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Author(s): Lynne Copson

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Realistic Utopianism and Alternatives to Imprisonment: The ideology of crime and the utopia of harm

Lynne Copson¹

Abstract

This article investigates the question of how we might begin to move beyond critique and towards the development of radical, yet realistic, alternatives to penal practices. In so doing an argument is made for the advancement of a zemiological 'transpraxis' as a primary site for realising meaningful change. Situating this discussion in the contemporary climate of penal dystopianism, the article first explores how the contemporary impulse is one largely born in critique. Highlighting a tension between the desire to effect meaningful change and the danger of legitimising the status quo, the article points to attempts to resolve this tension through a burgeoning interest in the concept of utopia as a form of praxis. However, by drawing on Mannheim's distinction between 'ideology' and 'utopia', the article proceeds to demonstrate that, despite their normative ambitions, efforts to realise 'realistic utopias' within contemporary criminal justice systems necessarily tend towards 'ideology' and reification of the existing system rather than alternatives to it. Highlighting parallels between Mannheim's concepts and Foucault's idea of 'regimes of truth', the article makes its central argument: that responding differently to crime begins by thinking and talking differently. It concludes by offering the discourse of social harm as a primary site of 'transpraxis', encouraging us to think beyond contemporary linguistic and conceptual frameworks to understand social problems, arguing that it is only through the adoption of a 'replacement discourse' of harm that we can start to build realistic utopias and meaningful alternatives to imprisonment.

¹ Lynne Copson is Lecturer in Criminology at The Open University. Contact: lynne.copson@open.ac.uk

Introduction

Concerns about the use of imprisonment, its pains and inadequacies and the search for better and more effective alternatives have been a central theme within criminology for much of its history. Belief in the possibility of realistic alternatives to prison, however, has waned from its heyday with the birth of abolitionism in the 1960s. That is not to say that such beliefs or the struggle for alternatives have disappeared. However, optimism in the possibility of their practical realisation has become muted, particularly in a contemporary climate of rising incarceration rates and increasingly punitive responses to crime (see Simon, 2014). At the same time, the contemporary climate of knowledge production has seen an increasingly uncomfortable relationship develop between government and the funding of criminological research (see Hillyard et al, 2004a; Walters, 2011), disciplinary specialisation and the suppression of normative theorising in social scientific research. This has led to a growing polarisation between, on the one hand, radical ideals with no means of effective translation and, on the other, practical reforms which seek to reform the existing system in a piecemeal fashion. Emerging from this context has been a renewed interest in the idea of utopianism as a means of realising genuine alternatives to the dominant discourse of crime and justice that resist simply becoming 'add-ons' to existing systems (Mathiesen, 1986; Mathiesen and Hjemdal, 2011/this volume).

Against this backdrop, this article explores the extent to which such approaches offer a realistic strategy for challenging dominant paradigms of criminal justice. It situates the emergence of calls for more utopian theorising within criminology against a backdrop of increasing awareness of the inadequacies and harms of contemporary criminal justice which become all the more pressing in a climate of increasing rates of imprisonment, and the perceived absence of alternatives. Within such a climate, it argues, normative theorising becomes increasingly detached from issues of practical reform. Charting one response to this as lying in burgeoning interest in the concept of utopia, and particularly, an implicit notion of utopia as a form of praxis, particularly amongst penal theorists, the article highlights how the concept of 'real utopias' (Wright, 2010) has been identified as one possible means of transcending existing approaches to criminal justice and penal reform, to offer meaningful alternatives. However, drawing on Mannheim's distinction between ideology and utopia, the main argument is that, despite the best of intentions, such attempts are ultimately likely to serve ideologically to reinforce the *status*

quo rather than to transcend it. Specifically, it is maintained that, so long as we take the criminal justice system as the starting point of our critique and the locus for the construction of alternatives, reforms are destined to reinforce and legitimise the contemporary ‘regime of truth’ (Foucault, 1980) and dominant constructions of crime, harm and justice. Therefore, it is argued that it is only by identifying a different starting point and developing a new ‘replacement discourse’ (Henry and Milovanovic, 1991) for conceptualising social problems (and hence, means of their reform) that we can hope to move beyond the ideology of crime. Finally, the developing zemiological or ‘social harm’ approach is identified as a potential candidate for doing so.

Contemporary criminal justice: a paradigm of inadequacy

The harms and inadequacies of the criminal justice and penal systems are well-documented. Not only do these systems fail to reduce reoffending (see, for example, Hillyard and Tombs, 2007: 14), but the penal system in particular, has long been recognised as a system of ‘pain delivery’ (Christie, 1981) which serves to dehumanise and inflict harm upon some of the most vulnerable members of society. However, these problems are arguably rendered more pressing within a contemporary context, in which increasing rates of imprisonment culminate in a crisis of mass incarceration (see Simon, 2014). That this should come at the same time as we are witnessing *falling* rates of crime (Garland, 2002; Office for National Statistics, 2016) arguably highlights the extent to which contemporary approaches to addressing crime, especially the use of imprisonment, have become detached from normative questions of what constitutes ‘justice’.

Consequently, the criminal justice system is increasingly recognised as an ‘industry’ (see Hillyard and Tombs, 2007). Rather than offering an impartial, objective means of addressing harm and delivering ‘justice’, it is argued that the criminal justice system provides a specific lens through which harmful acts are shaped and constructed in particular ways (Pemberton, 2007), with particular implications for the imagining of appropriate responses and ‘justice’ (see also Hillyard and Tombs, 2007). Whilst this has constituted a key theme in abolitionist thinking (see, for example, Hulsman, 1986), this critique has been developed more recently through the emerging perspective of zemiology (Hillyard et al, 2004b; Dorling et al, 2008).

The individualising logic of criminal justice

Proponents of the zemiological perspective, in particular, have highlighted the individualising logic of criminal justice, which serves to hold individuals to account for their behaviour at the expense of the broader contexts of inequality, exclusion and social marginalisation in which the majority of offending occurs (Hillyard and Tombs, 2007: 15-16). Reinforced by a penal system which focusses on individual education and reform as the means of rehabilitation, this has led to claims that, not only is the criminal justice system essentially doomed in its quest to tackle offending, but that it operates ideologically to recast wider social problems as individual failings (see Carlen and Tombs, 2006).

The neglect of victims

The criminal justice system has also been criticised in its failure to address adequately the needs of victims, at worst contributing to their secondary victimisation (see Hoyle and Zedner, 2007). Moreover, it plays an important role in determining legitimate victimhood in the first place, with a number of commentators pointing out that many of those harms that are recognised through the criminal justice system are often relatively trivial events which ‘would not score particularly high on an imaginary scale of personal hardship’ (Hulsman, 1986: 65) when compared with many, arguably more significant harms we are likely to face during our lifetime (Hillyard and Tombs, 2007).

Thus the contemporary criminal justice system arguably constitutes a paradigm of inadequacy on a number of grounds: it fails to realise its own explicit *raison d’être* in terms of tackling crime; it functions as a system of pain delivery which fails to recognise the needs of victims and offenders alike; and constructs particular harms – and the solutions to these – in particular, individualised ways.

Contemporary penal dystopianism

Despite recognising these inadequacies within the criminal justice and penal systems, however, the contemporary impulse is one born largely in critique. It appears that, as critical scholars, activists, and citizens, we are far better at deconstructing existing systems than positively constructing meaningful alternatives (Lippens, 1995; Zedner, 2002). Even where evidence of an impulse

toward the latter exists, this is often diluted over time via its translation into routine politics.

Part of the problem, no doubt, is the dominance of the criminal justice paradigm itself. As Shapland et al argue:

western criminal justice has, through the state adoption of powers of trial and punishment, removed not only responsibility for the future from participants, but even the need and the habit of thinking about the future consequences of offending. (2006: 515)

Accordingly, even where attempts are made to offer potentially radical alternatives to the existing criminal justice apparatus, these are typically co-opted ‘add-ons’ (Mathiesen, 1986: 86; Mathiesen and Hjemdal, 2011: 225), offering piecemeal reforms at best, and/ or forms of ‘transcarceralism’ at worst (see Carlen and Tombs, 2006). Therefore, they typically ultimately serve to reify the *status quo* rather than fundamentally engage with, or challenge the underlying normative premises of that system. This has implications both for how harms are constructed and are to be addressed, with emphasis placed upon individual reform as the solution to crime.

Recognising victims within the criminal justice system

An example can be seen with the increasing inclusion of victims within conventional justice apparatuses via the development of the *Code of Practice for Victims of Crime* (Home Office, 2015), and growing use of Victim Personal Statements (Ministry of Justice, 2013; see also Hoyle and Zedner, 2007).

However, these have arguably resulted in the increasing incorporation of victims and restorative justice within conventional justice apparatuses, rather than the development of genuine *alternatives* (see Marshall, 1996; Shapland et al, 2006). For example, the use of Victim Personal Statements sees them deployed only *after* the guilt of an offender, within the conventional criminal justice system, has been determined and they do not permit the views of the victim on an appropriate punishment to be considered. If they are read in court, it is also for the court to determine which sections are to be presented (Ministry of Justice, 2013), such that, at every step, victim experience is channelled within existing frameworks of justice. Such measures therefore, whilst seeking to give voice to victims’ experiences, only do so to the extent to which they are compatible with existing criminal justice frameworks.

Restorative Justice

Similarly, there has been increasing research into restorative justice processes within the criminal justice system, particularly in relation to juvenile crimes (cf. Home Office, 2002; Youth Justice Board, 2006; Muncie, 2009: 326-331). Restorative justice has been promoted as a means of salvaging conflicts from the processes of criminal justice, which construct them in particular ways to the exclusion of those directly involved in them and a consideration of the broader social contexts (see Christie, 1977).

However, just as victim statements are only employed post-conviction, in existing practices of restorative justice '[t]he relevant stage in criminal justice is[...] sentencing or the penal process, not the trial process/determination of guilt' (Shapland et al, 2006: 507). Because of this, those involved in restorative justice find themselves already cast in the roles of victim and offender. This has the effect of already closing down alternative ways of framing conflicts and developing responses that might go beyond the views of 'justice' and concerns of the criminal justice system, such as the traditional focus on individual reform for preventing future offending (see *ibid*: *passim*). Again, the use of such measures *within* the criminal justice system is criticised for its implicit reification of the normative frameworks of the dominant criminal justice paradigm.

This is not to deny that strategic advances have been made, nor the potential of such measures to 'influence and even slightly moderately transform criminal justice' (Shapland et al, 2006: 523). Indeed, evaluations of restorative justice within youth justice, for example, have highlighted 'the more positive lines of communication that have been opened up between offenders, parents, victims and communities' (Muncie, 2009: 330) despite recognising its problems and limitations. Therefore, one can recognise that the danger of a tendency to describe anything short of wholesale radical reform as serving an ideological function is that this may legitimise stagnation and inaction in addressing immediate problems for 'fear of buttressing an unjust[...] system' (Loader, 1998: 204).

At the same time, there is still a concern that without more effective translation of specific policy reforms into a broader positive politics of change, even the most critical approaches to contemporary criminal justice are destined to act as no more than a 'scientific "alibi"' (Garland, 1992: 404) for existing criminal justice and penal practices.

Reimagining vs. reifying the criminal justice system

This tension between effecting meaningful change and legitimising the existing system is increasingly recognised by critical criminologists and penal scholars alike (see Barton et al, 2011; Loader and Sparks, 2011; Young, 2011). It is a tension that strikes at the very heart of the criminological project itself, reflecting criminology's normative concern with questions of 'justice', and its practical project concerned to develop policies to address crime and/ or harm (Copson, 2013: 116-117).

It is also a tension that has been well-recognised by those advocating reform of criminal justice in general, and penal systems in particular (see Mathiesen, 1986; Mathiesen and Hjemdal, 2011; Scott, 2013). As Scott and Gosling highlight:

There are many difficulties when attempting to promote alternatives to prison varying from net widening [...] to falling through the net [...]. Radical alternatives must be able to incorporate both an engagement with the problems and possibilities of our historical moment, whilst simultaneously disrupting punitive and other ideologies which facilitate social inequalities. (2016: 53)

Accordingly we appear to reach an impasse between propping up the *status quo* through practical, but small-scale reforms to the existing system and advocating radical social reform without offering any means of doing so. It is this impasse that, perhaps, largely explains the contemporary tendency towards penal dystopianism – even, in some cases, anti-utopianism – and an emphasis on critique, without a positive politics for social change.

The importance of critique in inspiring social change should not be overlooked and the reluctance to impose change reflects an implicit recognition of the dangers of doing so: as history has taught, too often reforms that have been imposed for the greater good have come at great cost to others (see Copson, 2013: 119-121, [forthcoming]). However, the result has been a loosening of normative theorising within criminology, from the practical project of addressing crime, as refuge is sought in small-scale improvements which, whilst leaving untouched the broader structure of society, do not run the risk of making things much worse than the *status quo*. However, they are unlikely to make it vastly better either.

However, we are currently witnessing increasing calls for a recoupling of these strands as a means of moving beyond this impasse (see, for example, Zedner, 2007; Loader and Sparks, 2011; see also Copson, 2013, 2014, and [forthcoming]). There appears to be a renewed commitment to more normative theorising within social science in general (see Wright, 2010; Levitas, 2013), and criminology in particular. This is seen as crucial to moving beyond contemporary penal dystopianism and enabling us to connect normative ideals with practical reforms in a way that will enable us to move beyond reification of the contemporary regime. Included within this has been a burgeoning interest in the field of utopianism (see Young, 1992; Lippens, 1995; Malloch and Munro, 2013; this issue).

Ideology and Utopia

Since its introduction as the title of Sir Thomas More's (1516) work, the term 'utopia' has negotiated an ambiguous and often contested terrain. Coined as a pun playing on the terms *outopia* ('no place') and *eutopia* ('good place'), the term simultaneously juxtaposes questions of possibility with conceptions of desirability (Levitas, 1990: 2).

Whilst space denies justice to a full account of the ambiguity and contestation that characterises the history of attempts to use and define 'utopia' – though see Levitas (1990) for an excellent account of this – one definition identifies utopia with a blueprint for realising a proposed good society (see also Levitas, 2013), reflecting, perhaps, ambiguity as to whether More's utopia was intended as a serious proposal for the instantiation of the good society (Carey, 1999: 38-39). Another, and perhaps the most common, approach has been to restrict the definition of utopia to a literary form (see, for example, Kumar, 1991).

However, despite its proliferation as a common definition, there remain those suspicious of confining utopia to a literary form (see Jameson, 2007). This is particularly so given a contemporary context in which fictional and holistic outlines of the good society typical of the utopian literary genre are arguably in decline (see for example, Kumar, 2003). Moreover, the general identification of utopia as literary fiction has typically been undertaken in order to facilitate discussion of its role as a means of critical reflection upon contemporary society, rather than 'an exercise of the literary imagination in and for itself' (Kumar, 1991: 24).

Common to both accounts of utopia as a blueprint for social change and the identification of the literary genre as a means of critically engaging with the established social world is, arguably, the idea of utopia as a form of *praxis*. Through the presentation of alternative forms of society, it is suggested,

Utopia's value lies not in its relation to present practice but in its relation to a possible future. Its 'practical' use is to overstep the immediate reality to depict a condition whose clear desirability draws us on, like a magnet [...] so utopia's 'nowhereness' incites the search for it. (Kumar, 1991: 3)

Accordingly, some theorists, and particularly those who deploy the term in the context of social theory and research, define 'utopia' as a form of *praxis* and a drive to practical action.

An example of this is offered by Karl Mannheim who sought to distinguish ideas that serve to legitimate the *status quo* from those that bring about social change. Mannheim distinguishes utopia from ideology, arguing that this distinction lies in the transformative potential of utopia and the instantiation of an alternative social order it realises (Mannheim, 1960 [1936]: 173).

It is this conception of utopia as a form of *praxis* that contemporary criminologists are apparently invoking in their calls for more normative theorising and utopianism within criminal justice research (see, in particular, Young, 1992). This can be seen in the emphasis that has been placed on the imagining of 'realistic utopias' in response to the perceived inadequacies of the existing criminal justice and penal systems (see, for example, Loader, 1998; Scott, 2013; Scott and Gosling, 2016). At the same time, the tension highlighted between effecting meaningful change and reinforcing and legitimating the *status quo* that emerges in contemporary calls to imagine alternatives to imprisonment arguably reflects the key distinction drawn by Mannheim between ideology and utopia.

Both terms 'ideology' and 'utopia' have frequently become political labels used to discredit opposing ideas: ideology being used to suggest an individual is unaware of reality, misguided and a slave to the ideas of a powerful faction, with utopia being invoked, at times, to suggest naïveté – admirable in intention but impossible in reality. However, Mannheim distinguishes between ideological and utopian ideas in terms of their capacity for effecting social change. Whilst both 'transcend the reality within which they occur' (Levitas, 1990: 68) utopias 'tend to shatter, either partially or wholly, the order of things prevailing at the time' (Mannheim, 1960 [1936]: 173). Ideological ideas, by contrast, are those

which, even whilst appearing to transcend the existing social order, ultimately reaffirm the *status quo*. They are

the situationally transcendent ideas which never succeed *de facto* in the realization of their projected contents. Though they often become the good-intentioned motives for the subjective conduct of the individual, when they are actually embodied in practice their meanings are most frequently distorted. (Mannheim, 1960 [1936]: 175)

As such, the extent to which a form of thought can be considered ideological or utopian will depend upon the extent to which it questions the very premises upon which one's own position is based. For, as Mannheim argues:

As long as one does not call his [*sic*] own position into question but regards it as absolute, while interpreting his opponents' ideas as a mere function of the social positions they occupy, the decisive step forward has not yet been taken. (Mannheim, 1960 [1936]: 68)

The tension between creating meaningful alternatives to current penal regimes and reinforcing dominant contemporary paradigms within contemporary criminal justice can thus be seen as a reflection of the distinction between ideology and utopia in Mannheim's work. The question then becomes one of how we can escape this tension in order to construct 'realistic utopias' that take us beyond the provision of new forms of ideology and reinforcement of the *status quo*.

Foucault argues that '[e]ach society has its régime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true' (1980: 131). As these 'regimes of truth' are necessarily predicated upon, and reinforcing of, the current social system, an alternative regime of truth is only possible by changing the current social structure. Thus,

The essential political problem for the intellectual is not to criticise the ideological contents supposedly linked to science, or to ensure that his own scientific practice is accompanied by a correct ideology [...]. The problem is not changing people's consciousness – or what's in their heads – but the political, economic, institutional régime of the production of truth'. (Foucault, 1980: 133)

In this way, our lived social reality and contemporary ‘regime of truth’ can be considered mutually reinforcing, such that it is ultimately the structure of society that must be transcended if we are to realise a genuine alternative to the *status quo*.

This arguably resonates to some degree with Mannheim’s distinction between ideology and utopia. Although recognising the very different philosophical positions to which Foucault and Mannheim respectively belong, we may nevertheless argue that it is only through altering the social context of production of discourses that they may realise their utopian potential, rather than lapse into ideological reinforcement. At the same time, however, owing to the dialectical relationship between regimes of truth and the socioeconomic and political systems to which they correspond, it is also through altering the discourses available to us that we may create a genuine alternative to the existing system.

Thus, whilst critical scholars have sought numerous ways in which we might seek to move beyond existing approaches and offer meaningful alternatives to contemporary penal regimes in practice, so long as they remain wedded to the language of crime and criminal justice they arguably cannot help but lapse into ideological reinforcement by leaving unquestioned the premises upon which traditional conceptions of crime and justice have been based.

The ideology of crime?

Scott (2013), for example, invokes Erik Olin Wright’s (2010) calls to ‘envision real utopias’ as a means of engaging with and realising meaningful social change. Suggested by Wright as a means of reflecting the ‘tension between taking seriously emancipatory aspirations for a radically more humane and just world, and confronting the hard constraints of realism’ (2007: 27), Scott employs this concept as a means of developing what he terms an ‘abolitionist real Utopia’ (2013: 91), coupling a normative commitment to the abolition of criminal justice with a practical strategy of reform. He seeks to move ‘beyond’ contemporary criminal and penal justice frameworks by subverting them from within by ‘exploiting gaps, cracks and crevices within existing policy and practice’ (Scott, 2013: 92). In doing so, his approach is offered as an antidote to the contemporary retreat to critique of the existing system without a positive politics of reform (*ibid*: 97).

Scott situates his approach in an abolitionist critique of contemporary criminal justice and penal systems, arguing that in order to challenge the dominant paradigms of criminal justice and penalty what is needed is

a deconstruction of the 'reality' assembled through criminal processes and the adoption of the meanings and understandings derived from the situational wisdom of the life world where the conflict emerged, alongside the promotion of alternative means of conflict handling that recognise dignity, equality and social justice. (2013: 97)

To build this in practice, Scott identifies a need to develop alternatives guided by 'an abolitionist compass' (*ibid*: 98). This compass is underpinned by a commitment to: protecting human dignity and minimising suffering; social justice; alternatives that challenge and contradict established practices; a genuine alternative to criminal justice; legal protections and accountability for any alternatives; and meaningful and relevant interventions which allow active participation in creating norms (Scott, 2013: 97-100).

Whilst in the longer term, Scott suggests a number of 'historically immanent policies, practices and designs' (2013: 101) to address the material inequalities in society and thereby reduce recourse to punishment, he identifies five key alternatives which he regards as the primary concern for developing for 'the actual visualisation of abolitionist real Utopia pragmatic interventions' (*ibid*: 103). These involve:

1. Putting the victim of crime at the heart of responses
2. Using alternative models to the criminal law for handling conflicts
3. Providing more effective social support to help prevent crime from even occurring (through skills training, housing, healthcare etc.)
4. Providing more voluntary treatment programmes to divert those who come into contact with the criminal justice system through 'illness'
5. Creating intentional communities for lawbreakers, thereby providing a more meaningful context to develop new skills and responses to problematic behaviours (Scott, 2013: 103-107)

These are undoubtedly laudable and practical aims and one can see how, through their development, we might be able to begin to meaningfully reform the dominant criminal justice and penal responses. Moreover, one can

appreciate the need for pragmatic and practical measures if we are not to retreat into abstract theorising of alternatives with no means of their practical realisation, or anti-utopian acceptance of the *status quo*. However, it remains unclear how such measures will necessarily resist co-option within the existing criminal justice framework.

This is a danger Scott himself acknowledges elsewhere, in his discussion of Therapeutic Communities as a radical alternative to prison (Scott and Gosling, 2016). To avoid co-option it is suggested, alternatives must be deployed '*beyond* the criminal process', specifically '*before* and *instead of* a prison sentence' (*ibid*: 63). However, one could argue that similar aims have historically underpinned restorative justice approaches also, and yet they have all-too-frequently become adjuncts of criminal justice as noted above.

The problem here is that, so long as criminologists and abolitionists take the criminal justice and penal systems as their primary concern or the starting point against which they offer 'alternatives', they cannot help but reify that system and its associated conceptual frameworks.

This is not to undermine the important role that such contributions can play in improving conditions within prisons or reforming the criminal justice system. However, so long as such measures fail to question the very context of their production, they can only ever reinforce the contemporary 'regime of truth'. Indeed, the overwhelming danger is that the discourses we use, including the discourse of crime and justice which characterises contemporary society, are not merely ideological constructions as has often been recognised (see, for example, Box, 1983). Rather, they are predicated upon and reaffirm a particular 'regime of truth' and way of understanding the world, with particular implications for responding to crime and understanding justice.

This is evident, for example, in accounts of restorative justice. In their research into restorative justice programmes within the criminal justice system, Shapland et al found that:

participants, [...] are bringing to it their similar, normative assumptions about justice, offenders and victims, which are propelling them culturally to similar activities and expressions. (2006: 522)

This highlights the importance of context in shaping normative discussion. Similarly, it seems that so long as we invoke the language of crime and criminal justice, or penal abolitionism, we invariably set those systems as the normative yardstick against which alternatives will implicitly be measured.

As Henry and Milovanovic, in their articulation of 'constitutive criminology' have argued:

discursive practices produce texts (narrative constructions), imaginary constructions, that anchor signifiers to particular signifieds, producing a particular image claiming to be reality. These texts become the semiotic coordinates of action, which agents recursively use and, in so doing, provide a reconstruction of the original form. (1991: 300)

Therefore, it is a central premise of the argument put forward here that the search for meaningful and genuine *alternatives* in responding to crime must start by thinking and, ultimately, talking differently about crime.

The utopia of 'harm'?

The premise that the search for meaningful and genuine *alternatives* in responding to crime must start by thinking and, ultimately, talking differently about crime is both inspired by and reflected in the emergence of 'zemiology' or 'a social harm perspective' (see Hillyard et al, 2004b; Dorling et al, 2008). Within this perspective, the idea of social harm has increasingly been deployed as part of an attempt to highlight the shortcomings of criminology's focus on crime and as a basis upon which to establish a more holistic framework for understanding and addressing harm.

Deconstructing criminology

The roots of the zemiological approach can be located in the development of an increasingly critical orientation towards criminology itself in response to the renewed focus on criminal justice and preventative techniques of crime control with the advent of administrative criminology and criminal justice science in the late twentieth/early twenty-first century. There has been an increasing concern to deconstruct the discipline of criminology, pointing to its formation within existing structures of power (see Tifft and Sullivan, 2001) which, it is argued, has reinforced conventional constructions of both crimes and criminals (see, for example, Matthews and Kauzlarich, 2007). As Smart notes, '[t]he thing that criminology cannot do is deconstruct "crime"' (1990: 77). Therefore, whilst critical criminology has highlighted the differential construction and deployment of legal constructions of crime, Hulsman notes, 'the ontological reality of crime, has not been challenged' (1986: 66). Consequently, we remain

'stuck in a catasopic view of society in which our informational base [...] depends mainly on the institutional framework of criminal justice' (*ibid*: 67-68).

Thus, contemporary approaches to crime and justice have increasingly sought to 'decriminalise criminology' (Muncie, 2000) and 'decentre crime' from public discourse (*ibid*) through the positing of 'harm' as a more useful concept for understanding social phenomena (see also Milovanovic and Henry, 2001; Tift and Sullivan, 2001).

'Beyond' the discourse of crime

Presenting an explicit shift away from focussing on crime, key proponents of the zemiological perspective identify a number of critiques of criminology which reiterate existing critical criminological critiques regarding the social construction of crime and the operations of the existing criminal justice system, but also seek to move beyond them.

A central thesis of the perspective is that the discourse of crime excludes a whole host of harmful experiences for which no discrete cause or causal agent can be identified, neglecting the way in which apparently individualised, monocausal harms may be located in wider networks of systemic harm such as capitalism, racism, or patriarchy. It also reinforces a false dichotomy between legality and illegality which, when taken to its extreme, implicitly legitimates non-criminalised harms by virtue of the absence of sanction (and thus formal recognition) against it. In so doing, it ultimately implicitly reinforces, rather than challenges, the criminal justice agenda set by the State (Hillyard and Tombs, 2007).

Therefore, central to this perspective is the argument that the discourse of 'crime' and criminal justice structures our interpretations and responses to social phenomena in particular ways. Thus, so long as we continue to talk in the language of 'crime' and criminal justice, we cannot escape the perspective or 'truth' such language both requires and perpetuates.

By contrast, as Muncie (2000) notes,

[t]he redefining of crime as harm opens up the possibility of dealing with pain, suffering and injury as conflicts and troubles deserving negotiation, mediation and arbitration rather than as criminal events deserving guilt, punishment and exclusion.

Drawing attention away from legally defined crimes and locating criminal harms in broader systems of socioeconomic inequality and injustice, critical criminology challenges the capacity of the penal system to realise justice. It also

encourages the development of alternative policies better able to address the harms people experience and to realise the crime-free society.

Social harm: a replacement discourse

With this in mind, proponents of the social harm perspective point to the power of using an alternative discourse around 'harm' as a means of mobilising the 'subjugated knowledges' of harm excluded by the contemporary criminal justice regime (Hillyard and Tombs, 2007: 21). They point to the need for methodological tools 'to "debunk" the persuasive narratives of "crime" and create the discursive spaces where the marginalized can articulate their lived experience of harm without persistent reference to the notion of "crime"' (Pemberton, 2007: 33).

By changing the language according to which we come to articulate and understand social phenomena, through the offering of a 'replacement discourse' (Henry and Milovanovic, 1991) to that of 'crime', policy responses can be devised and implemented to more effectively prevent and address harms people experience 'from "cradle to grave"' (Pemberton, 2007: 34) than either current penal policy or the penal reforms with which critical criminologists have typically been preoccupied (see also Hillyard and Tombs, 2007). Such an approach can still admit that conventional 'crimes' are harmful, but also allow a more nuanced conception of the harmful nature of the systems that generate them. Whilst contemporary approaches to criminal justice reform have long recognised the way in which criminal harms are often premised on structures of inequality, marginalisation and exclusion, so long as the focus of reform remains on existing processes and institutions, as we have seen, the risk is that the solutions to structural problems become recast as individual 'treatments' through the individualising logic which underlies both the concept of crime and, by extension, criminal justice.

Thus, whilst underlying this approach is a commitment to developing a more socially just, safe, and equitable society in which social harm is significantly reduced if not eradicated, the shift towards a language of harm demands a broader policy focus which transcends existing specialisms to address a whole host of issues across institutions, rather than on improvements to the criminal justice system. The creation of alternative discursive spaces for articulating harm outside the conceptual framework of crime, it is advocated, will facilitate the remedy of such harms by a more joined-up and comprehensive social policy approach (Pemberton, 2007: 33; see also Pantazis and Pemberton, 2009 for examples of specific policies).

Realistic utopianism?

By shifting to the language of harm as a ‘replacement discourse’ (Henry and Milovanovic, 1991), zemiology and the discourse of social harm can be seen as offering an important means of realising ‘realistic utopias’ that take us beyond the ideology of crime and criminal justice. However, if the history of the co-option of alternatives to conventional criminal justice has taught us anything it is that the power of existing structures of thought is not easily resisted, particularly in a climate where all too often academic research is shaped by issues of access to funding. As many have noted, the contemporary climate of academic funding and research means that often the research agenda is shaped by external forces and interests (including those of government) which can, in turn, feed into the replication of existing discourses around crime (see Hillyard et al, 2004a; Walters, 2011). Such forces are not easily resisted. Even in those cases where they have been, we bear witness to the costs of doing so.

The high-profile dismissal of Professor David Nutt from the Government’s Advisory Council on the Misuse of Drugs offers a prime example of the strength of resistance to attempts to present a ‘replacement discourse’. This dismissal followed Nutt’s analysis of the harms of recreational drugs (see Tran, 2009) and resulting claims that many of those drugs we criminalise are less harmful than those we do not, such as alcohol and tobacco (Nutt, 2009). Such potential costs would make many researchers, especially those at the start of their career without the security of an established position or international acclaim, think twice about radically challenging the conventional wisdom on a given issue.

There is also a danger of holding out the discourse of ‘harm’ as a panacea to eradicating the problems of ‘crime’ and replication of the *status quo*. Immediate questions, acknowledged by proponents of the zemiological perspective themselves, stem from concerns as to whether ‘harm’ is any less socially constructed than ‘crime’, and the possible dangers of majoritarianism and relativism in any attempt to define harm (see Hillyard et al, 2004b: 271-275; Pemberton, 2007; 35-37).

Another danger, arguably neglected by proponents of the social harm perspective, is the extent to which the discourse of crime permeates our very perceptions of harmfulness. For example, there is a sense in which people perceive ‘crimes’ as ‘worse’ than other harms (see Ashworth, 1986: 105).

Similarly, the individualising tendency identified as underlying the concept of crime arguably constitutes a framework of understanding, reflected in broader attitudes that often seek to blame clear, identifiable individuals for harms. For example, reflecting on his analysis of jury decision-making concerning the awarding of damages in civil cases in the US, Feigenson suggests that people 'may be inclined to think about accidents in simplified, personalized, and moralized ways because that is a predominant way in which the culture at large constructs its accounts of accidents and many other kinds of events' (2000: 14).

Mannheim distinguishes 'relative' from 'absolute' utopias, where a relative utopia is one 'which seems to be unrealizable only from the point of view of a given social order which is already in existence' (Mannheim, 1960 [1936]: 177). Given the cultural and political power of the discourse of crime within contemporary society (see Loader and Sparks, 2011), a practical zemiological application must take seriously its 'relative' impracticability within a contemporary context if it is to offer a realistic alternative discourse.

That said, as Foucault has noted, challenging the existing 'regime of truth' is 'not a matter of emancipating the truth from every system of power [...] but of detaching the power of truth from the forms of hegemony, social, economic and cultural, within which it operates at the present time' (1980: 133). The democratic commitment of the zemiological perspective to the unearthing of 'subjugated knowledges' therefore arguably provides the means through which we can conceptualise the translation of the discourse of social harm as a means of constructing 'realistic utopias'.

From abolitionist praxis to zemiological transpraxis

The discourse of crime, as the history of critical strands of criminology has demonstrated, reflects the interests of those with the social power to define it. It is a discourse which, in Foucault's words, reflects 'the status of those who are charged with saying what counts as true' (1980: 131). As such, it is inexorably linked to the current *status quo*, the current 'regime of truth', and precisely those 'forms of hegemony, social, economic and cultural, within which [the power of truth] operates at the present time' (*ibid*: 133).

By contrast, zemiology, with its ideal of democratic unearthing and articulation of experiences of harm, without reference to the discourse of crime, as the basis for social policy may be seen as the first step towards realising this emancipation from the current 'regime of truth'. This discourse operates not merely at the superficial level but presents a form of 'transpraxis' whereby:

If praxis is taken to be purposive social activity born of human agents' consciousness of their world, mediated through the social groups to which they belong [...] Transpraxis assumes that critical opposition must be aware of the reconstitutive effects – the reproductions of relations of production – in the very attempts to neutralize or challenge them. (Henry and Milovanovic, 1991: 295)

Conclusion

Therefore, whilst the endeavours of critical scholars engaged in the search for 'realistic utopias' within the current penal system reflect an idea of utopia as *praxis*, they nevertheless cannot help but tend towards Mannheimian ideology. This is because, so long as they take crime and criminal justice as their starting point, they implicitly reify a 'regime of truth' that constructs 'crime' and processes of criminal and penal justice as the most pressing social issue and primary site for effecting social change, a position that has historically been supported and sustained by the very discipline of criminology itself. By contrast, it is only by engaging in strategies that challenge the very premises upon which these approaches are based, by offering alternative discourses and starting points, defined outwith existing disciplinary confines, that we can make the shift towards *transpraxis* and from 'ideology' to 'utopia'. As such, a perspective conceived around giving voice to subjugated experiences of harm typically excluded from academic theorising offers a genuinely 'new' starting point for conceptualising and responding to social problems. In this way, the zemiological perspective presents a means for moving beyond the existing context of knowledge-production and challenging the current 'regime of truth' in a way that radical perspectives *within* criminology cannot hope to. By challenging the primacy of crime, criminal justice and penal responses it opens up a horizon in which genuine and meaningful alternatives to these systems can be imagined, beyond the reification of the systems it seeks to oppose.

In conclusion, as this paper has sought to demonstrate, whilst the inadequacies and harms of the criminal justice and penal systems are well-recognised, interest in utopianism as a form of *praxis* has emerged as a means of challenging contemporary penal anti-utopianism. However, current attempts at meaningful reform are limited. These are undeniably important as a challenge to contemporary dystopianism and anti-utopianism amongst critical scholars, and a necessary antidote to the increasing specialisation and polarisation

between radical normative theorising and practical projects of piecemeal reform within criminal justice research. However, so long as they take these systems and their failings as their starting point, such attempts will necessarily tend towards ideology and legitimisation of the existing 'regime of truth' owing to their implicit reification of criminal justice discourse. It is therefore only by seeking a 'replacement discourse', such as that offered by social harm and zemiology, that we can find a new starting point outside criminology. It is only by transcending the ideology of crime and its normative underpinnings that we may take the first steps towards realising the practical utopia of harm.

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