that they are subject to section 1(1) of the Act

It is an offence to disclose without lawful authority any official information about security or intelligence. There is no damage test.

**Who will be notified?**

A person may be notified only if his or her work is, or which includes work connected with Security and Intelligence Services, and the nature of the work is such that the “interests” of National Security require that person should be subject to section 1(1) of the Act.

**What are the penalties for unauthorised disclosure?**

Offences of unauthorised disclosure under the Act may be tried either on indictment by the Crown Court, or summarily, by a magistrates court. The maximum penalties are two years’ imprisonment or an unlimited fine, or both, if the offence is tried on indictment, and six months’ imprisonment or a £2000 fine, if the offence is tried summarily.
Appendix 5: CPS Declaration to be signed by non-civil servants on being given access to official information

OFFICIAL SECRETS ACT 1989

DECLARATION TO BE SIGNED BY NON-CIVIL SERVANTS ON BEING GIVEN ACCESS TO OFFICIAL INFORMATION

I hereby confirm that I have read and understood the basic guide to the Official Secrets Act 1989 and have been advised of my obligations regarding the protection of official information as laid down in the 1989 Act and the statutory provisions listed in Annex 1 to paragraph 9910 of the Civil Service Pay and Conditions of Service Code.

Name (Block Letters): CHLOE PEACOCK

Area, Branch or HQ Division: .................................................................

Signed: .................................................................

Date: 14 August 2018
Appendices

Appendix 6: CPS research undertaking form

TO BE COMPLETED BY THE CPS:

1. **Researcher Name**: Chloe Peacock

2. **Sponsor Organisation**: Goldsmiths, University of London

3. **Purpose For Which Access is Granted**: In pursuance of ‘Rethinking the Riots’

   - which aims to aim to investigate the 2011 London riots, how various organisations responded to them, and their long-term consequences. In particular, it aims to develop a better understanding of how the criminal justice system responded to the disturbances.

   - Access is granted to interview 3 prosecutors in London
   - Access is granted until the end of 31/10/18

TO BE COMPLETED BY THE RESEARCHER:

4. **Conditions of Access**

   Permission to interview/question CPS personnel has been granted solely for the purpose of the research project referred to at paragraph 3 above. I agree that:

   (i) only the information required for the purposes of my research may be examined and recorded. The data may not be used in any way which will enable any individual on whom data is collected to be identified;

   (ii) consent must be obtained from the interviewee before proceeding to record an interview;

   (iii) any recording or transcript of interviews that are in my possession may only be used for the purposes of the research and will remain the property of the CPS;

   (iv) no unpublished information contained in recordings or transcripts of interviews may be quoted or disseminated to individuals outside the Service without the prior approval of CPS Headquarters;

   (v) any book, article, broadcast or lecture based upon the research findings and incorporating information derived from the interviews for which permission has been granted will be submitted to the CPS prior to any publication for comment. The CPS retains the right to edit or otherwise restrict publication of any such information. A thesis made available for public inspection shall be deemed a publication;

   (vi) a copy of any final publication will be forwarded to the CPS;

   (vii) I will comply with all the requirements of the Data Protection Act 1998 and am fully aware that non-compliance of the Act may result in a criminal offence.

   (viii) I hereby confirm that I am fully aware of my continuing obligations regarding the protection of official information as laid down in the Official Secrets Act...
1989 and that non-compliance of the Act may result in a criminal offence.

5. Project Specific Conditions

I agree that:

(i) a draft copy of the report of findings will be forwarded to the CPS at least two weeks prior to publication.

(ii) a final copy of the report of findings will be forwarded to the CPS within one month of publication.

Signed

(Supervisor - if applicable)

.9 August 2018. Date

. Date