



## **What lies beyond criminal justice? Developing transformative solutions**

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## What Lies Beyond Criminal Justice? Developing transformative solutions

J.M. Moore and Rebecca Roberts<sup>1</sup>

### Abstract

*Criminal justice failure has been well-documented. The traditional response to this failure has been to seek out alternatives. However, by their very nature, alternatives are usually conceived and positioned in relation to the failed criminal justice interventions they seek to replace. In this paper we focus on an initiative, Justice Matters, which seeks to provide a model, not for developing alternatives to criminal justice failure, but instead the creation of transformative solutions to a range of social problems. To illustrate the potential of this approach we explore two examples: drugs and violence against women.*

*Central to our argument is that for nearly all social problems, solutions already exist. But they exist beyond the boundaries of criminal justice and its experts. By drawing on appropriate knowledge – health for drugs and feminism for gendered violence; – aligned to a political commitment to social justice, we argue it is possible to develop transformative solutions which can provide the foundation for a society that lies beyond criminal justice.*

### Introduction

To talk about a world without prisons, police and the penal law – a post-criminal justice future – is to risk being accused of being idealistic, utopian or, worst of all, unrealistic. Nowhere is the belief that ‘there is no alternative’ more universal than when it comes to the agencies of criminal justice and the legal framework in which they operate. However much the failure of penal law is demonstrated (and indeed this failure is almost universally accepted,) all responses must be kept within the boundaries of criminal justice. In rejecting the limitations of such thinking and by daring to imagine how we can move beyond criminal justice we are simultaneously rejecting and embracing utopian thinking. We reject the utopian thinking that believes in an imagined perfect world – a world

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without crime and harm – that can be imposed on society, or utopian thinking which refuses to accept failure and maintains, against all the evidence, that institutions of criminal justice can be reformed. However, we argue that utopia as the use of the imagination to construct a better future is essential for the achievement of social justice and human emancipation (Levitas 2013). Utopian thinking provides the tools required to construct real social change on our own terms (Wright 2010). Such utopian thinking is about the deployment of values and principals and as such is inevitably always unfinished and indeed accepts and embraces failure (Mathiesen 1974; Dilts 2016).

Erik Olin Wright (2010) has called for the envisaging of real utopias. This requires, he argues, firstly identifying ‘the ways in which existing social institutions and social structures systematically impose harms on people’ and in this essay we therefore start with a critique of existing criminal justice arrangements (ibid:11). This is intentionally brief as it is well trodden ground and we wish to focus our attention more on the development of transformative solutions. As Wright (2010:20) has correctly pointed out, critique, although essential, is not enough, it must be combined with the development of ‘alternatives to existing institutions and social structures that ... eliminate, or at least significantly mitigate the harms and injustices identified in the diagnosis and critique’. Those who reject criminal justice face the inevitable question: ‘so what would you replace it with?’ This is a legitimate question. Social problems are real and need solutions; the harms experienced, particularly by the most marginalised, are frighteningly real; and conflicts likewise are very real. They all require concrete responses and solutions. To do this, the second section focuses on a specific initiative, *Justice Matters*, which is seeking to develop a practical blueprint for generating social justice solutions to conflicts, harms and social problems.

In the third section we explore two examples – drugs and violence against women – to illustrate the potential of the *Justice Matters* approach. Alcohol and drugs were two of the ‘main drivers of crime’ (out of six) recently identified by a UK Government Minister (Bates cited in Hansard 2015).<sup>2</sup> For those in the political mainstream, alcohol and drugs are a social problem that is central to the functioning of criminal justice, an approach we argue is not only ineffective but generates more harms. There are more effective and just ways of responding. Given the endemic and serious nature of gendered violence, we use this as our second example. Demands that violence against women be taken

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<sup>2</sup> The other four were ‘the effectiveness of the criminal justice system; opportunity; profit; and character’.

seriously have led many activists and campaigners to develop a Janus-like approach to the State and criminal justice. The public and political debate has become narrowly focused on what criminal justice could do better despite there being a wealth of international research and practice that focuses on solutions that sit outside of criminal justice. These brief examples, we argue, demonstrate how ‘real utopias’, which offer transformative solutions, can be developed. Because these solutions are *social justice* interventions, developed independently of criminal justice, we argue, in the conclusion, they are far less vulnerable to the colonisation and incorporation often experienced by interventions which have been developed specifically as ‘alternatives’ to criminal justice.

### **Criminal justice as failure and criminal justice as success**

The criminal justice system is both a failure and a success. It is a notorious failure when it comes to preventing crime and dealing with the needs of those who have been harmed. There exists an extensive and persuasive literature identifying the failure of criminal justice at a number of levels: it inadequately responds to victims’ needs (Christie 1977); it is unable to address the underlying social problems it claims to be a response to (Davis 2003); it is highly sensitive to power, repeatedly allowing the serious harms of the powerful to escape sanction (Box 1983; Tombs 2015a); it focuses attention on a narrow range of predominantly minor harms, deflecting attention away from many other more serious harms (Hillyard and Tombs 2004); and it tends to create and reinforce social inequality through its focus on the poorest and most marginal communities in our societies (Chapman 1968; Sim 2009). In particular, a careful evaluation of punishment’s stated justifications – deterrence, rehabilitation, retribution, and incapacitation – has shown that criminal justice fails (Mathiesen 1990).

Indeed, there is considerable agreement that criminal justice in general and prison in particular is failing. Despite this, mainstream penal reform (under the guise of humanitarian or crime fighting objectives) has sought to fix the criminal justice system and those people held inside it. These liberal reforms have resulted in incremental changes to policing, sentencing, probation and prison policy. However, such reform has done little to understand or address the underlying failures and contradictions of the penal law and criminal justice system. As Kay Harris (1991:91) has observed:

Existing structures, institutions, relations, and values create the problems that we then turn around and ask them to solve – or rather, control – using the very same structures, forms and values, which in turn leads to more problems and greater demand for control.

The failure of these ‘reformist’ reforms have repeatedly reinforced the legitimacy of punishment as a response to a wide range of social problems and indeed contributed to the expansion of the penal system.

Governments and criminal justice agencies are fully aware that penal law is unable to prevent and manage most harm or crime in society. However, they still parade it as the one-size-fits-all solution to public concerns about security and safety. This commitment to a system which, in its own terms, fails so spectacularly, needs exploring. Drawing on a range of sociological studies, JM Moore (2015) has highlighted that the prison performs a number of important functions remarkably successfully. As an instrument for highlighting the (minor and relatively harmless) ‘crimes’ of the powerless whilst hiding the (much more serious) harms of the powerful (Hillyard and Tombs 2004); as a mechanism for reinforcing existing power structures and disciplining the poor (Wacquant 2013); as a tool for disposing of the homeless, mentally ill and other marginalised sectors of society (Bauman 2004); as an illusory device for creating an appearance of the state’s concern for citizens’ security (whilst allowing it to implement austerity, a programme that causes real insecurity) (Neocleous and Rigakos 2011; Reiman 2007); as a strategy for electoral support (Pratt 2006); and as an institution that can generate profits for the increasing number of corporations involved in the commercial delivery of pain (Fleateau 1996); prison works. Similarly, writing about the USA, Angela Davis (2016: 6) has highlighted the prison’s success ‘as a strategy of deflection of the underlying social problems – racism, poverty, unemployment, lack of education, and so on’. These observations, although primarily directed at prisons, can be applied to the whole of the criminal justice system. Whilst it fails in terms of its stated aims, it performs important social functions tied to the maintenance and consolidation of the current social order. It is this real and insidious purpose of criminal justice which explains both its imperviousness to the damning critiques of its failure to achieve its official purpose and its tendency to incorporate and distort progressive reforms. Ultimately, criminal justice is a system whose primary function is the maintenance of an unjust social order. In terms of this function it must be considered a success.

### Imaging and creating solutions: *Justice Matters*

It is because the criminal justice system both succeeds (at least in terms of promoting the interests of the powerful) and fails (at least for those who aspire to social justice) that we wish to shift the focus away from it. Whilst we are guided by abolitionist thinking (Christie 1981; Davis 2003; Lamble 2011; Mathiesen, 1974) and a strong critique of reformist goals (Mathiesen, 1990), both, in very different ways, place the criminal justice system at the centre of their agendas. Reformism seeks to fix criminal justice, something we believe impossible, and abolitionism seeks to do away with it, something we believe cannot occur without alternatives that sit outside the existing 'footprint' of prisons, punishment and penal law. What is needed are programmes and approaches that ultimately make *reform unnecessary* and *abolition inevitable*. In this paper, we argue that by creating 'social justice' solutions, criminal justice as a system becomes unnecessary and obsolete. This is about transformation rather than reform, abolition or alternatives.

One initiative, that we are both involved in, that seeks to put this approach into practice is *Justice Matters*, launched in 2013 by the Centre for Crime and Justice Studies, London. It is motivated by the understanding that the over-reliance on policing, prosecution and punishment is socially harmful, economically wasteful and, rather than a source of justice, largely a source of great injustice. Three key elements were identified as part of a *Justice Matters* approach: Downsize; Build; and Transform.<sup>3</sup> The idea was to look beyond criminal justice and build partnerships and collaborations to identify both visionary objectives and concrete solutions. In the 'downsize' phase of the project, the Centre invited written contributions, asking people to identify which element of criminal justice practice could be radically downsized, or done away with altogether. The Centre was inundated with suggestions on elements of the system that could be downsized, or abolished altogether. Examples included the police, youth courts, drug criminalisation, children's imprisonment, women's imprisonment, measuring 'reoffending', short prison sentences and psychological services.<sup>4</sup> These contributions were helpful in identifying areas of criminal justice activity that could be withdrawn, but on their own were

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<sup>3</sup> Inspired by Critical Resistance (n.d.) who identify three 'frames' as part of their abolitionist strategy: 1. Dismantle. 2. Change. 3. Build.

<sup>4</sup> To read the various contributions to the 'I would give up' series see : <http://www.crimeandjustice.org.uk/search/node/lper cent20wouldper cent20giveper cent20up>

insufficient in answering questions about how to best protect people and resolve harm.

Contributions on the ‘build’ and ‘transform’ aspect were then invited and a number were brought together in *Discussing Alternatives* (Allison and McMahon 2015). Contributions to the what ‘I would build’ comment series included: ‘An alternative to the corporation’ (Tombs 2015); ‘A new liberal politics’ (Bell 2015); ‘Schools instead of prisons’ (Pike 2015); ‘Collective capacity for policy change’ (Drake and Samota 2014); ‘Stronger communities’ (Daddow 2015); ‘A movement to engage men in preventing violence against women and girls’ (Duggan 2015); and ‘A blueprint for change’ (Roberts 2015). The Centre continues to receive and publish short online articles. These contributions helped to provide a broad base of options to build on. It was clear that there were many who shared a critical understanding of the failures of criminal justice and the limitations of reform.

While there was a real appetite for finding alternatives, one of the main stumbling blocks for the project was in developing a programme for social justice solutions that truly sat outside of criminal justice. This became clear at a central London event attended by more than 80 activists, practitioners and researchers. There was a consensus on *what not to do* but an impasse when it came to *what to do*. Discussions gravitated to criminal justice improvements. This paralysis was rooted in the fact that these conversations were often amongst criminal justice experts; people who had in-depth knowledge of the criminal justice system. Added to this was a sense of helplessness that very little could be done in the absence of huge changes required to tackle structural inequalities and social arrangements. Criminal justice sceptics (ourselves included) are usually very good at identifying what isn’t working. But it is important to complement critique of criminal justice with the expansion of (non-criminal justice) interventions and approaches that promote wellbeing, health, stability, security and safety in people’s lives. Whilst criminal justice experts usually start with the area they know best – criminal justice reform – the project of building safer and healthier societies must be the task of a much wider group of social justice experts and activists.

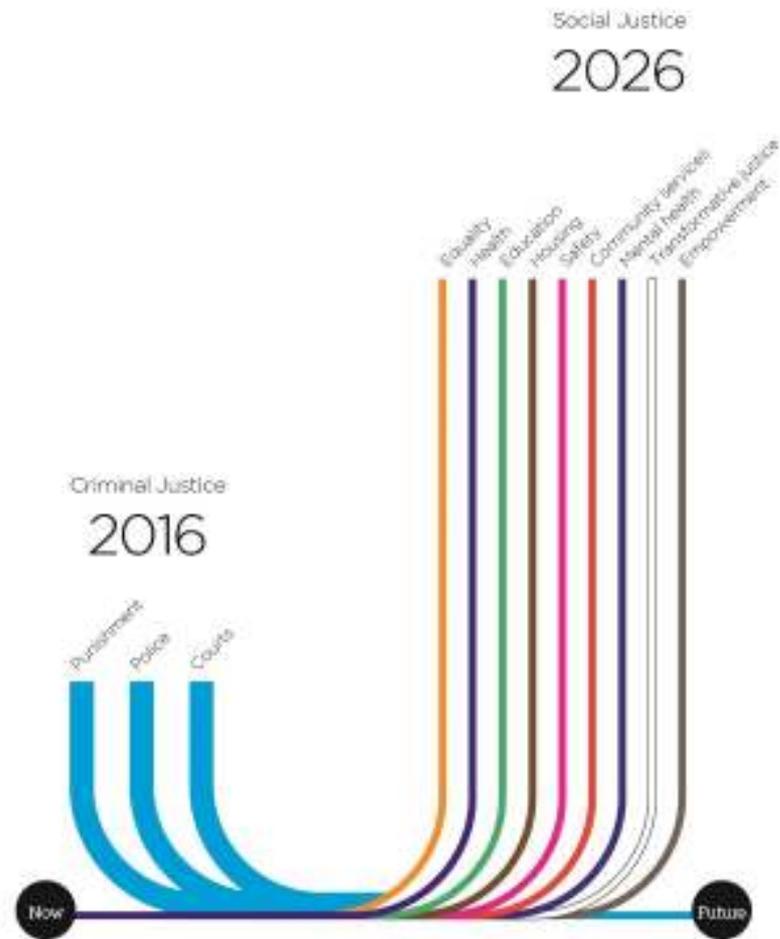
The next step in the *Justice Matters* initiative was to attempt to create resources or tools to help frame coherent and constructive discussions about ‘radical alternatives’. In late 2015, in collaboration with a small group of activists and researchers, work commenced on developing a toolkit and visual aids. This toolkit is intended to encourage the creation of thinking and practice that responds to social harm and conflicts without recourse to criminal justice and

punishment. By taking participants through a series of steps, the workshop is structured to identify policy and practice that in the short, medium and longer term may resolve harm and ultimately make criminal justice irrelevant, unnecessary and obsolete. With the assistance of a working group, work is ongoing to develop a prototype kit including poster, infographics and worksheets as a resource that can be used by people in a range of settings for discussions about how we move ‘from criminal justice to social justice’.

The infographic below offers a visual representation. Shaped as a ‘J’ for justice, on the left hand side we see criminal justice options: police; courts; and punishment. Moving to the right, we see multiple options, of many different kinds. These are simply illustrative and used as a basis for workshop discussions. They indicate the breadth of possible options that might be explored once you move ‘beyond criminal justice’.

In using this model in workshops participants are asked to identify a social harm or social problem. Rather than discuss ‘alternatives’, the workshop is focused on identifying ‘solutions’. The problem identified is open – and could be wide-ranging – from rape and sexual violence, through to burglary and theft, or workplace injury. Participants are then grouped together according to the problem they would like to discuss and asked to focus on a scenario and identify who is harmed. This is followed by a discussion about the current criminal justice response to identify the problems with, and limitations of, such an approach. Participants are then invited to focus on ‘doing things differently’ with prompts such as ‘what would a social justice approach look like?’ At various points, the discussion groups are encouraged to consider whether the responses or approaches they are identifying are focused on an individual, institutional or systemic level; whether they challenge or alleviate patterns of inequality; and who benefits? This is followed by a discussion of ‘risks’ – whether the proposals replicate any of the problems inherent within criminal justice approaches – and how it might be possible for them to be subverted or captured by criminal justice. The final part of the workshop invites participants to discuss how change can happen, concrete examples, quick wins, and how the proposals fit on a timeline. What becomes clear is that even within a short workshop, the opportunities exist for radically different solutions to social problems. Many alternatives do exist.

**Justice Matters: Building social justice solutions**  
(January 2016 draft)



*JUSTICE, POWER & RESISTANCE*

### **Transformative Alternatives: Drugs**

It is no exaggeration to describe criminal justice as drug-fuelled. The association between violence and alcohol is well established. The Crime Survey of England and Wales 2013/14 estimated that 53 per cent (704,000 out of 1,327,000) of violent incidents involving adults were alcohol-related (ONS 2015a). Whilst the correlation was closest for violence between strangers (64 per cent) it was also a factor in an estimated 36 per cent of incidents of domestic violence (ibid). Significantly, the association between alcohol and violence increases as the evening (and drinking) progresses. Alcohol is linked to 23 per cent of violent incidents that occur between noon and 6pm, rising to 83 per cent of incidents between 10pm and midnight (ibid). This suggests that the amount of alcohol consumed is a significant factor. For heroin, cocaine and other 'illegal' drugs, the criminal justice system predominately responds to 'crimes' related to fundraising. Whilst most consumers of (both illegal and legal) drugs have incomes sufficient to pay for their purchases, the consumption of a significant minority is funded through illegal activity: shoplifting; burglary; or robbery. A confidential British Government report in 2003 estimated that out of a total of 64 million crimes some 53 million were committed by people who reported consuming illegal drugs in the previous 30 days (SU Drug Project 2003:22). They estimated that some 36 million (56 per cent) of these offences could be defined as 'motivated by drug use' (ibid:22).

The harms experienced by victims of violence and acquisitive crimes are substantial and serious. However they are only some of the harms caused by (legal and illegal) drugs. By focusing on 'crime', criminal justice limits its responses to policing and punishment. These responses are not only inadequate but a generator of further harms. A social justice approach has the capacity to address the harms related to all drugs as well as to focus on developing solutions which promote the construction of safer and healthier societies. The starting point of such an approach would be to concentrate on substances' harms rather than their legality. Drug harms can broadly be divided into three groups: the inherent harms of the substances (direct harms); the harms consumers of them cause to others (indirect harms); and the harms generated by the production, distribution and retailing of the substances (market harms). The potential direct harms of various substances are well-documented (Nutt et al 2010). The harm caused by alcohol in particular is extensive. In 2013 there were 8,416 alcohol related deaths registered in the UK (ONS 2015b:1). In terms of health, these deaths are only the tip of the iceberg, with alcohol-related chronic ill health affecting hundreds of thousands of people in the UK. However, alcohol is not the

most harmful drug, that is tobacco smoking which in 2013 resulted in 79,700 deaths and an estimated 460,900 hospital admissions in England (HSCIC 2014:46,45). Deaths linked to illegal drugs are significantly less, with their consumption being associated with 1,957 deaths in England and Wales in 2013 (ONS 2014:2). A further 998 deaths were associated with other 'legal' drugs (ibid).

The potential indirect harms of drugs vary by substance and are closely linked to their current legal status. The indirect harms of tobacco are the most substantial with second-hand smoke killing over 12,000 people and causing around 165,000 new cases of diseases in children each year in the UK (CRUK 2015). Although the indirect harms of alcohol are less substantial, they tend to be more dramatic, particularly the alcohol-related violence associated with the night time economy of town centres. The main indirect harms of illegal drugs are the estimated 36 million offences caused by acquisitive fundraising crime detailed above. Market harms are evident in all categories of drugs. For 'legal drugs' such as tobacco and alcohol these are closely associated with the promotion of their commercial interests by the drugs industries. To optimise profits, they seek to maximise sales and minimise regulation. With all drugs, but particularly with alcohol and tobacco, the associated risks of harms (both direct and indirect) increase with higher rates of consumption. However, it is users consuming high and dangerous amounts that are the focus of the commercial strategies of the tobacco and alcohol industries. Whilst in recent years the UK has seen the tobacco industry subjected to increased regulation prioritising public health over profits, the alcohol industry has been progressively deregulated. Increased availability – facilitated by the removal of restrictions on sales and a reduction in taxation to reduce cost – have led to increased consumption (Brennan et al 2016). Big alcohol has effectively gained control of its own regulation (Hawkins and Holden 2014) resulting in an increase in both direct and indirect harms (as well as alcohol industry profits).

For illegal drugs, the market harms are more complex and are closely linked to the substances' legal status. By prohibiting substances, states effectively choose not to regulate their production, distribution or retailing. This means no quality control, which increases the direct harms of, for example, overdoses; market participants' exclusion from civil law resolutions, generating the indirect harms of violence which characterise illegal drug markets (Dills et al 2008); high prices – particularly of heroin and (crack) cocaine – which generate high levels of acquisitive crime; the criminalisation of consumers, a harm that falls disproportionately on black and minority ethnic communities (Eastwood et al

2013); and, at an international level, the political destabilisation of (poor, underdeveloped) producer and transit countries.

An alternative social justice response to the ‘problem’ of drugs (including both those currently legal and prohibited) would start by a recognition that people, for a variety of good and bad reasons, wish to consume them. However, we need to adopt a framework which allows consumption to occur whilst simultaneously minimising harms. Both direct and indirect drug harms are best addressed through the paradigm of public health. This requires a clear analysis of the respective risks associated with different substances to provide a scientific base for policy development. However, this can only occur within the context of an effectively regulated legal market. So a social justice approach to developing transformative solutions will require fundamental changes to the markets for all drugs, legal and illegal. The interests of the producers, distributors and retailers of drugs need to be made subservient to those of public health. Although a controlled market provides the framework for effective regulation, different drugs carry different risks – and have different social meanings – so the exact regulatory regimes will not be uniform. However, regulation is likely to be characterised by price controls (high enough to deter excessive use but not so high as to promote acquisitive crime); the promotion of lower strength products; restrictions on sales to children; supply through prescription for drugs linked to dependence; bans on branding, advertising and other promotional activities; safe consumption facilities; and education based on enabling consumers to make informed choices (Transform 2009).

Whilst such policies represent a major departure from the existing war on drugs and deregulation of the alcohol industry they are all approaches with histories. These are not speculative proposals but are based on an existing body of evidence. For example:

- Cannabis legalisation in a number of US states and South American countries has ended the excessive harms of criminal justice regulation without any evidence of an increase in any other harms (Drug Policy Alliance 2015)
- The decriminalisation of the personal consumption of all drugs in Portugal has not only seen a dramatic decrease in criminal justice harms but has also seen a reduction of the problematic use of previously illicit drugs (Gonçalves et al 2015).
- Alcohol regulation in early twentieth century Britain, through pricing (via taxation) and limiting availability (through licencing restrictions),

saw a significant reduction of both direct and indirect harms (Greenway 2003).

- The British system of prescription, which operated until the 1970s, whereby those with a drug dependency (particularly opiates) were prescribed them (Farrell and Hall 2015).
- The provision of shooting-up galleries and other safe consumption spaces which have significantly reduced overdose deaths and other harms in a number of countries including Switzerland (Hendrich 2004).

Limited space does not allow us to further expand on these or indeed explore innovative new approaches – such as David Nutt’s (2006) proposal to develop a safer form of alcohol – effectively prohibited under the existing framework. However, what is clear is that there are effective ways of reducing significantly the direct, indirect and market harms of all (legal and illegal) drugs. What they all have in common is a rejection of the current reliance on criminal justice, which not only fails to address harms but directly contributes to them.

### **Transformative Alternatives: Gendered Violence**

Violence against women is an endemic harm deserving of serious attention when thinking about moving beyond criminal justice and creating ‘social justice’ solutions. Mills et al (2015) offer a gendered analysis of the failures of criminal justice approaches, highlighting how in the case of violence against women, the system often replicates violence and inequality. Although the scale of violence against women is impossible to know, *End Violence Against Women* (2014) estimate that approaching three million women in the UK experience violence every year. This is likely to be an underestimate, as Helen Mills (2015) has pointed out:

many incidents will not have been recognised as violence (including by those experiencing it). Others will not have fitted a formal crime classification. Even when recognised as violence by the person at the receiving end of it, the complex, usually intimate, context means underreporting is chronic.

Women experience violence routinely in the form of everyday sexism. A focus on violence defined as crime ignores the daily experience of leers, whistles, looks, comments, being followed and other routine harassments that remind

women daily of the ever-present potential of gendered violence. Such events are rarely perceived, defined or recorded as crimes and, although they can be dismissed as 'minor', this classification is only apparent 'in retrospect' (Kelly and Radford 1987:242).

When gendered violence most obviously fits the category of 'crime', in cases of sexual violence, the criminal justice system still fails spectacularly. The Crime Survey for England and Wales, estimated that there are annually between 60,000 and 95,000 victims of rape and 430,000 to 517,000 victims of sexual offences (ONS 2013:7). This compares with 1,070 people convicted of rape and 5,620 people convicted of other sexual offences (ibid). These figures indicate a 'clear-up' rate for the CJS of less than two per cent for rape and just over one per cent for other sexual offences.<sup>5</sup> Such endemic failure often provokes the question 'what can criminal justice agencies do to respond better?' While this is a legitimate question to ask, it has been asked before and in response the criminal justice system has been subject to widespread reform, particular in respect of its responses to sexual violence. However, the failure detailed above occurred *after* these reforms, suggesting a much more fundamental problem. Demands for the police and courts to respond to every instance of violence against women would require a huge shift in approach and a vast investment in policing and investigation resources. Even then, they would largely focus on responding to violence after it had occurred. Crime *detection* and *reaction/response* should not be confused with *prevention*.

Whilst feminist campaigners and activists have been successful in raising the level of debate and awareness about violence against women, and this has resulted in some policing agencies recognising the hidden and harmful nature of this form of violence, there is a danger that the stick has bent too far. Mimi Kim (2013:1278), in an analysis of anti-violence work and criminalisation, argues that the 'constraining logic of criminalisation' has resulted in 'the alignment of the anti-domestic violence movement with the criminal justice system' which in

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<sup>5</sup> These figures are not directly comparable and underestimate the clear-up rate. Whilst they contain all convictions irrespective of the age of the victim the estimated prevalence is based on self-reporting by women aged 16 to 59. Given the particular vulnerability of girls and older women, the frequency of sexual violence is far greater. Recent figures (ONS 2016) illustrate this: over 30 per cent of victims in rape prosecutions are under 16, as are over 50 per cent of victims of 'other sexual offences'. Based on this data, the likely clear up rate, for women between the ages of 16 and 59, for rape is at best 1 per cent and for other sexual offences under 0.5 per cent. For women who may not fit the 'ideal' profile of a woman (for example, women with uncertain immigration status, lawbreakers), as well as black and ethnic minority women, the clear-up rate is considerably lower. In fact such women are routinely further victimised and traumatised by criminal justice agencies' responses.

turn has 'foreclosed alternative conceptual frames and remedies'. Indeed, despite the criminal justice system accommodating many feminist demands, there remains, as Laureen Snider (1998:2) has highlighted, 'no persuasive evidence that reliance on criminal justice has made the female complainant safer or the male offender less violent'. Sadly, for most women, contact with the criminal justice system following an experience of sexual violence runs the risk of ending with them 'being humiliated, discredited, disbelieved, and even reviled for their efforts' (Leander 2013:357).

If focusing on, and directing resources through, criminal justice is ineffective, then we need an alternative approach. A social justice approach would be fundamentally different and would involve 'divert(ing) resources from the traditional axis of criminal justice and into adequate, stable sources of funding for women's services' (Hall and Whyte 2003:14). The eye-catching and powerful protests and actions of Sisters Uncut, a UK based feminist group taking direct action to defend domestic violence services, have gained widespread media attention and raised awareness about the impact of austerity on domestic violence services. Writing for the *Justice Matters* initiative, Sisters Uncut activist, Lauren White (2015), highlights the immediate need for well-funded refuges and specialist services. White connects the short-term needs to longer term demands, outlining a range of interventions, responses and conditions required to build a society in which all women are safe from male violence. She argues that not only should there be sufficient refuge spaces for all women and children fleeing violence but that these should include specialist services for Black and Minority Ethnic (BAME) women, women affected by the criminal justice system, trans women and women with disabilities. They should also create refuges where actively using and recovering substance users can live safely and access support to address their substance use. In addition, all women should have access to legal aid and, to reach the most socially excluded and vulnerable women in society, there should be drop-in services for street homeless women.

Whilst such services would ensure the immediate needs of women experiencing violence are met, these, White argues, should be accompanied by a wider programme aimed at both promoting social justice and engaging with the underlying causes of gendered violence. It is important to also:

Teach girls they are important, that their voices, their thoughts, their bodies, matter. Teach young people about respect and consent. Link our struggles, and our successes, with our sisters and brothers around the world in the fight against misogyny, racism, incarceration and neo-capitalism. (White 2015)

Such approaches focus on an agenda largely shaped by the needs of women rather than those of state agencies. Other groups have sought to construct a transformative justice approach based on 'a pragmatic recognition that (the) available institutional remedies would not lead to desired outcomes' (Kim 2012:17). These involve developing community strategies to address gendered violence that do not involve the criminal justice system. These approaches are particularly appealing to BAME communities whose encounters with criminal justice have been characterised by institutional racism. In the United States INCITE!, an organisation of radical feminists of colour, has sought ways of addressing the multiple forms of violence they experience. This includes both violence *against* their communities (for example from the police) and violence *within* their community (such as gendered violence). Having realised that the agencies of the criminal justice system are generators rather than preventers of violence, INCITE! (2014) argues that effective responses to violence require the development of alternative community based strategies which should seek to:

- Create and affirm values and practices that resist abuse and oppression and encourage safety, support, and accountability
- Develop sustainable strategies to address community members' abusive behaviour, creating a process for them to account for their actions and transform their behaviour
- Commit to ongoing development of all members of the community, and the community itself, to transform the political conditions that reinforce oppression and violence
- Provide safety and support to community members who are violently targeted that respect their self-determination

This is clearly an ambitious and long term strategy which will involve overcoming considerable obstacles. However, if we want to generate transformative change we need to be 'building models today that practice how we want to live in the future' (Lamble 2011:252). More immediately, White's (2015) suggestions above show that there are many available responses to supporting women that are simple and achievable. In the longer term we need to face up to the reality that a dramatic reduction in gendered violence requires more fundamental change. Tackling root causes can only be achieved by removing 'the social and economic disadvantage experienced by women and their dependents' (Bumiller 2008:163) and discovering 'how communities can be restructured and dominant masculinities and identities changed' (Snider: 1998:28), 'something the State

fundamentally refuses to do' (Mathews 1994:165). Whilst some may accuse such an approach of being idealistic or utopian, it is important to highlight that both the immediate achievable objectives and the more fundamental long term ones are based on a wealth of professional and academic knowledge about how best to eliminate violence against women, knowledge which can be found in the fields of public health, anti-violence, feminism, epidemiology, economics, and other disciplines.

### **Conclusion: Beyond Radical Alternatives – Developing transformative solutions**

These two examples have shown that the potential exists for developing transformative solutions. In fact, for many social problems, harms and conflicts the answers can often be found within existing knowledge and practice. The argument that criminal justice and penal law are essential demonstrates an incapacity to think outside the crime paradigm: we don't realise we know the answers because we insist on asking the wrong questions. The *Justice Matters* initiative, by framing the question in terms of creating socially just transformative solutions to specific scenarios rather than seeking to create alternatives to criminal justice interventions, allows the right questions to be asked, questions to which we often already have the answers. It also attempts to extend involvement beyond the usual, top-down, 'experts' of practitioners, policy makers and academics to build on every day experience.

A focus on transformative solutions builds on the abolitionist tradition and attempts to address the weaknesses of many apparently progressive 'alternatives to criminal justice': the danger of administrative incorporation into – and ideological colonisation by – the very system they have sought to replace (Mathiesen 1974; Mills et al 2015). Rather than allow people to escape the harshest aspects of penal sanction, these alternatives have allowed the criminal justice system to widen its net and draw additional people into its control. An example that illustrates this is restorative justice that, despite being based on progressive principles, by locating itself (as an alternative) *within* the criminal justice system, has found itself being increasingly used in a punitive manner and targeted at people who previously were, by and large, outside the grasp of penal law (Takagi and Shank 2004; Wood 2015). This paradox, the need for alternatives to make moving beyond criminal justice credible combined with the criminal justice system's capacity to incorporate and corrupt alternatives is transcended by the approach of developing *transformative solutions* rather than

*alternatives* (radical or otherwise) to criminal justice. As Nils Christie (2011:78) has warned us 'experts are sometimes dangerous people' and so integral to our approach is a belief in the participation of those communities and individuals directly affected by social problems. It is their knowledge, experiences and wisdom, rather than that of experts and policy makers that will create solutions designed to solve real social problems, meet real human needs and respond to real harms and conflicts. Transformative solutions therefore need to be democratic, both in their development and in their implementation. Framed in this way, they are not alternatives to criminal justice but much broader, offering the concrete building blocks for real utopias. If they are developed democratically along principals of social justice they are ideologically incompatible with criminal justice's function of maintaining an unjust social order. Transformative solutions can be the scaffolding for the building of 'a better way of living and of being' (Levitas 2013:4).

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