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## **Crime, Harm and Justice: The Utopia of Harm and Realising Justice in a 'Good Society'**

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### **Abstract**

The effectiveness of criminal justice systems for realising justice either in theory or practice, as well as their role in perpetuating and legitimating *injustice* have long been questioned by critical scholars. These concerns have also animated the search for alternative approaches to imagining and realising justice. This chapter explores the role of criminal justice systems in producing a particular and limited notion of justice, derived from the standpoint of white, socially and economically powerful males living in the western liberal democracies of the Global North, which, in practice, serve to embody and legitimise *injustice*. It explores approaches that have sought to either reform criminal justice or abolish it, but argues that both tactics often fail to tackle the problems inherent within criminal justice and, at worst, legitimise them. Instead, drawing on utopian theory, this chapter explores the potential of the social harm perspective for transcending the status quo and reimagining justice.

### **Introduction**

Critical criminologists have long and frequently highlighted the failure of criminal justice systems to operate impartially and realise justice. They have also revealed the tendency of criminal justice systems to produce more harm than they address and to target the actions of the relatively powerless at the expense of more powerful actors such as states and

corporations (Hall et al., 1978; Coleman et al., 2009; Reiman and Leighton, 2016). While many critical scholars have sought to address these limitations in order to better achieve justice, this chapter argues that such attempts frequently result in a reification of existing justice paradigms rather than more fundamental challenge to them. Instead, it argues, a more radical holistic reimagining of society, inspired by a social harm perspective, is required.

The chapter starts by identifying 5 key criticisms that critical criminologists and zemiologists alike have made of criminal justice that reveal its function as a system of *injustice* rather than justice. It then proceeds to identify two major responses to these shortcomings. These are identified broadly as impulses of *reform* and *abolition* respectively. Highlighting in particular the role of penal abolitionism – a perspective both theoretically and practically committed to the abolition of criminal justice in general and the use of prisons in particular – the chapter argues that even approaches emerging from penal abolitionism risk implicitly if unintentionally reifying criminal justice. Such approaches are compared and contrasted with the more recent emergence of zemiology (or the study of social harm) which, it is argued, holds out significant promise for challenging the dominant and problematic conception of justice underpinning criminal justice.

Specifically, the chapter shows how zemiology, ‘encourages an opening-up of understandings and responses to social problems beyond traditional disciplinary confines in order to produce greater social justice’ (Copson, Forthcoming) by presenting ‘harm’ as a ‘replacement discourse’ (Henry and Milovanovic, 2000: 71) to that of crime. In doing so, zemiology has the capacity to promote a ‘utopia of harm’ understood as a holistic reimagining of society and social processes in ways that, drawing on the work of Mannheim (1960 [1936]), transcend the status quo. However, the realisation of this utopia is by no means assured and, as this chapter concludes, much will depend on how the zemiological perspective is developed and used in the future.

## **Background**

The judicial system in general, and the criminal justice system in particular, is commonly held to be a key site for delivering justice by the liberal democratic societies of the Global North. However, in reality criminal justice systems reflect a particular conception of justice, how it is best achieved, and a particular standpoint from which these are determined. In doing so, they not only shape definitions, perceptions and experiences of what is harmful or unjust (or not), but also they theoretically legitimise and practically inflict further injustices.

The limitations of criminal justice and the effectiveness of criminal justice processes for realising justice, both in theory and in practice, have long been recognised by critical scholars. The extent to which criminal justice systems effectively realise justice either within their own terms or more broadly, as well as their role in perpetuating and legitimating *injustice* and power inequalities have been questioned (Hillyard and Tombs, 2007; Hudson, 2006; Reiman and Leighton, 2016). Consequently, there have been numerous attempts within criminology to tackle the shortcomings of criminal justice systems in order to deliver justice and address harm (see Matthews, 2014). These range from attempts to reform criminal justice systems in order to address these shortcomings and better achieve justice in their own terms, and efforts to abolish them entirely.

Penal abolitionists have been central in highlighting how criminal justice systems are inimical to justice and present manifestations of inequality, power and control. Arguing for the abolition of criminal justice in general, and prisons in particular, penal abolitionism embodies a form of praxis that ties a theoretical commitment to social change with a practical project concerned with dismantling “‘criminal justice’ logic and practice’ (Coyle and Schept, 2018: 320). Theoretically, practically and politically, penal abolitionists fundamentally seek the development of a society in which prisons no longer exist, rather than the reform or improvement of prison systems. They do this not simply by theorising about penal abolitionism but through a practical commitment to building ‘new cultural institutions and practices’ (Coyle, 2018: 336) that overthrow criminal justice systems, logics and processes. However, this is advanced through various means. For example, in searching for new institutions and practices, some penal abolitionists have advocated alternative processes through which justice might better be realised, including restorative justice programmes and the development of therapeutic communities (Ruggiero, 2011; Scott, 2013; Scott and Gosling, 2016). However, such measures often risk co-optation *within* criminal justice systems rather

than succeeding in fundamentally challenging them because they take criminal justice as the starting point for both theoretical analysis and practical reform (Copson, 2016a). As a consequence, such approaches often end up offering an approach to penal abolition that is more figurative than literal. Others, such as Michael Coyle, highlight the dominance and internalisation of criminal justice logic within academic research (Coyle and Schept, 2018: 320-321) and argue for the importance of language in challenging paradigms of crime and criminal justice and realising the abolition of prisons (Coyle, 2016; 2018). Specifically, Coyle calls for a 'new era' of penal abolitionism, with 'new intellectual concepts' (2016: 19), that avoids recourse to the language of crime, criminology and criminal justice and 'invite[s] a discourse and a praxis that will... destroy structures of oppression that are centuries old' (2018: 336).

The approach advocated by Coyle resonates with zemiology, which takes as its starting the holistic analysis of social harms. In doing so, it avoids recourse to the language of crime and focus on criminal justice and ensures that questions of criminal justice and responses to criminal harms are not divorced from other aspects of social justice, such as health, education, the environment, housing or employment (see Copson, Forthcoming).

Therefore, with the emergence of the social harm approach arguably comes an opportunity to radically reimagine justice in ways that perspectives within criminology have previously been unable. Through the holistic analysis of social problems it advances, the social harm perspective creates an opportunity to reimagine justice holistically and an invitation to imagine what a 'good society' might entail.

It is in this way that the zemiological approach may start to be considered as offering a 'utopia of harm'. In doing so, it builds on burgeoning interest in utopianism amongst critical scholars of crime and justice (see Malloch and Munro, 2013; Bell and Scott, 2016; Copson and Boukli, 2020). Whilst this might sound counterintuitive – utopias are often considered to be perfect, if impossible, places – it is important to recognise that there are various ways of understanding the term 'utopia' (Levitas, 1990). One interpretation sees utopias as 'alternative holistic models of society ...[that] encourage us to think about the interrelationships of social processes' (Levitas, 2001: 450). Another, following the German sociologist Karl Mannheim, is as ideas which challenge the status quo and bring about the creation of a new social order. For Mannheim ([1936] 1960), these ideas are distinguished

from ideology or ideas which reinforce and legitimate the social order. In the context of this chapter, therefore, utopia is understood not as a blueprint to be imposed, but as a process of opening up new horizons and reimagining the social world.

In this sense, the shift to social harm as an organising concept and object of study as proposed by zemiologists facilitates what Levitas calls 'the imaginary reconstitution of society' (2007): it encourages us to reimagine justice and the interrelationships of social processes and institutions, as well as the organisation of society holistically. In doing so, following Mannheim, these ideas have the potential to reimagine justice and challenge the status quo that a focus on criminal justice as the primary site for realising justice serves ideologically to reinforce (Copson, 2016a). However, it does not *necessarily* entail these things. The germs of this more holistic vision can be recognised in changing approaches to tackling crimes such as problem drug use or knife crime, which are increasingly viewed as public health issues. However, the enduring legacy of the social harm perspective remains undetermined.

### **Criminal (in)justice**

The criminal justice system, particularly as it has been designed, developed, and often imposed by the western liberal democracies of the Global North, has long-presented a dominant account of what justice is and how best it is achieved. A criminal justice system typically presents a codified system of formal, procedural justice which 'sets down legitimate processes for determining rule-breaches, offers protections for the accused, and governs who should make such determinations' (Dekker and Breakey, 2016: 188). It is underpinned by principles of proportionality, impartiality and equality before the law, reflected in the idea that 'justice is blind'.

However, since the emergence and development of critical criminology during the second half of the twentieth century, criminal justice systems and their capacity for realising justice have been challenged.

The criminal justice is criticised particularly for its failure to achieve justice both in theory and practice. In summary, five key criticisms of criminal justice can be identified:

1. *Criminal justice causes excessive and disproportionate harm*
2. *Criminal justice is not impartial*
3. *Criminal justice only renders a select subsection of harms justiciable*
4. *Criminal justice invites a limited range of responses to harm, many of which are ineffective*
5. *Criminal justice privileges particular perspectives in the definition and administration of justice to the exclusion of others*

Each of these five criticisms will now be explored in turn.

1. *Criminal justice causes excessive and disproportionate harm*

Criminal justice has been criticised for producing greater harms than those it claims to address. For example, common sanctions, such as a fine or imprisonment, or even simply the possession of a criminal record, 'can create wider social harms which may bear little relationship to the original offence and pain caused' (Hillyard and Tombs, 2007: 14). These may include loss of one's job, loss of home, and social ostracism (Hillyard and Tombs, 2007: 14), the effects of which may last a lifetime. The inability of offenders, many of whom are often already socioeconomically deprived and vulnerable, to fulfil the requirements of sentences, such as paying a fine, can lead to a 'revolving door' of offending. For example, Jo Phoenix describes how sex workers may either engage in further offending as a means of getting money to pay fines imposed on them or find themselves subject to a further penalty – such as imprisonment – when they are unable to pay a fine (Phoenix, 2008: 300). Moreover, the impacts of criminal justice interventions are often felt widely, affecting not only individuals convicted of a crime but their friends and family members, most notably, their children (SSCJR, 2019; Beresford, 2018). Consequently, it undermines the principle that criminal justice systems should respond to crimes in proportion to the harm or wrong done.

In addition, the prison in particular has been described as a system of 'pain delivery' (Christie, 1981) with the so-called 'pains of imprisonment' (Sykes, 1958) well-documented (see Jewkes, 2005; Crewe, 2011). However, these pains are not borne equally by all members of society. Research has pointed to their differential and disproportionate impact on certain groups, including women (Genders and Players, 1987), foreign national (Warr, 2016), immigrant and transgender prisoners (Longazel et al., 2016). While this is particularly evident in the context of imprisonment, it is equally true in relation to other forms of penalty, including fines and community service, for example (Malloch and McIvor, 2011; Quilter and Hogg, 2018). This therefore undermines the principle of equality upon which criminal justice is founded.

## *2. Criminal justice is not impartial*

As the unequal experience of the pains of imprisonment shows, formal equality before the law in theory can nevertheless result in substantive inequality in practice. That is, even where the same penalty is formally imposed, the impacts may not be felt equally. Think, for example, of a fine of £500. The implications of this fine and the costs involved will likely feel quite different for someone living below the poverty line than it might for a millionaire. As a consequence, there are concerns that, even if intended to be impartial in theory, the administration of criminal justice is not impartial in practice.

Such concerns stem, in part, from a concern that the disproportionate impact of criminal justice penalties which are necessarily mediated by structural inequalities cannot be recognised or accounted for in a formal system of procedural justice. Such issues reflect the ways in which the focus on procedural justice underpinned by a principle of formal equality before the law within criminal justice systems, abstracts justice from the broader contexts and circumstances in which individuals and events are situated. While sentencing guidelines within criminal justice systems may make some provision for mitigating factors such as a previous good record, mental disturbance, financial pressures or a guilty plea (Ashworth, 2002: 1094-1095) they are limited in scope and typically cannot take into account the structural factors that critical criminologists and social harm theorists alike recognise as important for understanding how and why particular groups of people – most notably the socially and economically marginalised – find themselves overrepresented as offenders and defendants in criminal justice systems around the world .



More significantly, these measures fail to recognise or address concerns that the criminal justice system not only fails in its aims to be impartial, but operates fundamentally as a system of injustice as a result of systemic and institutional discrimination which influences the administration of justice. Evidence for this stems from analyses of the overrepresentation of particular socioeconomic and cultural groups within criminal justice system and analyses of their experiences. Most notable amongst these is the overrepresentation of Black, Asian and minority ethnic (BAME) young men in both criminal justice statistics in general, and in prisons in particular. Data from the UK reveals that BAME young men are more likely to be stopped and searched, arrested, prosecuted and convicted of crimes than their white counterparts and are also more likely to receive more severe sentences (Institute of Race Relations, 2020). Similar patterns are also found in other countries of the Global North (see, for example, JUSTICIA European Rights Network; The Sentencing Project, 2018).

Importantly, this is not simply a case of unwitting bias or the logical outcome of the disproportionate focus upon particular social groups, though that may play some role. Rather, evidence suggests a much more systemic use of power to marginalise and oppress already marginalised groups. This was perhaps most notable in the UK in Sir William Macpherson's (1999) report following the Stephen Lawrence Inquiry – a public inquiry into the racially-motivated murder of an 18 year old black man on 22 April 1993. The inquiry found both the individual police force involved (the Metropolitan Police Service) as well as other police services and national institutions to be 'institutionally racist'. Meanwhile, critical scholars have continued to highlight the ways in which criminal justice processes are used to target and control particular minority communities who are presented as a threat to the dominant social order (Hall et al., 1978; Burnett, 2009; Pantazis and Pemberton, 2009).

### *3. Criminal justice only renders a select subsection of harms justiciable*

Reflecting this view of criminal justice as a means of exercising power, control and reifying the dominant social order, criminal justice systems have also been criticised for the way their tendency to render only a certain subsection of harms justiciable.

Specifically, criminal justice logics and paradigms typically ensure that only those forms of harm which they fit the established criminal justice paradigm can be rendered justiciable, and

only to the extent that they fit this paradigm. These are typically those forms of harm that can be attributed to an individual for whom direct responsibility for an incident can be attributed, rather than more powerful social actors such as states and corporations. Since Edwin Sutherland (1945; [1949] 1983) first introduced the concept of white-collar crime, critical criminologists have drawn attention to the ways in which criminal justice definitions and processes focus on the behaviours of often the most socioeconomically disadvantaged, whilst leaving unaddressed the analogously harmful activities of the socioeconomically powerful (Pearce, 1976; Reiman and Leighton, 2016). For example, the number of occupational accidents and diseases resulting in deaths far outstrips those resulting from homicide (Tombs, 2007; Reiman and Leighton, 2016). Yet such deaths are typically prosecuted as regulatory offences such as breaches of health and safety law rather than as manslaughter, if they are prosecuted at all. Notwithstanding the difficulties in prosecuting corporate bodies (Pemberton, 2004; Hillyard and Tombs, 2007; Tombs and White, 2015), as Nicola Lacey and colleagues have highlighted, treating such deaths as simple regulatory offences rather crime ‘both results from and reinforces the notion that some criminal offences are neither ‘really’ criminal nor violent, despite causing death or serious injury’ (Wells and Quick, 2010: 654).

Meanwhile, zemiologists have pointed out in their critique of formal criminal justice systems, the ways in which this system also leaves unaddressed a significant range of wider, structural harms for which no individual or group can be held responsible, including for example, such harms as those resulting from neoliberal capitalism, sexism, racism, ableism, heterosexism and other forms of structural inequality (Hillyard et al., 2004). This is despite the fact that such systems can be just as harmful – if not more harmful – than many of the harms that are criminalised. Through a focus on individualised, discrete instances of abstracted harms, the criminal justice system neglects a whole host of structural harms for which no clear, direct and identifiable agent can be held responsible. In doing so, it fails to recognise such harms as unjust – they are instead presented as ‘natural, or ‘inevitable’ features of social life – outside the scope of formal criminal justice intervention.

#### 4. *Criminal justice invites a limited range of responses to harm, many of which are ineffective*

One consequence of adopting this narrow view of those harms which are justiciable is that criminal justice systems also necessarily imply a limited range of responses to those harms

they do recognise. The judiciary have recourse to a limited range of sentencing measures , such as imprisonment, fines, and community-service as means of punishing, deterring and/or rehabilitating offenders. However, these all focus on addressing the behaviour of individual *offenders* – reflecting their status as the primary cause of the crime or harm. In this way, the criminal justice system implies that the focus of justice should be upon the behaviour of individuals, leaving unaddressed the broader social conditions in which criminal events, victims and offenders are situated (Christie, 1977; Reiman and Leighton 2016).

Indeed, Nils Christie highlights the tendency for criminal justice systems to abstract harms, problems or ‘conflicts’ (Christie, 1977) from their wider social context. This has been a key area of criticism for both penal abolitionists and zemiologists. In particular, both Nils Christie (1977) and Louk Hulsman (1991) have highlighted the way in which the criminal justice system stages and presents social problems in particular ways. Specifically, within criminal justice systems, cases are typically brought by the state against a particular individual or group of individuals, with victims of crime typically cast, at best, in the role of witness.

In addition to concerns about the failure of criminal justice interventions to address the underlying social causes of crime, there is also scepticism regarding their effectiveness for tackling the harms of the powerful. For example, there is a limited range of criminal justice sanctions available for corporate wrongdoing. Corporations usually find themselves facing fines (Tombs and Whyte, 2015; Whyte, 2019). Despite sounding costly, in reality such fines typically form a small proportion of a company’s income (Greife and Maume, 2020). Moreover, these costs are rarely borne by the companies themselves – with any additional costs normally absorbed or passed on to consumers or workers (Tombs and Whyte, 2015). For example, in 2010 the oil company, BP, was prosecuted in relation to the Deepwater Horizon explosion and oil spill that occurred at a deep-water oil rig located in the Gulf of Mexico. Despite receiving a then record fine of \$65 billion, as Dave Whyte notes, ‘those fines failed to make any difference to BP’s profit over safety approach to management’ and ‘[t]he bill for Deepwater Horizon has [...] been absorbed largely by the recent sharp rise in oil prices’ (2019: 297). Such examples raise questions therefore, about both how effective criminal justice responses are in achieving justice either in their own terms or more broadly, as well as in whose interests they operate.

5. *Criminal justice privileges particular perspectives in the definition and administration of justice to the exclusion of others*

There have been accusations that criminal justice typically privileges particular voices and neglects, or actively excludes, others. For example, criminal justice stands accused of failing to recognise the needs and experiences of victims in general. It is also accused of delivering ‘white man’s justice’ (Hudson, 2006) – that is, a particular account of justice, as determined from the standpoint of white, middle-aged, socioeconomically privileged men, from the western liberal states of the Global North. In doing so, criminal justice systems at best neglect alternative perspectives regarding both what justice is and how to achieve it, and, at worst, actively silence them (Hudson, 2006). In doing so, they arguably inflict further injustices.

In recent years, for example, increasing attention has been brought to issues such as indigenous justice, environmental justice and species justice, with critical scholars pointing out the ways in which justice is defined and implemented by the powerful countries of the Global North do not always reflect or represent the perspective of other, less socially and economically powerful groups (Cuneen and Tauri, 2019; Westerhuis et al., 2013). In such circumstances, the administration of criminal justice as defined by the western liberal democracies of the global north can often feel less like justice and more like injustice.

*Summarising the limitations of criminal justice*

In summary, these limitations of the criminal justice system for realising justice – both in its own terms and more broadly indicates that, rather than being a system of *justice*, criminal justice systems are perhaps more appropriately understood as systems of *injustice*. As Anthony Pemberton (2020: 361) highlights, it is important to recognise that injustice is not simply a failure to realise a pre-defined standard of justice but a distinct experience, an ‘*ontological assault*’ upon taken-for-granted ways of being in the world.

To say that criminal justice is a system of injustice, therefore is not to simply say that criminal justice systems fail to achieve justice in their own terms – although this may be true and this has certainly been a site of criticism and reform for some. Rather it is to highlight their role in actively producing injustice through the systemic marginalisation and oppression of particular sociocultural groups – most notably women, BAME groups, and those from the

Global South. Following Anthony Pemberton (2020), underpinning such criminal justice systems is a logic that interprets justice in terms of preserving an established social order rather than interrogating what justice is or how it might be realised in practice. In this way, the criticisms highlighted show how criminal justice systems are not only accused of failing to realise their own ideal of impartial, proportionate, equitable justice, but actually operate to inflict injustice, by reflecting and reinforcing the dominant social order and the interests of the socioeconomically powerful. Meanwhile, they systematically neglect the experiences and needs of victims and offenders and the circumstances in which criminal harms arise, and legitimise many of the most significant harms people experience within society.

### **Responding to criminal (in)justice**

These shortcomings of criminal justice systems are well-recognised and have animated the search for alternative approaches to realising justice in both theory and practice, particularly amongst critical criminologists. Included amongst these have been attempts to adopt alternative means of realising and distributing justice, such as restorative justice approaches and the further inclusion of victims in criminal justice procedures through, for example, increasing use of victim impact statements (Strang and Sherman, 2003; Dignan, [2007] 2012; Sanders and Jones, [2007] 2012; Copson, 2016a). However, there is a division between attempts which seek to *reform* the criminal justice system in order to better achieve justice and those who argue for its total *abolition*. This 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, 2016a: 79; see also Copson, 2013). It also reflects the distinction noted above, between efforts to improve the administration of criminal justice in its own terms in order to achieve justice, and approaches which deny the possibility of this, viewing criminal justice paradigms instead as fundamentally systems of injustice, power and control.

#### *Reforming criminal justice*

Some critical scholars advocate the need to improve the existing criminal justice system, to address its shortcomings and better achieve justice. This approach is reflected, for example, in the work of those feminist criminologists who have sought to better recognise, in both policy and legislation, the harms of domestic abuse and sexual violence (Cook and Jones, [2007] 2012; Walklate, 2008). It is also found in attempts to reduce the excessive and unequal harms of criminal justice sanctions on particular social groups, particularly women (Carlen, 2002; Corston, 2007; Scottish Government, 2012). It is underpinned by an implicit view that the ideal of justice animating criminal justice is essentially unproblematic, it is simply the disjuncture between this ideal and its realisation in practice that needs addressing.

Others, however, suggest a more radical alternative, one that fundamentally dismantles and replaces existing criminal justice responses, is necessary for achieving justice: anything short of this will not only fail to address the harms and inequalities perpetuated by criminal justice, but will necessarily reproduce and reinforce existing inequalities and the silencing of the already marginalised. As Barbara Hudson (2006: 30-31) puts it:

Those who argue for 'law's progressive potential' (Lewis et al., 2001) are generally arguing for use of legal measures to reinforce the message that dominant society is against certain behaviours and for the provision of effective remedies for acknowledged harms.

In particular, she notes, that the harms experienced by women and BAME groups are typically only acknowledged and addressed to the extent that they can be presented within liberal, western paradigms of justice, determined from the perspective of white men.

The distinction between these approaches arguably reflects a divergence in what is seen as the central problem with criminal justice. Those who focus on reforming criminal justice, arguably reflect a view that the primary problem with criminal justice processes are their failure to achieve justice in their own terms or fulfil a pre-defined standard of justice. For others, it is not simply that criminal justice fails to achieve justice in its own terms, it is that it is fundamentally a system of *injustice* to which a radical alternative is needed. Notable amongst these are penal abolitionists.

*Abolishing criminal justice*

Penal abolitionism is a critical perspective both theoretically and practically committed to the abolition of the criminal justice system in general and the use of prison in particular. It is underpinned by a view of justice as social justice. This radical vision of justice promotes the holistic redistribution of social goods (Scott, 2007:78). Reflecting this, its proponents advocate the need for alternative structures for realising justice, that better recognise and respond to the needs of victims, offenders and communities, and which treat crimes as social problems rather than expressions of individual pathology or failure. In addition to advocating approaches which return 'conflicts' to the individuals and communities directly involved in them (Christie, 1977) in similar ways to restorative justice (Ruggiero, 2011; Ryan and Ward, 2015), they argue for alternative approaches to imprisonment.

Amongst these, David Scott and Helena Gosling have advocated the development of therapeutic communities as a radical, 'abolitionist real utopia' (Scott, 2013) alternative to imprisonment (Scott and Gosling, 2016). These are systems that 'are predicated upon helping the individual rather than punishing them' and offer 'a progressive and contradictory space that undermines the logic of penalisation because its overriding philosophy is fundamentally grounded in humanitarian values such as empathy, respect for oneself and respect for others' (Scott and Gosling, 2016: 6). Described as an alternative intervention '*before, instead of, and better than*' prison (Scott and Gosling, 2016: 6), genuine therapeutic communities offer spaces in which recognise individuals and their needs holistically, listen to their needs and voices, and promote self-directed, community supported strategies of change to reduce harms.

### *Zemiology and abolitionism*

The concept of harm is also of central importance to zemiology. However, while the concept of harm is important to both abolitionism and zemiology, abolitionism nevertheless typically takes its starting point as a criticism of the criminal justice system (Copson, 2016a). This is important because it facilitates the co-option of intended radical alternatives as 'add-ons' (Mathiesen, 1986: 86) to criminal justice. Too often apparently radical measures that have been intended to address the inequalities and injustices perpetuated by criminal justice systems have found themselves absorbed within them, presenting a veneer of respectability and social justice to a fundamentally unjust system – a risk which is well-recognised by abolitionists themselves (Ruggiero, 2011; Scott and Gosling, 2016). For example, even

measures developed to try to better recognise the experiences of victims and tackle some of the problems with criminal justice – such as victim impact statements and restorative justice measures – are often absorbed *within* existing criminal justice systems, as sites of reform rather than radical change (Copson, 2016a).

As Anthony Pemberton points out: ‘much of the currently existing modes of participation and input can be viewed as attempts to create spaces of countering injustice within the landscape of justice processes’ (2020: 375). When individuals have experienced an ontological assault that disrupts their sense of self such as when they have been a victim of crime, participation through victim impact statements and restorative justice measures can offer a means for challenging established criminal justice processes and the concept of justice underpinning them, calling attention not just to their failure to achieve justice in their own terms, but questioning the role such processes play in the systemic infliction of further injustice. However, as Pemberton also highlights, ‘the hedged off game-like quality of a process of law’ undermines this potential, focussing instead on orienting such contributions to achieving a pre-defined goal of criminal justice, such as shaping sentencing (2020: 375-376).

In this way, intended radical *alternatives* often find themselves transmogrified into *reforms* of existing criminal justice processes as a result of the pervasiveness of criminal justice logics: they improve the internal administration of justice according to criminal justice systems’ own aims, but do not counter the systemic injustice they inflict. In doing so they implicitly serve to reinforce the status quo and ideologically reinforce criminal justice systems (in Mannheim’s sense), lending them respectability, rather than truly dismantling or transcending them.

The root of this problem arguably lies in the tendency for such penal abolitionists to take criminal justice processes as both the focus of their critique and the practical starting point for effecting the practical dismantling the criminal justice paradigm. In doing so, such approaches necessarily continue to implicitly take for granted the importance of crime and criminal justice paradigms as the starting point for effecting social change and, as a consequence, can struggle to escape it (Copson, 2016a). This may be contrasted with the approach of other penal abolitionists who highlight the pervasiveness of criminal justice logics for shaping research and policy agendas (Coyle and Schept, 2018). They instead emphasise the importance of new concepts and language as the starting point for escaping criminal justice paradigms and the injustices they inflict. (Coyle, 2016; 2018).



## **Realising justice in a 'good society'**

In its focus on identifying new forms of language as a starting point for challenging the injustices of the criminal justice and analysing and responding to social problems more effectively, zemiology both resonates with, and distinguishes itself from, penal abolitionism. Zemiology takes as its starting point the holistic analysis of social problems without necessary recourse to the language of crime or a focus upon criminal justice. With this comes an opportunity to reimagine justice – and society – holistically. Like abolitionism, the focus on social harm within zemiology offers an implicit alternative vision of justice which challenges that reflected and reinforced by criminal justice processes. As with abolitionism, this can broadly be described as a view of justice as social justice. Zemiology also similarly presents a challenge to the vision of justice that is reinforced by the language of crime and, by extension, criminology in all its guises. However, unlike penal abolitionism, zemiology is not primarily animated by a commitment to penal abolition – although it is likely many of its proponents would support it. Indeed, to even call oneself a penal abolitionist necessarily arguably continues to invoke the language of criminal justice. Rather, zemiology arguably presents the logical conclusion of the approach advocated by Coyle in that it seeks to escape recourse to the language of criminal justice and penal systems in their entirety by establishing an alternative discourse around social harm. In doing so, zemiology facilitates an alternative vision of justice to that reflected by criminal justice paradigms and encourages 'the imaginary reconstitution of society' (Levitas, 2007) through the analysis of social harm. Specifically, zemiologists argue '[a]ll forms of harms must be considered and analysed together. Otherwise a very distorted view of the world will be produced' (Hillyard et al., 2004: 2). So too must justice demand a more holistic reimagining of society that reflects and responds to all such forms of harm. Since criminal justice systems can be considered but one element of the way in which we organise society they cannot ever represent or fulfil the demands of justice in their entirety.

This social harm approach implies a vision of justice that is sensitive to different knowledges and experiences through the emphasis it places on the 'subjugated knowledges' neglected by

criminal justice processes (Hillyard and Tombs, 2007: 21; see also Copson, 2016a: 88). These are those forms of knowledge which 'have been disqualified as inadequate to their tasks or insufficiently elaborated: naïve knowledges located low down on the hierarchy, beneath the required level of cognition or scientificity' (Foucault, [1976] 1980: 82). They include the voices of those marginalised by the 'white man's justice' of the Global North noted previously. In this way, zemiology seeks to find new ways of doing justice. It is a perspective, therefore, that is committed to giving voice to alternative perspectives on what justice is and how it might be realised in practice that subvert and challenge the established social order and the models of justice that currently maintain it.

### *The utopia of harm*

Understood in this way, zemiology can be considered to contain within it an impulse that challenges the status quo that has been reflected and reinforced by the focus on criminal justice both as the primary site for realising justice *and* the starting point for reimagining justice by critical scholars (Copson, 2016a). It is in these ways that we might begin to talk about 'the utopia of harm' implicit within zemiology. It is important to understand that this is not a utopia understood as a blueprint or goal for '*the good society*', but more as a process of opening up possibilities for imagining *a* good society, that is imagining society in a different way – as it might be hoped for – that transcends and overturns existing ways of organising the social world, based on the lived reality of the present (Levitas, 2017).

Zemiology does this, primarily, by offering harm as a 'replacement discourse' to the language of crime, through which it seeks to disrupt established ways of viewing the world and open possibilities for imagining justice – and the social world more widely – differently. A 'replacement discourse' can be understood as 'the attempt to substitute new, less harmful discursive practices and their associated constructions for those that are more harmful' (Henry and Milovanovic, 2000: 271). The origins of this concept lie in the subdiscipline of constitutive criminology. This is a brand of critical criminology which views knowledge, including criminological knowledge, as a form of discourse that is produced and used to express or resist power (Henry and Milovanovic, 2000: 270). Like other critical criminologists, constitutive criminologists are critical of criminal justice as a source of great harm. They are also committed to the realisation of social justice, which, they argue, can only begin with a

dismantling of discourses around crime and criminal justice and their replacement with an alternative.

The focus on social harm operates in this way to present

a purposive attempt to challenge existing relations of production through the establishment of an alternative discourse to that of crime[...]. It also encourages an opening up of understandings and responses to social problems beyond traditional disciplinary confines in order to produce greater social justice (Copson, Forthcoming).

### *Zemiological justice*

By severing any direct reference to crime, moreover, this perspective reflects a more holistic notion of justice than that reflected in criminal justice systems. Instead of rendering only a small subsection of harms justiciable, for zemiologists issues such as access to healthcare, housing, education, recreation, or environmental wellbeing are seen as fundamental to achieving justice, and are not distinct from or subordinate to the harms and injustices currently dealt with by criminal justice interventions. Nor do particular views of justice, specifically those that reflect and serve the interests of the socially and economically powerful, or that prioritise the views of humans over other non-human animals or the environment, dominate. If anything, the emphasis on giving voice to ‘subjugated knowledges’ within zemiology emancipates ideas of harm and justice from both the purview of criminal justice and the standpoint of white, privileged, western men from the Global North whose interest such justice systems serve. Moreover, it actively counters the injustices of criminal justice paradigms outlined previously in this chapter. By seeking alternative accounts of what is harmful, how harm might be addressed, and where it is manifest, a focus on social harm promotes the holistic analysis of social problems and responses to them, outside criminal justice paradigms. In doing so, it challenges the established forms of power and social order those paradigms serve. One way of doing this, for example, is in the suggested development of ‘life-histories and biographies’ in order ‘to produce objective measures of what people consider are the most harmful events so that an index of harm can be produced’ (Hillyard et al., 2004: 268). Such approaches not only facilitate the unearthing of alternative concepts of what justice is – or might be – as viewed from different standpoints, but also alternative

suggestions for how it might be achieved in practice without recourse to the limited range of responses offered by criminal justice systems.

By emphasising the holistic analysis of harms by proponents of the social harm perspective, zemiologists emphasise the indivisibility of experiences of harm – and the means to remedying them – from broader questions of justice across all areas of social life: how we source food, how we educate people; how we travel to work, how we treat the sick and elderly.

I have explored these ideas in my own work considering the danger of contemporary penal populism in the context of mass incarceration (Copson, 2014: 62):

questions of penal policy cannot (and, crucially, should not) be abstracted from such questions as housing policy, welfare provision, education, healthcare or taxation: we need to consider society as a whole, in order to understand current responses to crime and justice as a particular expression of more universal organizing principles and, ultimately, to create a 'space of hope' [(Harvey, 2000)], in which the status quo (including but not limited to, penal policy-making) can be more effectively challenged.

By emphasising social harm and the voicing of 'subjugated knowledges' zemiology encourages a more joined-up approach to social problems. This is an approach that not only resists the dominance of criminal justice systems as the primary site for realising justice but actively challenges it. It does this by implying a view of justice in terms of a more fundamental reimagining of society as a whole rather than focussing on simply improving or abolishing criminal justice alone.

#### *Reimagining justice: A public health approach to homicide*

This alternative approach to interpreting harm and envisioning justice is perhaps most readily identifiable in analyses of homicide and particularly the work of Danny Dorling, a geographer who specialises in the analysis of social inequalities. Dorling's contribution to *Beyond Criminology: Taking Harm Seriously*, the leading text which introduced zemiology as a distinct field of study in 2004, analyses homicide data in England and Wales and Scotland, over the twenty year period between 1981 and 2000 (Dorling, 2004). This analysis reveals how

patterns of homicide are situated in broader social contexts of inequality and exclusion and must be understood as such.

Later, Dorling (2008) is critical of the criminal justice focus on individual acts of homicide at the expense of focussing on broader social conditions, and has argued for the need to situate homicide in broader patterns of inequality and mortality. With colleagues, he argues that, in contrast to conventional approaches to criminal justice, murder needs to be understood, not simply as a discrete phenomenon, but as a socially structured one in order to address it effectively. As Shaw et al. note,

Murder has commonly been perceived as a matter of crime and criminology rather than as a marker of societal or public health. The immediate circumstances of particular deaths have therefore been a primary concern rather than the social and economic environment of murder as a cause of death (2005: 52)

By emphasising the way in which homicide is situated within broader patterns of inequality and premature mortality that are woven into the very fabric of society, social harm analyses of particular harms, such as that offered by Dorling (2004), anticipate the imagining of a better society. The public health approach advocated by Dorling and colleagues (Shaw et al., 2005) reflects a new way of understanding and responding to social problems which has the potential to dismantle the established paradigm of criminal justice and the harms and injustices associated with it.

### **Current developments in policy and practice**

With the limitations of criminal justice well-recognised, there has been a growing shift away from the language of crime and towards adopting the language of harm and public health for conceptualising and responding to social problems. This can be seen in a growing number of specific areas, including problem drug use, knife crime, and the impacts of Covid-19 and the Black Lives Matters movement, each of which is discussed briefly below.

#### *Harm reduction initiatives*

The emergence of ‘harm reduction’ initiatives in response to problem drug use reflect a public health approach to the harms associated with drug use and rejection of the punitive criminal justice model associated with the ‘war on drugs’ (see Marlatt, 1996). Rather than invoking criminal justice apparatus, harm reduction approaches emphasise a need to understand the harms of drug use holistically in the context of users’ broader circumstances, to reduce the harms associated with drug use as far as possible – and the failure of criminal justice paradigms for doing so. Such harm reduction strategies include measures such as providing access to clean needles for intravenous drug users, testing drugs’ purity, and providing information and support for drug users who want help to reduce or stop their drug use (see Hunt et al., 2003). Similar approaches have also been advanced in relation to addressing the harms of sex work (see Rekart, 2005; Cusick, 2006).

#### *A public health approach to knife crime*

There have also been recent calls to adopt a public health approach to understanding violence in general by the World Health Organisation and others (WHO/Europe, 2020) and for tackling knife crime in particular (Scottish Government, n.d.). For example, the Mayor of London’s London Knife Crime Strategy (2017: 44) highlights that

A public health rather than purely criminal justice approach - that focuses on creating positive change, addressing underlying vulnerabilities, reducing risk factors, and strengthening protective factors has been shown to be most effective in reducing knife crime.

Recognising the need for the development of more holistic, structural responses to addressing harm, it also advocates ‘bringing together partner agencies to provide a comprehensive package of support around health, education, housing and employment’ (Mayor of London, 2017: 43) in order to tackle knife crime.

The emergence of such approaches reflects growing awareness of the limited scope a focus on criminal justice offers for addressing harms, as well as the need to recognise many harms, particularly those harms that are criminalised, in more holistic ways. That said, its impact should not be overstated and it, like many apparently ‘radical’ alternatives before it, such as those suggested by abolitionists noted above, remains ripe for co-option within existing criminal justice responses. Indeed, the *London Knife Crime Strategy* is necessarily focussed

upon knife *crime* and outlines close working relationships with criminal justice services and personal. As such, it still takes as its starting point criminal harms as defined by criminal justice institutions and actions. Equally, those areas where the public health approach has seen most development remain in relation to harms that have historically been subject to criminalisation, but for which criminalisation has been deemed disproportionate or ineffective in recognising and addressing harm, such as drug use and prostitution. Consequently, it may be questioned whether such approaches are focussed more on remedying and improving existing criminal justice paradigms than fundamentally challenging and dismantling them.

### *Reimagining justice in the context of Covid-19 and Black Lives Matters*

Finally, there are signs that the public health approach is gaining traction in other areas, most notably following the disproportionate impact of Covid-19 on BAME communities and the 2020 Black Lives Matters protests across the Global North. As a result, there are increasing calls to recognise racism and racial inequality or injustice as a public health issue (Singh, 2020), reflecting the need to recognise the interconnections between different forms of violence and death and the holistic reimagining of the social world. As Delan Devakumar and colleagues argue:

Society is unwell. The symptoms— racialised violence, and excess morbidity and mortality in minority ethnic populations—reflect the cause: an unjust and unequal society. Scientists and doctors, by remaining technocratic and apolitical, are complicit in perpetuating discrimination. As a health community, we must do more than simply describing inequities in silos, we must act to dismantle systems that perpetuate the multiple intersecting and compounding systems of oppression that give rise to such inequities and injustices (2020: e112).

### **Next steps and future directions**

The development of a growing awareness of public health as an alternative policy response certainly suggest an appetite, at least in some quarters, for thinking differently about how we respond to social problems. While the direct relationship between such shifts and the advent of the social harm approach cannot be proven (Copson, Forthcoming), it arguably reflects the fact that the time is ripe for thinking differently about justice, what it consists in and how this is best achieved, as well as potentially reimagining society.

As has been highlighted in this chapter, the injustices of the criminal justice system and its failures in recognising and responding to the needs and experiences of victims, offenders and communities are well-recognised. Yet frequently measures aimed at challenging this system find themselves transmogrified into ideological reinforcements for the existing social order rather than alternatives that challenge it. As such, it remains unclear whether recent moves towards public health reflect a genuine paradigm shift in the conceptualisation and realisation of justice, or simply another ideological tool aimed at reinforcing the status quo. That is, are they animated by a spirit that seeks to challenge the fundamental injustices of existing paradigms and dismantle them or merely improve them? And even if they are animated by such a spirit, given the pervasive logic of criminal justice highlighted by Coyle and Schept (2018) will they nevertheless find themselves manipulated into reinforcing, and legitimising, that logic – as many of the radical efforts of penal abolitionists have been?

The following section outlines a number of steps that seem vital if the radical potential of the social harm approach and the utopia of harm it anticipates is to be realised. As the Black Lives Matters movement and the response to the Covid-19 global pandemic bring into relief the insufficiency of criminal justice paradigms for understanding justice, this chapter concludes by arguing that zemiology must establish its distinct contribution to reimagining justice and distinguish itself from criminology if it is to resist ideological co-option and realise the utopia of harm it promises.

#### *Extending the public health approach*

The growing momentum of the Black Lives Matters movement and the devastating impact of Covid-19 across the world suggest opportunities to encourage a more holistic understanding of how health and wellbeing are predicated on broader structural inequalities both within



and between states, as well as the social systems of healthcare, education, housing, and welfare that are in place.

That said, this trajectory should not be overstated. As noted above, the tendency thus far has been to concentrate public health and holistic responses upon areas which usually fall within the purview of criminal justice but where the criminal justice system has been found most wanting. It is also typically applied in relation to those areas of offending and those groups of people who are most readily perceived as vulnerable, where the lines between victim and offender are more easily blurred in popular and political consciousness, especially young people and women. There thus remains the danger – as with the example of *The London Knife Crime Strategy* – that this commitment to public health will, too, become an adjunct to established criminal justice regimes, an ideological tool that reinforces the criminal justice status quo, rather than the tentative steps towards the utopia of social harm. This risk is heightened by the uneasy and often ambiguous relationship zemiology continues to bear with criminology (Copson, 2018; Forthcoming).

#### *Resisting the language of crime and criminology*

As I have argued elsewhere, ‘if the social harm perspective proposed in *Beyond Criminology* is not to become an addendum to the criminological enterprise, it must harness its radical potential once more’ (Copson, Forthcoming) and resist inclusion within the broader field of criminology. This means reasserting its commitment to the language of social harm and the rejection of crime, to ensure it operates as a true ‘replacement discourse’ that challenges the dominant constructions of social problems and conceptions of justice that are manifest in criminal justice policies. The focus must be on showing the connections between different sites of harm to show how they necessarily feed into and reinforce multiple inequalities and injustice and encouraging a joined up response to address them. As I have argued elsewhere in the context of penal populism and mass imprisonment:

What is needed... is a means by which we can reconnect... particular debates concerning crime, control, and justice to broader, universal concerns and thereby make them relevant and accessible to the general public from whom they have become alienated (Copson, 2016b: 178).

This requires the social harm approach untethering itself from the language of crime and focus on the criminal justice system or problems as the primary site for action and change as has so often been the case for critical criminological scholars.

### *Unearthing 'subjugated knowledges'*

Developing intellectual commitments to unearthing 'subjugated knowledges' and 'biographies of harm' might encourage an articulation of harm and, by implication justice, away from the dominant perspectives of privileged white, western, middle-class, middle-aged men from the Global North. Finally, it means continuing the work of Dorling and others (Shaw et al, 2005; Dorling, 2004, 2008; Singh, 2020); of finding ways of intervening in current policy debates and issues that highlight the need to think holistically about harm and reimagine what justice is and how it might be realised, beyond and without necessary reference to, criminal justice paradigms.

### **Summary conclusion**

This chapter has identified five key criticisms of criminal justice systems that have been made by critical criminologists and zemiologists and has outlined various responses to these. In particular, it has highlighted a distinction between efforts that have been made to *reform* criminal justice systems so that they might better achieve justice in its own terms, and those which claim the complete *abolition* of criminal justice is essential for realising justice and countering the injustices wrought by criminal justice paradigms. However, it has argued that any attempts to address the inequalities of criminal justice are necessarily limited so long as they are formed *within* criminology and take criminal justice as the focus of their analysis *and* starting point for practically realising alternatives. Frequently recast as 'add-ons' (Mathiesen, 1986: 86) to established criminal justice systems, they risk operating ideologically to reinforce the status quo rather than radically transcend it. By contrast, the zemiological perspective, with its focus on social harm as a 'replacement discourse' (Henry and Milovanovic, 2000:71) contains within it a utopian potential to encourage the reimagining of justice through the holistic analysis of harm and 'subjugated knowledges' it promotes. This is not an idea of

utopia as often understood as the outline of a blueprint to be imposed, but a process of reimagining the social world and what a good society might look like, and an invitation to transcend the status quo. While the first breaths of such an approach developing can be found in public health initiatives, there remains the very real risk that zemiology will face similar co-option within criminal justice framework unless and until it rejects the discourse of crime and finds ways to intervene in current debates that can move beyond the criminal justice agenda.

### Further Reading

- Copson, L. (2016a) 'Realistic utopianism and alternatives to imprisonment: The ideology of crime and the utopia of harm', *Justice, Power and Resistance*, Foundation Volume, 73-96.

This explores Mannheim's distinction between ideology and utopia as they relate to abolitionism and zemiology respectively, as well as the idea of zemiology as a replacement discourse to crime.

- Hillyard, P., Pantazis, C., Tombs, S. and Gordon, D. (eds) *Beyond Criminology: Taking Harm Seriously*, London: Pluto Press.

Various chapters in this edited collection are relevant to understanding the zemiological perspective and its critique of criminology including Ch. 1 by Paddy Hillyard and Steve Tombs, entitled 'Beyond Criminology?', while Ch. 11 *Prime suspect: Murder in Britain* by Danny Dorling shows why conventional crimes need to be explored more holistically.

- Hudson, B. (2006) 'Beyond white man's justice: race, gender and justice in late modernity', *Theoretical Criminology*, 10(1): 29-47.

This provides a good overview of the way in which criminal justice definitions and processes privilege the perspective of particular groups, specifically white men.

- Levitas, R. (2013) *Utopia as Method: The Imaginary Reconstitution of Society*, Basingstoke; New York: Palgrave Macmillan.

Various chapters in this monograph are relevant to understanding the concept of utopia as a method or process rather than a goal and its relationship to social research. The introduction is particularly helpful for providing an overview.

- Pantazis, C. (2008) 'The Problem with Criminalisation', *Criminal Justice Matters*, 74: 10-12.

This provides a brief introduction to the problems with criminalisation identified by zemiologists and their commitment to a more holistic reimagining of justice.

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