

Thinking the unthinkable: alternative strategies for the future

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The title of this talk comes from a book published in 1994 called *Thinking the Unthinkable*. Starting in the 1930s, the book traces the intellectual resurgence and ultimate triumph of a set of economic principles now generally referred to as 'neoliberalism', or sometimes Thatcherism. As the author Richard Cockett writes in his introduction:

'This is a study of an intellectual counter-revolution, tracing the development of an idea, forged in the 1930s...and the eventual translation of that idea into a coherent body of specific policy proposals and initiatives which governments could deploy in power... It was a conscious and, in the end, successful attempt to turn the tide of political and economic thinking in a particular direction.'

The idea of neoliberalism came of age in the 1970s, some forty years after its birth in a very different world. The power of big ideas to shape opinion and inspire coalitions for change is often overlooked. The desire to achieve short-term policy gains can blind us to the fact that real change is sometimes measured in years and decades.

I want to start by reflecting a bit on that phrase: 'thinking the unthinkable'.

In 1846, Karl Marx and Fredrich Engels offered the following – arguably unthinkable – vision of life under a very different set of social arrangements:

'In communist society, where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise after dinner.'

Marx and Engels' vision is not unthinkable in a literal sense. They thought of it after all. We can think about it too and develop the implications behind it. Or not, as the case might be.

If Marx and Engels' vision is 'unthinkable' it is so in a different sense.

Some may not find their vision a particularly attractive one. All that hunting, fishing, cattle rearing and criticising, Frances Wheen remarks in his biography of Marx, does sound rather exhausting.

Others might be strongly opposed to their vision on political grounds. They would consider the kind of society envisaged by Marx, Engels and those inspired by them as unthinkable because, to them, it is highly undesirable.

Others still may simply consider their vision utopian. Nice in theory; completely unrealistic in practice.

Consider another vision: that of the liberal political philosopher John Rawls. In his book *Political Liberalism*, published 150 years after Marx and Engels penned the words I just quoted, Rawls outlined the necessary institutional arrangements that in his view would allow citizens to participate in a society such as ours. In summary these were:

- Public financing of elections and the provision of genuinely impartial and independent information on policies to the electorate;
- Equality of opportunity to ensure that all citizens can partake of and contribute to public debate;
- A 'decent' distribution of income and wealth to ensure that all citizens can partake of basic liberal freedoms;
- Society as employer of last resort, to ensure that all citizens have the opportunity for meaningful work;
- Basic health care for all.

Many people, from across the political spectrum, would assent to some, if not all, of these propositions. They do not appear particularly utopian. Indeed as demands go they are rather modest. Yet given current political conditions and priorities, even Rawls' modest list seems unachievable. At least in the short-term.

No idea is unthinkable in a literal sense. Ideas become unthinkable when placed in the context of our values and expectations, our political views, our moral outlook. We like some ideas. We dislike others. Some move and inspire us. Others dismay, even disgust us.

Ideas also become thinkable or unthinkable against the background of our lived experience and our judgements about what is possible and impossible, realistic or utopian. There is a social context to the thinkability of ideas. Ideas do not exist in the abstract.

What of the other part of my title: 'alternative strategies for the future'?

These strategies must be an alternative to those of the coalition government. If not, to what *are* they the alternative? On criminal justice there is little to choose between the coalition government and the Labour opposition. The strategies we must consider are

therefore alternatives to those offered by the Westminster parties as a whole, not just the government.

There follows the risk that these alternative strategies may be considered irrelevant to mainstream and current policy agendas. This is a necessary risk, inherent to any endeavour aimed at transforming the existing order of things, rather than merely modifying and tweaking it.

We are engaged in a version of what Alex Callinicos, in his 2006 book *The Resources of Critique*, describes as 'transcendence'. This is not transcendence in a theological sense. To quote Callinicos:

'Transcendence in the sense in which I am interested in it embraces a particular innovation in the social, political, and intellectual realms. How are we able to go beyond the limits set by existing practices and beliefs and produce something new?'

Our challenge is to transcend the seeming solidity of existing criminal justice institutions and practices; the enervating inertia of the Westminster and Whitehall policy machines. We must guard against setting our sights too low in the misguided attempt of appearing 'relevant' to current concerns. And if we do set our sights high, we must be clear also about what might be involved in achieving our ambitions.

I now want to develop this argument in relation to criminal justice.

In 2009, the courts in England and Wales handed out 100,000 prison sentences. They handed out another 200,000 community sentences and nearly one million fines. 170,000 penalty notices for disorder were imposed, as were some 300,000 cautions.

Around 1.4 million people were found guilty in the courts last year. A total of 1.8 million appeared as defendants. The police carried out 1.3 million stops and searches. In a further 2.2 million cases individuals were stopped by the police and asked to account for themselves.

Daily the criminal justice system sifts and sorts, manages and oversees hundreds of thousands of people. Millions find their lives affected by it directly every year. Indirectly it touches the lives of millions more.

What should be the response to this? What agenda should we set for ourselves?

One response is to defend the interests of those subject to criminal justice capture and to advance the cause of criminal justice reform, step by incremental step. This has been the historic mission of reformers. There have been notable achievements and successes.

There have also been many disappointments. Under the last Labour government the cause of criminal justice reform ground to a halt. Indeed it slammed into reverse as Labour greatly increased criminal justice budgets, expanded the system's reach and enhanced its grip. As the comedian Linda Smith once said, 'I never expected much from New Labour, but even I was disappointed'.

The Conservative-Liberal coalition looks set to continue many of the policies it inherited from Labour. The emphasis may change in some respects. Innovative means of achieving policy objectives will emerge. The overall direction of travel will probably remain the same.

The reformers' historic mission – defending those subject to criminal justice capture; eking out important reforms; resisting bad policy; championing fundamental values and principles – remains as necessary today as it ever was. It is also not enough.

At its best, the reformist approach might identify a practical solution to a pressing criminal justice problem for legislators to implement. Or champion a seemingly unpopular cause – votes for prisoners for instances – making, and sometimes winning, the argument. Or defend an important principle – the right to legal representation perhaps – in the face of attempts to undermine it.

Its starting point is the criminal justice system as it *is*, seeking to turn it into the criminal justice system as it ought to *be*. This is also its weakness.

Reformism operates within the limits set by existing practices and beliefs, rather than seeking to transcend them. It assumes as given certain beliefs: that crime exists as an objective category independent of social description; that those who commit crime are offenders. It assumes as given the existence of the criminal justice system as the natural institutional response to crime and offending. It assumes as given certain practices – the policing function, the probation service, the prison, the courtroom – as the appropriate and necessary basis for a society's response to the problem of crime and offending.

To make itself relevant to the concerns of the Westminster village, the media and public debate, reformism has necessarily had to define the terrain of the thinkable in this way. As a result it cannot allow itself to think the unthinkable.

We do not have to limit ourselves to a discussion of how the criminal justice system might be different. We can also discuss how the criminal justice system might be transcended.

To think the unthinkable about criminal justice means thinking beyond existing institutional arrangements, certain commonsense assumptions and beliefs. It means developing a blueprint for change capable of inspiring a new generation of activists and organisers. It is avowedly not about pulling together a set of demands on criminal justice for the current crop of administrators and managers to implement.

The starting point involves rethinking some basic assumptions:

- on criminal justice,
- on so-called 'offenders', and
- on so-called 'crime'.

I will discuss each of these in turn before drawing together their implications.

Viewed from certain standpoint, society has the appearance of a chain of regulatory relationships. Timetables regulate the movement of trains around the country. The doctor-patient relationship regulates the wellbeing of those in need of health care and treatment. The teacher and the school regulate the education of children and young people.

The criminal justice system is another example. It regulates certain social conflicts through the legal form. This was a point made by the Soviet legal theorist Evgeny Pashukanis in his 1924 book, *The General Theory of Law and Marxism*. Pashukanis found out to his own cost just how unyielding the legal form can be. He was executed as an enemy of the state by Stalinist goons following a show trial in 1937.

According to Pashukanis the law 'represents the mystified form of a specific social relation'. To put the point more precisely, 'under certain conditions the regulation of social relations assumes a legal character'. These 'certain conditions', argues Pashukanis, are the social antagonisms of class-based capitalist societies marked by profound inequalities of wealth and power. To quote Pashukanis:

'Human conduct can be regulated by the most complex regulations, but the juridical factor in this regulation arises at the point when differentiation and opposition of interests begin'.

So it is that the criminal justice system tends towards regulating the activities of certain socially selected individuals: predominantly fractions of the working class; mostly male. It does not regulate *all* offenders or *all* crime, or at least does not do so equally.

The particular social relationships that assume a legal form are the conflicts accorded the status of 'crime'. The perpetrators of such acts are accorded the status of 'offenders'. These terms – crime and offender – are the means by which conflicts that are the product of social processes are simplified and abstracted from their social context to fit with the logic of criminal justice.

This point is made in more concrete terms by Dave Whyte in a recent article in *Criminal Justice Matters*. To quote from his article:

'In criminal procedure motive may come into the picture during a police investigation or where the prosecution establish the events leading to the crime. It may also feature in judicial sentencing. But motive is immaterial in establishing criminal guilt. The reason that criminal law developed this principle is simple: the law needed to resolve the contradiction between the equality it was supposed to uphold in the courtroom and the inequality that increasingly threatened the social order outside the courtroom. Had motive not been fenced off in this way, a motive of alleviating poverty or hunger could mitigate the crime of theft. How, then, might a hungry poor person have been jailed or transported to Australia for theft of food? Indeed, were poverty or other social circumstances to feature in a test of guilt today, some of our prisons would be close to empty.'

In summary:

1. The regulation of certain social relationships marked by conflict assume a legal form in societies such as ours.
2. This legal form finds its practical application in the operation of the criminal justice system.
3. 'Crime' and the 'offender' are the means by which an array of acts and happenings become the legitimate object of criminal justice practices.
4. This is possible because these acts and happenings are abstracted from the social context of their causes and origins.
5. The logic of criminal justice therefore represents a radical simplification and reduction of a complex range of social processes into a form that makes it open to a narrow set of bureaucratic processes.

An agenda that starts by asking how criminal justice can be reformed will tend to accept uncritically the very assumptions and beliefs that need to be questioned. If we are to think the unthinkable *in relation* to criminal justice we must start by unpacking the commonsense assumptions and beliefs *about* criminal justice. 'Crime' and 'offenders'; the operation of the criminal justice process: these are the existing practices and beliefs we should seek to transcend if we are to produce something genuinely new.

We will all have different ideas of what would be involved in developing an alternative strategy to do this. For me these should include the following:

- A rethink of the current governmental structures of criminal justice: the Home Office and Ministry of Justice. Where should the so-called 'problem of crime' be located at a ministerial level.
- A rethink of the basic institutional structures of criminal justice: the police and prosecution authorities; prisons and probation. What is the purpose of the police; do we need a police force at all? Should we be trying to reduce the prison population or abolish prisons altogether?
- The development of holistic institutional responses of the scale, scope and impact appropriate to the nature of the problem. These might include displacing criminal justice responses with health, housing, employment and educational ones, for instance.
- Locating such an agenda within a coherent analysis of the nature and origin of social conflicts currently subject to criminal justice regulation. What is it about societies such as ours, for instance, that produce such unequal outcomes in terms of wealth and power? What can be done about this at a society-wide level?

These are big questions and a big agenda. It is the agenda we should be in the business of developing if we are to start thinking the unthinkable.