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Disadvantage, Crime, and Criminal Justice

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When individuals are asked to form a general impression of the common “criminal,” they tend to think of “an outsider, a young, lower-class male, physically unattractive, who has been convicted of a crime involving violence” (Roberts 1992, 138). Criminalized persons are stereotypically disliked and perceived as being evil, but are also stereotyped as being poor (Carroll et al. 1987; Carlsmith and Darley 2008; Langworthy and Whitehead 1986; Reed and Reed 1973; Roberts 1992; Sargent 2004; Tam et al. 2008). In this respect, central aspects of the criminal stereotype are related to their disadvantage.

Disadvantage itself can come to impact what is considered a crime from a legislative standpoint. Many categorically harmful practices are indeed not defined as crimes (e.g., deadly pollution, unsafe working conditions), particularly when they are committed by the powerful (Bittle and Snider 2006; Reiman and Leighton 2015). The politicization of “crime” extends the “definition of crime from its narrow legal base to include wider social harms, injuries and injustices” committed by corporations and by the state (Cohen 1996, 5). Any discussion of criminalized persons therefore must heed in part to the important role that disadvantage plays in the very designation of behaviours as crimes.

Broadly, the concept of disadvantage can be understood as conveying a sense of inferiority in terms of perceived and actual access to resources, such as income, power, and prestige (e.g., in terms of employment or achievements). The nomenclature of disadvantage is therefore conceptually large enough to capture the experiences of various social groups including—but not limited to—racialized groups, LGBTQ groups, those experiencing significant physical or

mental health problems, and those experiencing demarked social exclusion (e.g., the poor, the homeless), including formerly incarcerated individuals. Though the present work uses the concept of disadvantage, more traditional concepts such as social class could have also been employed. Though the concept of social class has a longer history in sociological works on social structure and inequality, social class could be seen as being more strictly tied to poverty and economic relations than other forms of disadvantage. Moreover, the concept of social class does not allow for the consideration of the impacts of multiple forms of social exclusion (e.g., cumulative disadvantage). For these reasons, the present work draws on the concept of disadvantage.

Though not focusing on disadvantage explicitly, concepts related to disadvantage have historically been prominent in theoretical frameworks aiming to explain criminal behaviours and judicial responses to these behaviours. From the eighteenth to the twentieth century, social class was a key lens through which crime was understood (Emsley 1996). Such a view of crime was in line with Marxist theory, which posited that economic activity and related social class distinctions shape the rest of society (Garland 1990). A traditionally Marxist view put forth in the nineteenth century suggests that crime is the result of social class conflicts, with criminalized persons as a social group conceptualized as being in a specific class position forced upon them by the capitalist system (Hirst 1975). In other words, criminal behaviours among the lower-classes, though undesirable, were seen as being the result of the social system.

Drawing on the Marxist tradition, the 1940s saw the introduction of neo-Marxist frameworks suggesting a direct link between social structure and state reactions to crime (Rusche and Kirchheimer 1939). Specifically, it was hypothesized that varying unemployment rates would be associated with varying imprisonment rates. In this way, the criminal justice system was conceptualized as a means to manage the behaviours of "lower-classes" (Quinney 1975).

Over the past fifty years, dominant theoretical currents have continued to draw links between the social position of individuals and their criminalized behaviours. For instance, in the 1960s it was suggested that a combination of differential cultural values among the poor and opportunities for crime explained the overrepresentation of the poor among criminalized persons (Blau and Blau 1982). However, other more critical or radical theoretical frameworks emerged in the

1970s and 1980s, which brought to the fore issues surrounding power, politics, and inequalities, and the role of criminal justice in preserving unequal class relations (Cohen 1985; Quinney 1970; Rock 2002; Taylor et al. 1973). Questions surrounding the designation of behaviours as “crimes” also emerged (Lemert 1972; Wellford 1975). In more recent theoretical frameworks, the criminal justice system is understood as simultaneously reacting to and producing disadvantage: being disadvantaged may lead to involvement in the criminal justice system, while a criminal record and incarceration in turn have detrimental impacts on employment, earnings, health, family life, and recidivism (Harcourt 2008; Western and Muller 2013). This reciprocal relationship between disadvantage going into and out of the criminal justice system is underscored by theoretical frameworks and empirical evidence put forth in the late twentieth century which posit that the “criminal justice system is one of the most important hierarchy enhancing social institutions in the social system” (Sidanius et al. 1994, 340).

The following chapter is in line with theoretical frameworks that conceive the criminal justice system as both reacting to and producing disadvantage, elsewhere described as a “ratchet effect” (Harcourt 2008). The objective is to provide a review of the state of empirical research that demonstrates the numerous ways in which disadvantage comes to impact crime and the criminal justice process. In this review, preference is given to large empirical studies, systematic reviews (i.e., summaries of all empirical evidence that answers a defined research question), and meta-analyses (i.e., statistical analyses that combine the results of multiple empirical studies). The chapter draws in part on earlier frameworks linking social class to the criminal justice process. However, it also moves beyond these frameworks by considering not only the social class of individuals, but also other types of disadvantage (e.g., based on ethnicity or gender). The review also underscores empirical evidence demonstrating the impacts of disadvantage on the criminal justice process for both criminalized persons and victims, and the current theoretical frameworks that explain these trends. Lastly, the objective is to extend the “ratchet effect” perspective by providing evidence of how public perceptions that are reactive to disadvantage and criminal justice practices ensure—wittingly or unwittingly—that these processes continue in the same direction.

Distinguishing between components of disadvantage and stages of the criminal justice process is problematic for two central reasons.

First, decisions at one stage of the criminal justice process will undoubtedly impact later decisions, something referred to as the “dynamic process” that constitutes criminal punishment (Kutateladze et al. 2014). For instance, decisions pertaining to arrest will have a definitive impact on who is processed through the court system. Similarly, outcomes of court decisions will undoubtedly shape the composition of the so-called “criminal population” or “criminal identity” and public perceptions of this social group.

The second issue concerns the drawing of somewhat artificial delineations between the effects of socio-economic status and race on judicial outcomes. To be sure, it is empirically difficult to fully disentangle the historical, intergenerational, and systemic impacts of disadvantage for racialized groups, and especially Black and Indigenous individuals in North America. Take for instance findings suggesting that, for Black individuals, merely living in disadvantaged areas further increases their likelihood of being arrested, independent of other individual-level (e.g., age, sex) and neighbourhood-level features (e.g., residential stability, ethnic composition) (Kirk 2008). The combination of elements of disadvantage result in what some have called “cumulative disadvantage” (Kutateladze et al. 2014), which has devastating impacts on the life outcomes for the most vulnerable individuals. The delineations drawn between aspects or types of disadvantage, as well as between the multiple facets of crime and the criminal justice process, are therefore for pedagogic purposes only, and should not be seen as implying that these are mutually exclusive phenomena. Nevertheless, it is helpful to discuss disadvantage, along with its impacts at various stages in the treatment of crime and law. The following review therefore first considers how disadvantage comes into play for those suspected or convicted of having committed a crime: in arrest statistics, in court proceedings, and in generating public support for harsh criminal justice policy. Next, the chapter considers the role of disadvantage in shaping victims’ experiences in terms of relations with police and in court proceedings. The chapter concludes by discussing some of the potentially devastating impacts of growing social inequality on criminal justice.

Disadvantage and the “Offender”

Disadvantage and Arrest

Arrest is arguably the first point of entry into the criminal justice system. In terms of explaining biases linked to disadvantage in arrest rates, five key factors contribute to policing biases in arrest practices: discretion, being a novice, crime focus, cognitive demand, and identity threats (Swencionis and Goff 2017). In particular, the combination of ambiguous situations and a personal disposition to exert dominance is likely to work toward discrimination against individuals of a lower social status. Some evidence suggests that as a social group, police officers demonstrate significantly higher levels of a preference for social dominance compared to other social groups (e.g., jurors, university students, or public defenders) (Sidanius et al. 1994). These personal dispositions may partly explain discrepancies in arrest rates related to disadvantage. More broadly, systemic and individual discrimination against disadvantaged individuals is likely facilitated by myths that legitimize disadvantage by drawing on classism, economic theories of merit (e.g., the protestant ethic), and racism (Sidanius et al. 1994).

Investigating the impact of disadvantage on arrest rates, however, is challenging for two central reasons. The first is related to the nature of arrest data. On one hand, official arrest data recorded by police provides a snapshot of crimes reported to the police, for which the police effected and recorded an arrest. However, arrest data tends to be under-reported by police departments compared to crime data (Maltz 2010). Self-reported arrest is a second source of arrest data; however, this data is seen as problematic due to desirability effects and a general reticence to disclose criminal behaviour.

Crime rates—though subject to many measurement issues—could also be considered as an indirect measure of arrests. There is robust evidence suggesting that police-recorded crime rates for violent and property crimes are higher in areas demarked by absolute and relative disadvantage (Chamberlain and Hipp 2015). Several theoretical frameworks help explain this trend. Notably, social disorganization theory suggests that communities demarked by disadvantage will lack resources to provide informal and formal sources of social control. For instance, the clustering of disadvantaged neighbourhoods

within cities suggests a concentration of poverty, unemployment, and weak social control, and therefore ideal conditions for crime (Chamberlain and Hipp 2015).

Still—adjusting for the crime rate—individuals living in disadvantaged areas are more likely to be stopped, searched, and arrested. Research investigating a number of individual, family, and neighbourhood characteristics suggest that a low socio-economic family status is associated with arrest and police contact (e.g., questioning), and that this association cannot be explained by disproportionate criminal offending alone (Kirk 2008; Pollock et al. 2012).

In terms of disadvantage linked to race and ethnicity, there is no shortage of examples of the disproportionate use of force and persecution of Black Canadians and Americans by the police. In Canada, the Centre for Research-Action on Race Relations has consistently denounced the over-policing of Black individuals in the city of Montreal. In Toronto, a 2017 study suggests that 80 percent of Black men between the ages of twenty-five and forty-four report having been stopped by police (The Black Experience Project 2017). In their study of Canadian youth, Scot Wortley and Julian Tanner (2005) find greater self-reporting by Black youth than white youth of stops by police, adjusting for a range of factors (e.g., involvement in criminal activity, use of public spaces, socio-economic status). They suggest that the practice of racial profiling, or stopping Black individuals more frequently than white individuals, is a self-fulfilling prophecy as it will ultimately lead to more detection of crimes among Black individuals even if white individuals demonstrate the same level of criminal behaviours (Wortley and Tanner 2005). However, data from the United States suggests that in neighbourhoods with a high number of racialized (e.g., Black) individuals, stops have been found to be less effective in terms of identifying culprits of crime, particularly stops of racialized individuals (Fagan et al. 2010). And while overall arrest rates have decreased in many American cities, trends in the States suggest that Black Americans continue to be disproportionately arrested: in New York City, they were 5.2 times more likely to be arrested than white individuals, and in most California counties they were 3 times more likely to be arrested than white individuals (Lofstrom et al. 2019; Patten et al. 2018).

In the United States, some studies suggest that differential offending behaviours (e.g., committing more crimes, and more serious crimes) are responsible for the disproportionate arrest rates of

Black individuals (D'Alessio and Stolzenberg 2003). Other studies suggest that once lifetime involvement and IQ level are taken into account, there is no difference in self-reported rates of arrest between white and Black individuals (Beaver et al. 2013). However, these studies are heavily criticized for ignoring structural and discrimination-based factors contributing to arrest disparities (Gabbidon and Greene 2018). Moreover, these studies are marked with methodological flaws, including improper estimation techniques and the omission of key confounding variables (e.g., socio-economic status, neighbourhood-level factors). A meta-analysis of observation data of actual police arrests found a robust effect of race—specifically for Black and Hispanic individuals—adjusting for a number of confounding variables (e.g., seriousness of the crime, use of weapon) (Lytle 2014). In particular, when Black individuals are economically and residentially disadvantaged relative to white individuals, they are more likely to be arrested, and this is particularly the case where police officers can exert more discretion (e.g., in drug arrests). Furthermore, research investigating the neighbourhood context suggests that, adjusting for involvement in criminal behaviour, if Black individuals lived in neighbourhoods with similar levels of poverty as white individuals, their arrest rate would be substantially decreased (Kirk 2008).

In summary, although capturing the true association between disadvantage and arrest rates is rendered difficult by methodological limitations related to measuring actual arrest practices, empirical and theoretical grounds suggest that those experiencing disadvantage are more likely to be stopped, searched, and arrested by police.

Disadvantage and Courtroom Decisions

Disadvantage may also come into play in the courtroom by impacting prosecutorial, defence, judiciary, and jury decision-making. In terms of judicial decisions, key concerns relate to blameworthiness or culpability (e.g., based on criminal and life history), and the practical consequences (e.g., concerns about efficiency) or social costs of judicial decisions (Kutateladze et al. 2014). The “focal concerns” theoretical framework suggests that cues related to social status are relevant in courtroom decisions to the extent that they suggest a likelihood of future offending, as this would go against the judicial concern for community protection (Steffensmeier et al. 1998).

In this respect, stereotypes linking crime to disadvantage are likely bolstered by concerns associated with pragmatic issues related

to judicial efficiency and “the greater good.” The concept of the greater good suggests that punishment—even if applied disproportionately to the disadvantaged—could be seen as contributing to improving the overall welfare and happiness of society (Fletcher 1998). Moreover, it is argued that when information is missing or incomplete, decision-makers are likely to rely on stereotypes that systematically place racialized groups—and particularly the young, male, and poor—at a disadvantage in terms of inferences related to the likelihood of reoffending, to life history, and to other factors (Kutateladze et al. 2014).

With regards to juror decision-making, a meta-analysis of eighty mock juror experiments varying a range of characteristics of the accused suggested a small but robust effect of a low socio-economic status on an increased likelihood of being found guilty and on a greater likelihood of receiving harsher punishment (Mazzella and Feingold 1994). This finding may be due to the presumed covariance of these characteristics with criminality and thus jurors “unconsciously” finding these characteristics relevant in their decision-making.

With regards to prosecutorial, defence, and judiciary decisions, a U.S. study investigating 185,275 criminal cases revealed that adjusting for legal characteristics of the offence (e.g., number of charges, type of offence, severity of offence) and of the individual (e.g., age, sex, social class), Black individuals were more likely to be incarcerated, while Black and Latino individuals were more likely to be detained pretrial and to be treated more harshly in terms of plea bargaining and sentence type (Kutateladze et al. 2014). A systematic review of seventy-one published and unpublished studies investigating racial disparities in sentencing, which adjusted for offence seriousness and criminal history, revealed a small but robust effect suggesting that Black individuals are sentenced more harshly than white individuals (Mitchell 2005). The size of this effect is larger for drug offences, imprisonment decisions, and discretionary sentencing decisions. Similar findings of small but significant negative effects for non-white defendants have also been found outside of the United States (e.g., in the Netherlands) (Wermink et al. 2017).

The concept of cumulative disadvantage in the courtroom suggests that the interactive effects of personal characteristics (e.g., race, age, income, employment, gender) should be considered when investigating sentencing outcomes (Spohn 2000; Steffensmeier et al. 1998). In particular, the combination of a low socio-economic status and

being a racialized individual is potentially particularly disadvantageous (Wooldredge 1998; Wu 2016). However, this combination is insufficiently investigated with more emphasis put on the racial dimension in most studies (Zatz 2000).

In any case, the over-representation of the disadvantaged in prisons (Wright 2013; Reiman and Leighton 2015) suggests, first, that courts may be more likely to find the disadvantaged guilty of crime and, second, when this occurs they may be more likely to sentence them to a custodial sentence. These trends are likely partly the result of the cumulative impact of decision-making in the courtroom that draws legal inferences from disadvantage to legal notions of intent and blameworthiness, and the broader notion of “the greater good.” Moreover, disadvantage at one phase (e.g., the impact of imprisonment history on pretrial detention) of the criminal justice process is likely to contribute to later disadvantage (e.g., the impact of pretrial detention on suspended prison sentences) (Wooldredge et al. 2015).

Disadvantage and Public Support for Harsh Criminal Justice Policy

Moving beyond policing and courtroom decisions, public decisions and opinions about harsh criminal justice policies can also lead to punitive practices, which tend to disproportionately affect the disadvantaged (e.g., the poor, youth, racialized groups, those with mental health problems) (Bazemore 2007; Bobo and Johnson 2004; Curry and Klumpp 2009; Garland 2004; Harcourt 2008; Helms 2009; James and Glaze 2006; Pettit and Western 2004; Robinson and Darley 2007; Teplin 1984). Public support for harsher criminal justice policy has been found to partly explain the long-term increase in legislative punitiveness and punitive practices (e.g., imprisonment rates) (Enns 2014; Jennings et al. 2017). More broadly, levels of public punitiveness remain relatively high in the United States, Britain, and Canada, with figures suggesting a majority of individuals believe that courts are not harsh enough in dealing with criminalized persons (Enns 2014; Hough et al. 2013; Hough and Roberts 2005; Ramirez 2013; Sato and Hough 2013). And while measures of public punitiveness in specific instances (e.g., in response to a hypothetical crime) suggest lower levels of public punitiveness than broader measures of support for harsh criminal justice policy (Doob and Roberts 1984), high levels of public support for harsh criminal justice policy are apparent despite declining crime rates and stable or growing prison populations (Côté-Lussier 2016).

Theoretical frameworks which gained prominence in the beginning of the twenty-first century suggest that social-structural factors linked to disadvantage may contribute to shaping public attitudes toward crime. Competition for resources and differences in social status are the two key factors influencing inter-group perceptions and responses (Fiske et al. 2007; Fiske et al. 2002; Fiske et al. 1999). Social status refers to a group's overall attainment in terms of education, income, and prestige.

Perceiving criminalized persons as having a low social status is associated with the perception that these persons are cold and callous (Côté-Lussier 2016). These perceptions in turn contribute to public feelings of anger toward criminalized persons and increased support for harsh criminal justice policies. This indirect pathway linking disadvantage to public punitiveness is explained by functional links between inter-group perceptions and corresponding emotional responses that motivate specific behaviours (Cuddy et al. 2007). For instance, perceiving a social group as competing against one's own group leads to inferences regarding that group's general negative disposition, and therefore negative emotional (e.g., contempt, disgust, resentment) and behavioural response (e.g., attacking, excluding). Groups perceived as having a low social status and as competing against society for resources—thus those most likely to elicit negative responses—include the poor, the homeless, and welfare recipients.

Social-structural inequalities, and criminalized persons' perceived disadvantage within that context can therefore contribute to public support for harsh criminal justice policies. This support is the result of functional processes that come into play in inter-group relations. Such processes may help explain sustained public support for costly criminal justice policies, despite declining crime rates and growing prison populations.

Disadvantage and the "Victim"

Indigenous Peoples in Canada and Police Relations

Ensuring a positive relationship between the public and the police has significant implications for both parties (Jackson and Bradford 2009; Jackson et al. 2009; Jackson and Sunshine 2006; Loader and Mulcahy 2003; Sunshine and Tyler 2003a). For instance, through the

fair treatment of citizens and the nurturing of public confidence, the police are able to cultivate within communities a sense of legitimacy and consent to their authority. In return, citizens will be more likely to voluntarily co-operate with the police in the performance of their duties (Sunshine and Tyler 2003b; Tyler 2010; Tyler and Fagan 2008). This arguably helps the functioning of the criminal justice system, while hopefully contributing to the wellness of communities and the strength of social ties. Yet relations between disadvantaged groups and the police are fraught with tension, distrust, and a perceived lack of legitimacy of the latter (Tyler 2005; Wortley and Owusu-Bempah 2011). For victims of crime, a lack of trust and confidence in the police may deter them from reporting crime and co-operating with the criminal justice process (Tyler 2005; Sunshine and Tyler 2003b). Relations between disadvantaged individuals and the police are particularly key as these groups are most likely to become victims of crime, though they are rarely the object of scientific or political attention (Bunch et al. 2012; Miller 2013; Perrault 2014).

The following section focuses on Indigenous peoples as one particularly disadvantaged group in Canada and their relation with the police. Indigenous communities across Canada have been and are still affected by a myriad of social harms and social prejudices, which can be tied to colonialism and the attempted assimilation of Indigenous peoples by the British and Canadian governments, which has contributed to continuing issues of intergenerational trauma, substance abuse, low socio-economic living, cultural dislocation, and educational and health inequalities (Comack 2012; Monchalin 2016; TRC 2015). One of the legacies of these experiences is notably a greater risk of victimization (Monchalin 2016). According to the most recent official statistics, Indigenous peoples were approximately one and a half times more likely to report having been the victim of a crime compared to their non-Indigenous counterparts in 2014. Moreover, Indigenous women were about three times more likely than non-Indigenous women to report having been the victim of spousal violence (Boyce 2016, 3).

Despite greater rates of victimization, Indigenous peoples' reporting of those incidents to the police remains low. Indeed, 77 percent of non-spousal violent incidents and 50 percent of violent spousal incidents experienced by Indigenous peoples in 2014 were not reported to the police (Boyce 2016). Such low reporting rates may be explained by the difficult relationship between

Indigenous peoples and the police in Canada. From their role in the attempted assimilation of Indigenous peoples, to their involvement during Indigenous rights protests and land claim disputes, police have played and continue to play a pervasive role in the life of Indigenous peoples in Canada (Ministry of the Attorney General 2007; Monchalin 2016; Rudin 2006). Indigenous communities experience two discriminatory forms of policing: over-policing and under-policing (Monchalin 2016; Rudin 2006). Over-policing is the practice by which the police focus their attention “inordinately in one particular geographic area (or neighbourhood) or on members of one particular racial or ethnic group” (Rudin 2006, 28). More relevant to Indigenous victims, however, is the practice of under-policing: “[Indigenous] people are often seen as less worthy victims by the police, and thus requests for assistance are often ignored or downplayed. ... Just as over-policing has a significant impact on [Indigenous] peoples’ attitudes toward the police, under-policing also plays a great role in fostering a deep distrust of police” (Rudin 2006, 1–2).

Under-policing of Indigenous peoples is particularly visible in the case of women victims of violence at the hands of partners or former partners. For instance, some findings suggest that Indigenous women victims report racist responses from the responding officers or are discouraged from filing an official report by the police officers themselves, while others simply do not report their victimization for fear of being criminalized in turn (e.g., for being intoxicated) (Comaskey and McGillivray 2000).

As a social group, Indigenous peoples in Canada are therefore more likely to become victims of crime and simultaneously experience under-policing when in need of police intervention (Boyce 2016; Rudin 2006). These trends may partly explain the overall lower levels of confidence Indigenous peoples have in the police and their overall poor relations with police (Boyce 2016). Ensuring positive relationships between the public and the police is important not only because it helps the police in the performance of their duties, but also because it promotes a context through which authority is asserted with the consent and the recognition from communities, and not through authoritative coercion (Jackson and Gau 2016). This is especially important when it comes to Indigenous peoples in Canada in recognition of their nation-to-nation relationship with the Canadian government (David 2018).

*Rape Victims' Credibility and Gender-Based Disadvantage
in the Criminal Justice Process*

That victims of gendered-based violence experience disadvantage within criminal justice systems across jurisdictions is well established, in particular for the case of rape (Lovett and Kelly 2009; Spohn and Tellis 2014; Westmarland and Gangoli 2012). This section outlines how gender operates as disadvantage at all stages of the criminal justice process, undermining victim credibility and resulting in poor criminal justice outcomes for a crime that is overwhelmingly committed by men against women.

A consistent finding of research on rape victims' experience of the criminal justice process is the central role played by the extent to which a rape victim conforms, or fails to conform, to gender expectations and "real rape" stereotypes. A "real rape," as first proposed by Susan Estrich (1987), is perpetrated by a stranger, typically in an outdoor setting. A "real" victim fights back verbally and physically to avert the rape, resulting in visible injuries that prove the struggle, and reports the rape to police immediately. Furthermore, rape victims are found wanting in their credibility as "genuine" victims if they violate gender expectations by voluntarily consuming alcohol prior to the offence, being sexually active, having a previous consensual intimate relationship with the perpetrator, dressing "provocatively," disclosing substance abuse, being sex workers, having a record of mental health problems, or not fighting back to defend their "unsullied" woman status (Ellison et al. 2014; Kelly et al. 2005; Ellison et al. 2014; Lonsway and Fitzgerald 1994; Lovett and Horvath 2009; Stanko 1985). The empirical evidence suggests that "real rapes" are in fact not typical at all: the majority of victims know their perpetrator—frequently they are current or previous intimate partners. Moreover, rapes often do not result in visible injuries and most victims delay reporting to police, or do not disclose the rape at all (Hohl and Stanko 2015). This is compounded by rape being, in part, enabled by gender-based disadvantage. Perpetrators exploit victim vulnerabilities—for example, alcohol and drug use—and use their relative position of power to coerce victims into sex against their will.

Rape victims' courtroom experience further illustrates how gender and rape stereotypes and beliefs enhance their disadvantage. In rape cases it is often "one word against another"; the testimony of the victim and the accused are frequently the only and

nearly always the key evidence. As a result, the credibility of the victim versus that of the defendant takes centre stage, and defence lawyers exploit the rape myths and stereotypes held by the members of the public who make up the jury. For example, Emily Finch and Vanessa Munro (2007) found that while (mock) juries hold intoxicated defendants less responsible for their actions, intoxicated victims are held more responsible for the subsequent sexual events. Louise Ellison and Vanessa Munro (2009) found that, in line with the “real rape” myth and rape victim stereotypes, a lack of physical resistance, delayed reporting and a calm, unemotional demeanour of the victim all served to undermine their credibility in the eyes of (mock) juries. In this way, stereotypes disadvantage victims by attributing responsibility and blame for the rape to the victim, and diminishing the perceived responsibility of the accused (Taylor 2004; Temkin and Krahé 2008).

Disadvantage and status defined by gender expectations and rape stereotypes therefore play out at all stages of the criminal justice process. As a result, most victims in England do not report the rape to the police (Stern 2010), and of those who do around half withdraw their complaint and do not wish to continue with the police investigation and prosecution (Hohl and Stanko 2015). Of the non-withdrawn complaints the police conclude the investigation with “no further action” in 67 percent of cases (Hohl and Stanko 2015), and only 7 percent of cases result in a conviction (Ministry of Justice 2013). A similar pattern of attrition is evidenced in other jurisdictions (see Daly and Bouhours 2010; Lovett and Kelly 2009; Spohn and Tellis 2014). For instance, in the United States it is estimated that 19 percent of women who were victims of rape after the age of eighteen reported those rapes to the police (Tjaden and Thoennes 2006). In Canada, it is estimated that approximately one in five sexual assaults (which includes rape and other types of assault) are reported to the police (Conroy and Cotter 2017).

More broadly, there is a dearth of research on the link between further forms of disadvantage (e.g., in terms of socio-economic status, sexuality, or ethnicity), victimization, and attrition. In England, there is some evidence that additional forms of disadvantage such as being non-white, having had prior police contact, or having a mental health issue further increase the odds of attrition (Hohl and Stanko 2015). While race or ethnicity is not strongly associated with rape victimization, there are some exceptions. Namely, there is some evidence that

Indigenous women in the United States are significantly more likely to be victims of rape than other women (Tjaden and Thoennes 2006). In Canada, there is evidence that self-reported sexual assault is higher among Indigenous women, homosexual, or bisexual individuals; those with poorer mental health; and those who have experienced homelessness (Conroy and Cotter 2017). Gender-based and other forms of disadvantage therefore work to reduce reporting of rapes, impacting both policing practices and courtroom decisions to the detriment of victims.

Conclusion

For suspected or convicted criminalized persons, the consequences of disadvantage are apparent in arrest statistics, judicial decision-making, and public opinion. Cumulative disadvantage means that those facing multiple types of disadvantage—for instance in terms of socioeconomic status and race or ethnicity—are particularly likely to feel the full force of the criminal justice system. The fact that disadvantage has notable impacts on “offender” treatment in the various phases of the criminal justice process (i.e., from arrest to court proceedings) suggests a “dynamic” or compounding effect of disadvantage. That is, an individual who is more likely to be arrested for a crime may also be more likely to be subject to courtroom biases with regards to findings of guilt and punishment.

The disadvantaged are more likely to be arrested and be given harsh punishments, but are also often more likely to suffer as citizens who come into contact with the criminal justice system as victims. Drawing on the example of Indigenous peoples in Canada, it is demonstrated that, as a social group that has experienced systemic disadvantage over centuries, they are subject to under-policing as it relates to their victimization, over-policing as it relates to their criminalization, and overall poor relations with the police. In a second case, it is demonstrated that victims of rape, who are overwhelmingly women, face systematic, gender-based disadvantage in the way police deal with their cases and in terms of courtroom outcomes, particularly when women fail to conform to gender expectations and gendered victim stereotypes. While some of these findings echo what is typically referred to as the “victim-offender overlap,” the focus of this literature is typically in terms of identifying trajectories of offending and victimization (Jennings et al. 2010; Schreck et al. 2008). The present work

aimed to underscore how victims, like offenders, face systematic disadvantage in the criminal justice process and how this may be associated with their social disadvantage.

The negative links drawn between disadvantage and crime are evidenced not only throughout the criminal justice process, but are also apparent in widespread public perceptions. These public perceptions in turn contribute to supporting criminal justice policies that are particularly damaging for the disadvantaged. In other words, endorsing stereotypes that suggest that criminalized persons are disadvantaged in terms of income, education, and success, is associated with endorsing policies that, for instance, push for greater use of prison. The evidence therefore lends support to Marxist and neo-Marxist theories writ large, in that policies that disproportionately punish the disadvantaged are largely supported by the public.

Within criminology, theoretical frameworks have historically focused on social class as a key lens through which to understand crime and criminal justice. A traditional Marxist approach, focusing on social-class conflicts, has been taken up in various iterations over the past hundred and fifty years or so. These frameworks, however, tend to focus largely on the social class of the offender and appear to place the dominant classes as the driving force behind punitive trends.

The present chapter aimed to move beyond these frameworks in part by drawing on more recent theoretical frameworks that may help explain the impact of disadvantage at a micro level (e.g., in terms of police and courtroom decision-making). These frameworks point to separate but related processes (e.g., personality differences, stereotyping, judicial goals) that together may help explain the impacts of disadvantage for criminalized persons and victims throughout the criminal justice process.

The chapter also builds on the “ratchet effect” framework by drawing on a macro-level theoretical framework that identifies functional links between the social structure and public support for harsh criminal justice policy. According to this framework, inequality may contribute to public punitiveness by leading to perceptions of criminalized persons as being disadvantaged. Specifically, in an unequal social system where there are greater status differences between groups within that system, criminalized persons are situated at the very bottom of the social system. Growing social inequality may therefore contribute to widespread public punitiveness and punitive

practices, despite consistently declining crime rates and stable or growing prison populations. In fact, growing inequality has been found to explain incarceration rates in the United States (Enns 2014). Changes in social structure leading to growing inequality may therefore have devastating consequences for offenders, victims, and other social groups targeted by harsh social policies.

Perceptions of specific disadvantaged groups may also contribute to public responses toward crime and punishment. For instance, perceived threat and competition from Black people predicts public punitiveness, while racism partly accounts for the divide in white and Black people's support for the death penalty in the United States (King and Wheelock 2007; Unnever and Cullen 2007). These findings are additionally explained in part by theories of racial threat and racial animus (Unnever and Cullen 2010).

In summary, this review demonstrates that poverty and social class have historically made up the key lens through which crime has been understood. The review further demonstrates that the broader concept of disadvantage is helpful in observing the numerous impacts that inferiority in terms of perceived and actual access to resources—such as income, power, and prestige—can have throughout the criminal justice process for both criminalized persons and victims. The implications of this dual impact of disadvantage calls into question a Kantian and Marxist view that suggests that crime can be seen as a form of restoration of the injustice of the social system. Indeed—according to Kant's *Lectures on Ethics*—by adhering to the laws and rules of a social structure we may be nevertheless contributing and participating in injustice, in that the social system victimizes a large segment of the population (Reiman 2007). However, such a view fails to take into account that victims of crime are very often the disadvantaged themselves, and that both disadvantaged victims and criminalized individuals will evermore be subject to systematic biases and the full force of the criminal justice system.

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