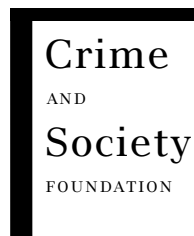


Right for the wrong reasons: Making sense of criminal justice failure



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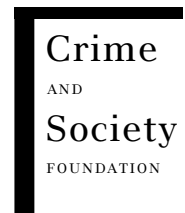
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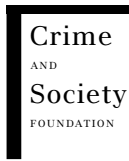
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Introduction

These are curious times for criminal justice. The risk of being a victim of crime, according to the government, is at a 20 year low. The official rate of crime, as measured by the British Crime Survey, stood at nearly 20 million incidents in 1995. Ten years on the comparable figure is just under 11 million, a near 50 per cent decline in a decade. The government's self-imposed target of a 15 per cent reduction in British Crime Survey measured offences between 2002/03 and 2007/08 (Home Office 2004a), now appears more timid than ambitious, so significant has been its apparent success.

Meanwhile, those agencies that make up the so-called 'criminal justice system' face regular attack and criticism, much of it from government ministers. In his speech to the 2005 Labour Party Annual Conference, the Prime Minister told delegates that having 'battered the criminal justice system to get it to change' over the previous eight years, he now understood that 'the system itself' was 'the problem' (Blair 2005). Mr Blair returned to the theme earlier this year, during the launch of the government's 'Respect' agenda. 'Traditional' criminal justice processes were, he said, 'utterly useless' for getting 'on top of twenty-first century

crime' (Blair 2006). Developing this point in an email exchange with Henry Porter of the Observer newspaper, the Prime Minister wrote:

If the traditional processes were the answer to these crime and law and order problems that are an age away from *Dixon of Dock Green* and the stable communities of 50 years ago, then we wouldn't be having this debate. But they're not. They've failed. They are leaving the innocent unprotected and the guilty unpunished. That's why we need them changed.

'We are trying', the Prime Minister continued, 'to fight twenty-first century crime by nineteenth-century means. It hasn't worked. It won't work' (Porter and Blair 2006).

The Prime Minister has not been alone in attacking the criminal justice system. Following controversy over the conviction for serious offences of a number of individuals who were under probation supervision at the time, Charles Clarke, the former Home Secretary, reportedly described these perceived failings as 'a dagger at the heart of the criminal justice system' (Johnston 2006). One of John Reid's first public acts as incoming Home Secretary was to tell the House of Commons Home Affairs Committee that the Home Office was 'dysfunctional' (Wintour 2006).

This paper attempts to get to the bottom of this apparent paradox: that during a period of rapidly falling official crime levels, criminal justice appears mired in almost permanent crisis. It begins by examining the nature of criminal justice failure as the government sees it and traces the policy implications that flow from this analysis. The government's analysis and policy prescriptions, it points out, have a certain consistency and plausibility. But this consistency and plausibility rest on faulty reasoning. In the second section, the paper goes on to unpack this faulty reasoning, in the process shedding fresh light on the problem of criminal justice failure.

Taken together, these two sections illustrate the first of this paper's two main arguments: that though the government is right to have identified criminal justice failure as an important

policy question, its analysis of the causes and extent of this failure is profoundly flawed. Ministers are, in other words, right about criminal justice failure, but for the wrong reasons.

From this flawed analysis has flowed a number of erroneous policy conclusions and decisions about criminal justice, which have diverted resources and political energies into a set of initiatives that are largely irrelevant to the fundamental challenge of engendering a safer society in which the prevention and resolution of crime and related harms is taken seriously. This point is explored in the final section of the paper, in which the second main argument is developed: that government can and should pursue policies that promote greater safety and security, but that this entails escaping the criminal justice *cul-de-sac* into which Labour has charged. The real policy challenge involves greater honesty about what criminal justice *cannot* achieve and a genuine openness to thinking on a much broader policy canvas, beyond the usual suspects of the police, the courts and the prisons.

Criminal justice failure: the view from Whitehall

The government's analysis of criminal justice failure is at heart very simple. It was set out in two seminal publications released either side of the 2001 General Election: *Criminal Justice: The Way Ahead* and *Justice for All*, the White Paper that laid the ground for the 2003 Criminal Justice Act (Home Office 2001a; 2002).

The basic problem, according to *Criminal Justice: The Way Ahead*, is that crime rates took a sharp upward turn from the early 1980s, while the criminal justice system treaded water. During these years, the criminal justice system had 'not kept pace with the growth in crime nor with new types of crime and criminality'. This lack of performance itself contributed to the development of a vicious circle. There were 'many reasons' for the growth in crime, but 'one important underlying factor' was the fact that the criminal justice system had 'not been effective enough in dealing

with crime or offenders' (Home Office 2001a:18). Far from simply being a matter of bureaucratic dysfunction, criminal justice failure was itself a major cause of crime. This in turn contributed to public cynicism and declining confidence that criminal justice was up to the job and to a disproportionate fear of crime.

The policy implications that flow from this analysis are straightforward, at least in their general articulation. The criminal justice system 'must keep pace' with changes in crime and criminality. This 'is the broader challenge of modernisation'. Appropriately modernised, the criminal justice system will be 'able to keep pace with changing patterns of crime... so that it can drive down crime' (Home Office 2001a: 20).

In practice, criminal justice modernisation has meant a policy mix, combining steps to *increase entry* into the criminal justice system by suspected offenders with moves to *improve the processing* of suspected and convicted offenders once they are in the criminal justice system. The former has included increasing police numbers and targeting so-called persistent offenders. The latter has included the development of drug treatment and other so-called offender rehabilitation programmes in prison and the community, investments in infrastructure and IT and attempts to join up and speed up various agencies and processes. These two strands overlap and are mutually reinforcing. For instance, *Justice for All* recommended the extension of the use of fixed penalty notices, originally introduced in the 2001 Criminal Justice and Police Act, to cover a range of 'disorder' offences. Rolled out across England and Wales in April 2004, their use has expanded significantly the coercive embrace of the criminal justice system. But it has also reduced dramatically the time taken to process the individuals so targeted (see Roberts and Garside 2005).

The visceral appeal of the analysis set out in *Criminal Justice: The Way Ahead* (and the policy agenda that has flowed from it) is one of its strengths. It chimes with a Middle England mindset that assumes that the country is losing the war against crime, with hardened criminals and their clever lawyers running rings round the police and prosecution. This is why the Prime Minister's claim that 'it is also a miscarriage of justice when the guilty

walk away unpunished, as it is when the innocent are convicted' (OCJR 2004: 6) has genuine purchase, rather than merely being dismissed as spurious.

But it also chimes with a reforming desire to make complex and apparently underperforming bureaucracies work better. After all, if criminal justice 'exists to fight and reduce crime and to deliver fair, efficient and effective justice' (Home Office 2002: 26), modernising it to keep up with shifting crime rates and crime patterns is a natural corollary. In this it reflects a commonsense view of criminal justice as being on the frontline in crime reduction.

For all these reasons the government's analysis has proved remarkably influential, setting the trajectory for criminal justice policy ever since. It is one of the reasons why successive Home Secretaries have pursued much the same policies as their predecessors, regardless of talk of fresh starts and new beginnings on their appointment. The Home Office and criminal justice system strategic plans, both published in July 2004 (Home Office 2004a; OCJR 2004), take as a given the analysis of the problem set out in *Criminal Justice: The Way Ahead* and *Justice for All*. It also underpins much of the policy prescriptions outlined in Labour's crime 'mini-manifesto', published in the run-up to the last General Election (Labour Party 2005). The intellectual ballast it has lent to the 'anti-social behaviour' and 'Respect' agendas is also telling. Without it, the government's rather quaint fixation with policing petty irritations and minor disorder, rather than engaging seriously with their underlying causes, would be rather more apparent.

The ripples of influence have also spread beyond the bounds of government, populating some of the core thinking of both the Conservative and Liberal Democrat Parties in the run-up to the 2005 General Election (Conservative Party 2005; Liberal Democrat Party 2005). As a result, all three main Parties went into the last General Election offering policy prescriptions more notable for their agreement than for their distinctive and divergent positions (Kaletsky 2005). Beyond Westminster, its influence can regularly be detected in journalistic analyses and

in the policy positions adopted by a range of think tanks, non-governmental organisations and pressure groups from across the political spectrum. Indeed, it is hardly an exaggeration to say that something approaching a stifling fug of consensus about the nature of the policy challenge facing criminal justice has descended on the body politic. Differences remain between the main players on points of implementation, but these differences are played out on a very narrow terrain in which the centrality of criminal justice is rarely questioned.

Such a consensus can make for rather dull politics. But it arguably would not otherwise matter, were the analysis correct. But what if the analysis were faulty? What if the core assumptions guiding government policy on criminal justice were erroneous? This indeed is the case, though the picture is complicated. The government has correctly identified criminal justice failure as a reality and as an important question of public policy. But it has started in the wrong place in its attempts to pin down the nature of this failure. As a result, the policy conclusions it has drawn are flawed. To understand this point better, let us examine the basis for the government's claim that criminal justice has failed to keep up with the changing patterns and trends in crime.

Getting to the bottom of criminal justice failure

It has long been noted that there is a significant gap between the number of crimes known about through official figures and the number of individuals successfully convicted of those crimes. Generally referred to as 'attrition', and more recently by the Home Office as the 'justice gap', it forms the basis of the government's case for criminal justice failure. A detailed critique of the government's justice gap analysis is available elsewhere (see Garside 2004), so a brief discussion will suffice here.

The government's analysis is based on a comparison of criminal justice throughputs, in particular successful convictions against

suspected offences recorded by the police. According to *Criminal Justice: The Way Ahead*, ‘the ability of the CJS [criminal justice system] to detect and sanction offenders has not kept pace with the marked increase in recorded crime’. Until the late 1970s, ‘recorded crime, clear-ups, indictable prosecutions and convictions... tracked each other closely’ (Home Office 2001a: 114). From then on, a gap opened up. In 1980, it notes, around six offences were recorded by the police for every individual successfully convicted. By 1999-2000 the police recorded around eleven offences for every successful conviction. Over a 20-year period the conviction rate apparently declined quite significantly, from 18 percent in 1980 to nine percent 20 years later.

What are we to make of this? It sounds reasonable enough. Criminal justice performance, it appears, has only slipped in recent times. Given the political will and the correct policies, it should not be impossible to turn this around. But note that the government’s analysis starts with suspected offences recorded by the police. This matters because it defines down massively the scale of the problem that criminal justice is put forward to solve.

If ministers were simply concerned with quantifying and improving the inner workings of the criminal justice system, with the efficiency with which one agency or department related to another, or with the impact of these agencies on those offenders and victims, suspects and witnesses who are known to criminal justice agencies, then it might make sense to start with suspected offences recorded by the police. On the whole, the criminal justice process begins with a suspected offence coming to the attention of the police. The effectiveness with which the various agencies then discharge their duties can be compared against the number of suspected offences the police record.

But police-recorded offence data is precisely that: details of alleged crime incidents catalogued by the police. And it is *only* that. It is an elementary error, though one regularly made, to assume that such data offers a satisfactory insight into the scale and scope of crime in the real world. If the policy challenge is to reduce crime

in the real world – as the government claims – it would only make sense to start with suspected offences recorded by the police were it to be assumed that the police figures accounted for *all* crime. Or, alternatively, that only those crimes catalogued by the police mattered, were of interest or were of relevance.

The government does not believe this, which is one of the reasons why it prefers the British Crime Survey over police data as a means of measuring crime trends. The British Crime Survey came about partly from a recognition that police crime figures fell a long way short of measuring all crime. Let us see what happens if we compare successful convictions against crime measured by the British Crime Survey, the government's preferred means of quantifying crime levels.

In 1981, the first year for which British Crime Survey data is available, around one individual was successfully convicted for every 25 offences estimated by the British Crime Survey. By 2000 around one individual was convicted for every 30 offences estimated by the British Crime Survey, as was the case in 2003/04. According to this data, the justice gap that supposedly opened up during the 1980s and 1990s largely disappears. Expressed differently, a gaping justice gap was the norm throughout that period. Criminal justice was about as ineffective at successfully resolving suspected offences in 1981 as it was nearly 20 years later, and as it is now.

Ironically, the government's core analysis understates, rather than exaggerates, the scale of criminal justice failure; a scale of failure the government does acknowledge in its more candid moments. During a speech given to launch, of all things, *Criminal Justice: The Way Ahead*, the Prime Minister observed that the government's social programmes amounted to a 'crime-fighting strategy for tackling the 97 per cent of crime that never gets to the courts' (Blair 2001). That Mr Blair saw no tension between this statement and the government's core analysis says much about the ability of policy-makers to evade the implications of their own positions. But there are obvious advantages in doing so. Measured against suspected offences recorded by the police, the conviction rate is poor. But one conviction for every ten suspected

offences is not disastrous. Closing the gap appears a reasonable proposition, holding out the promise of reduced crime levels should it be achieved. The rationale for closing the justice gap largely evaporates when the British Crime Survey becomes the starting point. The sheer scale of the justice gap makes closing it a far greater challenge. It would also be rather beside the point, given that the vast majority of crime would still not result in a successful conviction even were criminal justice performance to be enhanced.

So far we have considered two means of measuring crime: police records of suspected offences and victimisation incidents estimated by the British Crime Survey. The police recorded 5,301,187 suspected offences during the 12 months to April 2000. The British Crime Survey figure for 1999 was 11,716,000. Both datasets have their strengths, but both fail to measure much crime (Garside 2004). This raises the question of whether criminal justice failure may be worse even than a comparison with the British Crime Survey suggests. Just how badly does criminal justice perform in relation to crime? To answer this question we need to get a better sense of the scale of crime.

What is the 'real' level of crime? The Prime Minister's former 'blue skies' thinker, Lord Birt, must have pondered much the same question back in 2000, as he prepared his confidential report on reducing crime. The estimate he came up with posed a fundamental challenge to the government's approach to criminal justice. For a 12-month period in 1999-2000, he estimated that 'the real level of indictable offences was as high as 130 million' (Birt 2000). This is around nine times the British Crime Survey estimate and nearly 26 times the police recorded crime figure. Lord Birt came to his figure by adding the British Crime Survey and police-recorded crime figures to an estimate of unreported drug and non-drug offences.

In terms of the justice gap problem, this means that more than 250 offences were committed for every one successful conviction. If Lord Birt's estimate is taken at face value, more than 99 per cent of indictable offences probably did not result in an individual being convicted. This estimate will presumably

have been on the Prime Minister's desk in the run-up to the publication of *Criminal Justice: The Way Ahead*, with its faulty and partial estimate of the justice gap. Not surprisingly, Downing Street decided against publishing Lord Birt's report, only relenting following applications under the Freedom of Information Act.

Lord Birt's figures have a 'back of an envelope' feel about them. No clue is given to the methodology adopted, making independent verification impossible. But other, more rigorous, exercises likewise come up with estimates far higher than 'official' crime rates. A Home Office study published in 2000 put the figure at around 60 million offences in 1999-2000 (Brand and Price 2000), roughly midway between Lord Birt's figure and the police and British Crime Survey figures. On this basis, around 125 offences were committed in that year for each successful conviction.

This latter Home Office study is not a 'total crime' estimate. It excludes a number of offences from consideration. The authors also emphasise that some of their estimates, of sexual violence for instance, are 'likely to underestimate the true level of victimisation' (Brand and Price 2000: 15). But attempting to make an estimate of 'total' crime is in any case a rather futile activity. Apart from the inevitable guesswork involved, 'crime' covers such a vast array of different behaviours that a total figure would be rather meaningless. Crime is also not a cut-and-dried category of actions, distinct from other actions. Even something as extreme as one individual killing another will not always be considered a crime if the individual concerned was deemed to be acting in self-defence, or indeed in defence of the realm. The many millions of knocks, shoves and pushes that individuals inflict on each other on a weekly basis are not generally considered to be assaults, often for good reason.

Instead of attempting to measure all crime, let us consider some actions that all would agree involve significant harm or trauma to those who experience them and see how comprehensively the criminal justice system deals with them. Here we look at three

groups of offences: rape and sexual assault of females, child abuse and homicide.

Table 1 gives the conviction rates for the 12 months to 31 March 2000 for rape and sexual assault of females, child abuse (including sexual abuse) and homicide.¹ The incidence rates are based on suspected offences recorded by the police. The conviction figures are for the year 2000.

TABLE 1: CONVICTION RATES FOR RAPE AND SEXUAL ASSAULT ON FEMALES, CHILD ABUSE AND HOMICIDE 1999/2000 (ENGLAND AND WALES)

Type	Incidence	Convictions	Conviction rate
Rape and sexual assault of females	28,473	2,780	10%
Child abuse	3,996	641	16%
Homicide	766	501	65%

(Source: Home Office 2001b: Tables 5.11 and 5.12; Simmons et al 2002: Table 3.04)

What conclusions should we draw from this comparison? Recalling the analysis of *Criminal Justice: The Way Ahead*, which pointed out that the overall conviction rate in 2000 was nine per cent, we might say that criminal justice performance in 2000 was about average for rape and sexual assaults of females. It performed above average in the cases of child abuse and homicide. The conviction rate for child abuse was pretty good, being more or less comparable with the 1980 average. In the case of homicide the rate was very good.

But it sounds odd, if not downright complacent, to describe as ‘good’ a situation in which, at least on the face of it, more than four-fifths of suspected child abuse cases and a third of suspected homicides possibly do not lead to a successful conviction. This points to a problem at the core of the government’s drive to improve the performance of the criminal justice system. For all the energy and resources it has devoted to this enterprise, it in

¹These three offence groups comprise, respectively, rape and indecent assault; cruelty or neglect and gross indecency with a child; and murder, manslaughter and infanticide.

essence is attempting to turn a system that performs dreadfully into one that performs badly.

But then the comparison above only examines the conviction rate against suspected offences recorded by the police and we have already noted that the police do not log much crime and related harmful behaviours. This suggests that the criminal justice system's performance is far worse than merely dreadful.

RAPE AND SEXUAL ASSAULT OF FEMALES

It has long been suspected that police data on rape and sexual assault understate the scale of the problem. A detailed questionnaire appended to the 2001 British Crime Survey attempted to fill this gap. The researchers estimated that there were some 720,000 sexual assaults on over 400,000 female victims in the 12 months leading up to the survey (Walby and Allen 2004: 24), giving a conviction rate of less than one per cent.

This is a disturbing figure, and it probably underestimates the scale of male sexual violence directed at women. This is partly because many women may choose not to reveal a traumatic experience in the context of a research project, however sympathetic or well turned-out the researcher might be and regardless of promises of confidentiality. Given the likely scale of intimate partner abuse, for instance, the perpetrator will often be in the same house as the victim. But the survey also adopts the standard criminal justice definition of rape and sexual assault that makes the principle of *consent* of the victim, or the lack thereof, a key consideration. Whether consent should be the means of drawing the line between coercive and non-coercive sexual relations has become a pertinent issue in recent months following the controversial acquittal of a man accused of a sexual assault on a woman. She admitted in court that she could not remember whether she had 'consented' to sex because of the amount of alcohol she had drunk. The prosecution dropped the case, on the grounds that 'drunken consent is still consent' (Dyer 2005).

Sexual assault and rape can involve lack of consent – indeed, it is difficult to think of any sexual contact to which a woman withholds

consent that would not be an assault. But there are many ways that a woman can be sexually violated while apparently consenting. A woman may 'consent' to her male partner's sexual advances out of fear of rejection, or after being pressurised. She may 'consent' to a superior's advances on the promise of promotion, or the threat of demotion or the sack. She may 'consent' because alcohol or drugs have dulled her better judgement and a man has decided that drunken consent, after all, is still consent. She may 'consent' to sex with clients in return for payment. Indeed, when the various means by which men sexually exploit women are thought through, it is difficult to disagree with Steven Box's assessment that 'it is no longer a tiny minority of women who are raped or sexually assaulted, but a substantial proportion' (Box 1983: 130). When this is acknowledged the impact of the criminal justice system on such violations is minuscule.

CHILD ABUSE

Social attitudes to violence against children make reliable estimates difficult. From bullying in the school playground to slaps in the sitting room, we expect our children to put up with levels of violence that adults would find intolerable. Many will, perhaps uncomfortably, walk past a parent hitting his or her child in the supermarket. Were a man seen hitting a woman in the same aisle, many would probably intervene, or at least call a security guard. Underneath these very public forms of violence lies an epidemic of routine violence inflicted by adults on children.

A study published in 1997, commissioned by the Department of Health, examined physical punishment of children in two-parent families. Summarising the research, Felicity de Zulueta observes:

About 91% of children had been hit, with the youngest and most vulnerable hit the most often. Almost half of the children were hit weekly or more often and one-fifth were hit with an implement. Around 35% of children were severely punished, with the intention of causing harm to the child, and these included actions that were repeated, prolonged or involved the use of implements. (de Zulueta 2006: 261-2).

As de Zulueta points out, much of this abuse takes place against the background of the social acceptability accorded to

the hitting of children by adults under the cloak of ‘reasonable chastisement’. She notes: ‘The need to grant parents the “freedom to smack” their children reflects the society we live in, one that condones violence against children with all that this entails in terms of developmental damage’ (de Zulueta, 2006: 261). The occasional smack and regular and serious abuse are clearly not comparable, either in relation to the trauma experienced by the child or the relative culpability of the adult. But the fact remains that current policy around adult violence towards children centres on the question of *how much* violence is acceptable, not *whether* it is acceptable.

The question of the social context in which violence unfolds is one we will return to. For the present, we should simply note that the just under 4,000 suspected incidents of child abuse recorded by the police in 2000 must dramatically understate the scale of the problem. The British Crime Survey does not measure crimes perpetrated against children, so we need to start elsewhere for figures that might offer a more comprehensive picture of the scale of child abuse.

An analysis by Susan Creighton of the NSPCC Research Department breaks down the various ways that child abuse might be known about, or ignored, into five layers (Creighton 2004). The figures for layers one to three relate to the year ending 31 March 2003. The layer one figure – 5,989 – relates to those abuse incidents recorded by the police in England and Wales. The layer two figure – 32,809 – is the number of children officially recorded on child protection registers in England and Wales. The layer three figure relates to those children reported to social services in England as in need of protection – for instance by neighbours or teachers – but who have not been added to the child protection register. This latter figure is 570,000. Layer four is those children recognised as abused by relatives or neighbours but who are not reported to any professional agency. Finally, layer five is those children who have not been recognised as abused by anyone, including the victim and perpetrator.

By definition, no accurate figures are available for layers four and five. Layers one to three point to the possible scale of child abuse

in England and Wales. They also put in perspective the impact of criminal justice on such violations. In 2003 there were just 775 convictions for child abuse.

Creighton also refers to a self-report study published by the NSPCC in 2000 that gives further clues to the possible scale of child abuse. According to the study 16 per cent of females and seven per cent of males said that they had been subjected to some form of child sexual abuse involving contact. If non-contact sexual abuse such as exposure is included, the proportions rise to 21 and 11 per cent respectively. This points to a far higher prevalence rate of child abuse even than the layer three figures suggest. Indeed, on this basis, literally millions of children, and adults when they were children, will have been sexually abused. Given the difficulties in gaining intimate and personal information via a self-report survey, these figures may themselves be underestimates.

CRIME, HARM AND CRIMINAL JUSTICE

Before we consider the case of homicide, let us draw together some initial conclusions from our analysis of rapes and sexual assault of females and child abuse. Most obvious of all, there are far more unacceptable violations, as well as gross and serious violence, directed against women and children than official, criminal justice-based statistics would lead us to believe. Whatever insights official crime statistics offer – be they from police data or the British Crime Survey – they comprehensively fail to quantify the many day-to-day deprecations perpetrated by men against women and by adults against children. In the face of the magnitude of such crime and related harm the scale of criminal justice failure, and the hubris involved in calls to close the justice gap, is only too apparent.

Our analysis also throws into sharp relief much of the current policy focus on the seemingly more everyday offences like burglary or robbery, as well as the government's current preoccupation with tackling 'anti-social behaviour' and fostering 'Respect'. A serious engagement with the evidence-base leads us to conclude that offences such as sexual assaults and child abuse may well be far more common than burglary and robbery. In the

case of the many petty irritations and infractions that fall under the banner of ‘anti-social behaviour’, no one would seriously suggest that they should be a higher priority than men abusing women or adults abusing children.

This in turn challenges the credibility of the criminal justice system as a mechanism for dealing with crime and protecting the public, because its credibility rests in part on its ability to deal successfully with the most serious and odious of crimes. If significant amounts of serious suspected offending is left unresolved by the criminal justice process, this calls into question the claims made for it as a means for resolving crime and protecting the public.

It is perhaps worth stressing at this point that the criminal justice system is similarly ineffective in addressing what some might see as its ‘core business’: offences such as burglary and robbery. In 2004, for instance, the conviction rate for burglary was between two and four percent and for robbery was between three and nine percent, depending on whether police data or the British Crime Survey is the starting point.

We need not collapse into pessimism at this point, unless we are to assume that the prevalence of sexual assaults and child abuse is mostly, or perhaps just significantly, down to the failure of criminal justice to bring offenders to justice. Rather than looking for answers in a narrow configuration of government agencies collectively known as ‘the criminal justice system’, we might instead look for answers in a broader constellation of social, economic and political interventions. For as becomes clear when we turn now to examine the case of homicide, changes in the rate at which people are unlawfully killed has little to do with the criminal justice process.

HOMICIDE

When it comes to dealing with homicide, the criminal justice system looks pretty effective, at least compared with most other offences. The majority of killings formally recognised as murder, manslaughter or infanticide apparently result in an individual being convicted. This is a desirable state of affairs. Few would

want to live in a society that treated with indifference the taking of life of one by another. But is it *because* of the criminal justice system that more people are not victims of homicide? Put differently, to what extent do the workings of the criminal justice system influence the number of murders, manslaughters and infanticides in any one year?

Let us start by examining the conviction rate for homicide in more detail. As Table 1 above shows, in the year ended 31 March 2000 the police recorded 766 suspected homicides. In 2000, 501 individuals were convicted of homicide, giving a conviction rate of 65 per cent. In 1980, 564 suspected homicides were recorded by the police and 370 individuals were convicted (HMSO 1981: Tables 4.3 and 4.7), giving a conviction rate of 66 per cent. The justice gap stayed the same during the 1980s and 1990s at the same time as homicide increased, suggesting that the reason for this rise is more complex than that of supposed criminal justice failure. Whether this is considered a plausible explanation depends in part on the assumptions one brings to the understanding of the crime problem. As recent analysis by Danny Dorling illustrates, a different and far more compelling explanation for the rise in homicide rates is available than that furnished by assertions about criminal justice failure.

For his study, Dorling undertook a detailed study of homicides in England, Scotland and Wales between January 1981 and December 2000 (Dorling 2005). Approximately 13,140 people were murdered during that period. Dorling looked at who was murdered, when, where and how they were murdered, and why they were murdered. Through such an analysis the underlying causes of murder, rather than their superficial ones, became clearer.

Over the 20 years covered by the analysis just under two murders were committed per day. Men were more likely to be murdered than women and young men most likely of all to be murdered. Significantly, the rate of murder increased as the 1980s rolled into the 1990s.

The increased rate of murder during the 1980s and 1990s was not distributed evenly across the population. From 1981,

the risk of being murdered increased for men but decreased for women. But the strongest determinant of an individual's likelihood of being murdered was poverty. The risk of being murdered decreased for the rich but increased for the poor. Indeed, the rise in murder victimisation in Britain was concentrated almost exclusively in men of working age living in the poorest parts of the country, who grew up in the era of mass unemployment that was the 1980s.

Rather than being an artefact of a failing criminal justice system, the rising homicide rates during the 1980s and 1990s were the result of profound and lasting social, economic and political changes. As Dorling points out, there is 'no natural level of murder'. He continues:

For murder rates to rise in particular places, and for a particular group of people living there, life in general has to be made more difficult to live, people have to be made to feel more worthless. Then there are more fights, more brawls, more scuffles, more bottles and more knives and more young men die. (Dorling 2005: 36-37).

So it was that rates of poverty and income inequality rose significantly in the 1980s and 1990s. This overwhelming social fact, rather than any marginal criminal justice impact, exerted by far the strongest influence on the murder rates. While it would be a travesty to suggest that the Conservatives in the 1980s and 1990s pursued particular social and economic policies with the intention of increasing the number of people who were murdered, it is reasonable to conclude that increased murder rates were an unintended, though arguably predictable, consequence of those policies.

Taking crime and harm seriously

When Labour came to power in 1997, it made reform and 'modernisation' of the criminal justice system a priority. Criminal justice had apparently been losing ground in the fight against crime. As crime increased through the 1980s and 1990s

a justice gap opened up, itself contributing to further increases. Decisive action was needed to close this gap. Enhancing the ability of the criminal justice agencies to catch criminals and generally improving the efficiency and effectiveness of the system were necessary.

This, at least, is the story Labour likes to tell. In its telling and retelling it has both spurred and validated a particular set of institutional arrangements and reforms embarked on by the government in the field of criminal justice since 1997. But weaknesses in the story are not hard to detect. According to the government's favoured measure, crime fell from the mid-1990s, during the period the government now claims criminal justice was failing so badly. This suggests a certain fuzziness of thinking on the government's part. Underlying this is a more fundamental confusion, between the question of criminal justice reform and the question of crime prevention and reduction. Ministers assumed precisely what needed to be questioned: that criminal justice processes are the means by which crime is controlled and reduced.

Comparing criminal justice performance, first with police data and the British Crime Survey and then with research that attempts to uncover what official figures miss, has given us a fresh perspective on the question of criminal justice failure. At best, the justice gap stayed largely unchanged during the 1980s and 1990s. In truth the question of the justice gap is almost wholly a distraction, for the vast majority of crimes and harms we examined never came to the attention of the police, never mind the courts or prisons. Ministers have been right to identify criminal justice failure as an important public policy question. But they have dramatically understated the scale of this failure through faulty reasoning. They have been right, but for the wrong reasons. This has led them into a policy cul-de-sac in which the pressing need to address serious crimes and harms has been supplanted by a bureaucratic obsession with structures and processes that are largely irrelevant to this challenge.

A fresh approach is needed. An approach that takes seriously the lack of impact criminal justice has on the vast majority of crime and related harms, without denying that it does have

some impact on *some* crimes. One that takes seriously the need to reform and humanise a criminal justice system that too often is degrading and alienating to those caught up in it – be they offenders or victims, witnesses or suspects – but which does not confuse this important task with the challenge of resolving and reducing crime and of enhancing safety and security. One that takes seriously the role of government in championing and pursuing policies that lead to greater security for the individual, but that also recognises that endless changes to the criminal justice system are a distraction from this task, rather than being central to it. An approach that does not seek to minimise the scale of crime and related harms in contemporary society but also does not seek to highlight them simply for the purposes of scaremongering, or as a counsel of despair.

This final section does not attempt to map out in any detail a policy programme that might constitute such a fresh approach. Detailed work is needed in this area, but it is beyond the scope of this paper. Nor does it offer a shopping list of practical and achievable policies for implementation today, tomorrow, next week, next month, or next year. This is not because short-term improvements and reforms are unnecessary or undesirable – far from it. But as should be clear from the preceding discussion, of themselves these will never be enough. Instead, here is attempted the rather more modest task of pinpointing some of the foundations for a fresh approach. If the policy imperative is crime reduction and harm minimisation, rather than criminal justice reform, where should we start?

To set us on our way, let us remind ourselves of what we have discovered so far. First, crime and related harms are far more prevalent than official statistics would have us believe. This includes some of the most serious and traumatic of crimes and harms. Second, criminal justice processes do not resolve the large majority of these crime and harms, if successful conviction is considered the measure of success. Third, it is upon those members of society with proportionately less power – the poor, children, women – that some of the most serious and traumatic crimes appear to fall most heavily. Fourth, at least in the case of homicide, the intensity of vulnerability and victimisation

has changed over time. The strongest influence on this change has been broader social and economic processes rather than either criminal justice failure or individual wickedness or irresponsibility. We might also conclude, at least provisionally, that fifth, a wider range of crimes and related harms are likewise significantly influenced by broader social and economic processes rather than individual failings or criminal justice processes.

Three broad policy challenges flow from this. The first relates to the quantifying and acknowledging of crime and related harms; the second, to the role of criminal justice and the limits of the reformist agenda; the third, to the broader social, economic and political challenge of crime reduction and harm minimisation.

QUANTIFYING AND ACKNOWLEDGING CRIME AND RELATED HARMS

The basis of any coherent policy is a clear and honest assessment of the scale and nature of the problem or challenge that needs to be addressed. In this context that means acknowledging that crime and related harms are far more widespread, common, everyday and endemic than official statistics suggest and than the current government would have us believe. It means making genuine and serious attempts to quantify and talk about the real likely levels of crime and related harm.

This is difficult territory in public policy terms. An unhealthy consensus has developed within government circles, among its supporters in the media and among criminal justice reformers about the need to ‘talk down’ the problem of crime. A fearful public will also make for a punitive public, so the argument goes. Highlighting the scale of hidden crime levels leaves one open to charges of scaremongering and to wittingly or unwittingly playing into the hands of revanchists.

Though an understandable reaction in one sense, the alternative, of championing a ‘noble lie’ of diminishing crime, is hardly more appealing. At best, proponents of such a view risk charges of smug elitism. The knowing experts, they keep the public in the dark in the interests of the greater good. At worse, they risk charges of complacency or, hardly better, mere ignorance. Ardent

in their commitment to official measures of crime they are either unbothered or unaware of the real scale of crime and harm.

Evidence that public opinion is far from fixed and hard-line on the issue of crime and punishment (for example, Roberts and Hough 2002) suggests that the opportunity for a more open and honest debate about crime should be embraced rather than feared. But the basis of such a debate must be an honest acknowledgement of the probable scale of the crime problem and a commitment to talking about it openly. For many people will come to the crime debate with a range of unacknowledged experiences, both past and present, that deeply affect the way they understand the problem. It should not surprise us that public fears and personal anger appear at levels not warranted by the official crime statistics. Given that official statistics do not quantify the real levels of harm, apparently disproportionate fear and anger might be a largely rational response to lived experience. In this context, 'talking down' the crime problem may only be serving to exacerbate fear and anger and feed the very punitiveness that is the subject of concern.

The overriding imperative must therefore be to base the debate about crime reduction and harm minimisation on an honest assessment of the scale and nature of crime, not on misleading, albeit reassuring, myths.

THE ROLE OF CRIMINAL JUSTICE AND THE LIMITS OF REFORMISM

The ineffectiveness of criminal justice as a means of addressing crime and harm has been a major theme of this paper. Of course the rate of convictions is only one, rather crude, way of measuring effectiveness. Looked at differently, criminal justice undoubtedly has a big impact on individuals. Indeed, far more are subject to some form of criminal justice intervention than ever end up being convicted of an offence.

Around two million arrests are currently made by the police every year (Phillips and Brown 1998; Hillyard and Gordon 1999). In 2003-04 nearly one million stop and searches were undertaken (Murray and Fiti 2004). Around a quarter of a

million police cautions were issued in 2004, along with nearly 64,000 penalty notices for disorder (Home Office 2005a; 2005c). There were more than two million prosecutions in courts in England and Wales in 2004, of which around one and a half million ended in a conviction, mostly for petty and trivial offences. Almost 20 times as many people were found guilty of television licence evasion in 2004 than were found guilty of sexual offences, for instance, and there were almost 18 times as many convictions for minor motoring offences as there were for offences of violence against the person (Home Office 2005c). Around 100,000 prison sentences were imposed by the courts in England and Wales in 2004, along with more than 200,000 community sentences and over one million fines (Home Office 2005b). Behind these striking figures lie millions of people whose lives were changed, in many cases dramatically and permanently, by the operations of the criminal justice system.

It goes without saying that in the course of their operations the various criminal justice agencies do deal with some crime and some criminals. Some serious crimes are resolved. Some individuals who pose a threat to others are incapacitated or otherwise controlled. But while individuals come to the attention of the criminal justice agencies ostensibly because they are suspected of having committed a crime, the broader function of criminal justice, particularly the police, as a means of bolstering a particular set of institutional and social relationships should not easily be discounted. Criminal justice, as Nicola Lacey has pointed out, is ‘a related but not entirely coordinated set of practices geared to the construction and maintenance of social order’ (Lacey 1994: 28). In a complex society within which social antagonisms and tensions are the norm, rather than the exception, criminal justice performs ‘regulatory tasks’ (Lacey 2004: 144). This point was made vividly by former Home Secretary Jack Straw in a recent exchange in the House of Commons. The purpose of the Home Office, Mr Straw observed, was to deal with ‘dysfunctional individuals – criminals, asylum seekers, people who do not wish to be subject to social control’ (*Hansard* 25 May 2006: Column 1640).

This helps to explain not only why politicians so readily resort to criminal justice mechanisms whenever a new social problem is identified, but also why criminal justice rarely has the promised impact on crime and related harms as far as successful resolution is concerned. After all, regulating a problem is not the same as resolving it.

It also helps to explain why those individuals who end up in the criminal justice system as suspects and convicted offenders are so disproportionately drawn from the poor, marginalised and excluded populations. For if criminal justice tends to regulate rather than resolve social problems, it is likely to entrench rather than address the wider inequalities and imbalances that give rise to such problems. As Lacey points out:

In a society in which people are very differently situated in relation to the proscriptions of criminal law, and in which factors such as race, ethnicity, nationality, class, gender, and age widely affect not only life chances in general but also official and unofficial beliefs about people's predispositions to break criminal laws, the impact of criminal justice is virtually certain to be very unequal. (Lacey 1994: 6)

This highlights the importance of reforming the criminal justice system but also the inherent limitations of such an agenda. That criminal justice processes reproduce rather than ameliorate deeply rooted inequalities, if anything strengthens the moral case for civilising and humanising them. It also places a premium on recruiting and retaining skilled individuals committed to maintaining the highest standards of care and professionalism.

Yet precisely because criminal justice is a regulatory response to a set of problems, the causes of which it is not constituted to resolve, reforming the criminal justice system and civilising its practices will always fall short of what is really required. This is not an argument against reforming the criminal justice system, nor against the need for high quality criminal justice professionals. It *is* an argument for not confusing this important task with the more fundamental one of crime reduction and harm minimisation.

BEYOND CRIMINAL JUSTICE: TACKLING CRIME AND HARM AT SOURCE

The scale of crime and related harm, combined with the inability of criminal justice to deal effectively with so much of it, might understandably result in a certain despondency or pessimism. Indeed the need to avoid such despondency partly explains the embrace of what has become known as the ‘what works’ agenda: the largely futile attempt to ‘reform’ convicted offenders through various criminal justice interventions. The tragedy lies not in the desire to address the causes of criminality, but in the concentration of energies on various criminal justice programmes that at best have had a marginal impact. The challenge now is to step beyond criminal justice and to formulate a policy response on a much broader canvas.

Tackling the high levels of poverty and income inequality has its own inherent worth. One should not embark on such a task merely because it might lead to falls in crime and related harms. But a serious attempt to tackle poverty and inequality is likely to have benefits far beyond simply making the poor better off. For as Richard Wilkinson has shown, poverty and inequality levels blight the lives of those people living in the poorest areas of all the developed countries in ways far more significant than the mere issue of financial hardship. So it is that the average life expectancy of the poorest in societies such as Britain today is five to 15 years shorter than that of the richest. ‘This huge loss of life, reflecting the very different social and economic circumstances in which people live,’ writes Wilkinson, ‘stands as a stark abuse of human rights... [and calls] into question the humanity, morality and values of modern societies’ (Wilkinson 2005: 1).

Richard Mitchell and his colleagues examined overall mortality rates across Britain for a study funded by the Joseph Rowntree Foundation. They estimated that 7,500 people aged under 65 would not die prematurely *each year* if income inequality levels were to be returned to the levels they were at in the early 1980s. In the Prime Minister’s own constituency of Sedgefield, this would equate to around 13 premature poverty-related deaths being prevented each year, a much higher figure than

the couple of suspected homicides recorded annually by Mr Blair's local police force of Durham (Mitchell *et al* 2000).

The impact of such policies on a wider range of violent confrontations should also not be discounted. Behind every homicide will be thousands of violent assaults that could easily have ended in death, as well as millions of serious assaults. Homicide, as Dorling argues, is but the tip of a pyramid of social harm. Policies that tackle inequality are thus likely also to address the causes of a wider range of violence.

Tackling poverty and inequality will never be enough on its own, not least because much violent victimisation is also heavily gendered, directed by men against women. This means that much violence suffered by some of the most vulnerable in our society will not begin to be addressed until the systemic misogyny and sexism of British society is confronted.

The challenge is partly an attitudinal one. Far too many men, when asked, can think of plenty of reasons when it might be appropriate to hit a woman. Some 40 per cent of heterosexual men questioned by Jayne Mooney, for instance, felt that they would be justified in hitting their partner if she slept with someone else. Nearly 20 per cent thought they would be justified in hitting her if he felt that she was neglecting their children (Mooney 2000: 182). In other words, millions of adult men have no difficulty in justifying in their own minds the violent assault of women. Other research has found that an uncomfortably large proportion of young men and adults can think of scenarios when it might be appropriate to force a woman to have sex with them. As Steven Box once observed, 'the engine of rape is not to be found between a man's loins, but in his mind' (Box 1983: 161).

But attitudes themselves are rooted in a number of things, not least of all the lived realities of men and women, boys and girls. Women's own vulnerability to male violence, for instance, would be reduced by strategies aimed at addressing poverty and income inequality, given that socio-economic position itself is an indicator of victimisation risk. The Home Office analysis of

sexual assaults cited earlier found that women in the poorest households were more vulnerable, women in richer households less vulnerable, to sexual assault, domestic violence and stalking (Walby and Allen 2004: 75, 76).

In societies such as Britain, where wealth and power is highly stratified, boys and men in positions of comparative powerlessness will also tend to resort to one of the few resources they have left – their own brute strength – to achieve power and prestige. The resulting violence will often be directed against other males, which explains why young men are the group most likely to be murdered in Britain today. But women will also be on the receiving end. Boys engage in violent behaviour, argues Bob Connell, ‘not because they are driven to it by raging hormones, but in order to acquire or defend prestige, to mark difference and to gain pleasure. Rule-breaking becomes central to the marking of masculinity when boys lack other resources for gaining these ends’ (Connell 2000: 163).

The way in which gender roles are understood and enacted in any society thus has a powerful impact on the levels of crime and related harm that any society might experience. Inasmuch as material inequalities are a driver for a particular and destructive form of masculinity, it is plausible to argue that systematic attempts to address income and power inequalities in society will have a positive impact on gendered violence by helping to address the causes of male violence.

Male violence towards women is only one of the ways in which unequal power relationships are enacted and reinforced through violence and coercion. Any set of policy interventions aimed at reducing crime and minimising harm would need to confront the dangerous attitudes and behaviours all too frequently directed by adults towards children and young people, for instance. It would need to think seriously about how crimes of the powerful, and not just the powerless, should be addressed. The purpose of this paper, however, has been to examine the problems of current policy and debate around crime and related harms, not map out in detail what a new agenda should look like. This challenge will be undertaken in future papers.

Concluding remarks

This paper started by highlighting the seeming paradox of perceived criminal justice failure at a time of apparent falls in crime. Ministerial arguments that criminal justice agencies were failing the public sat oddly with their claims that crime had fallen under Labour; fallen indeed to historically low levels.

We have seen that ministers are right to have argued that criminal justice is failing to protect the public, but that they have been right for the wrong reasons. The government's flawed analysis has masked the true scale of criminal justice failure. Once this scale is identified and acknowledged the drive to improve criminal justice effectiveness becomes largely irrelevant to the challenge of promoting a lower crime and safer society.

Thinking across a broader policy terrain, we have started to explore what a new agenda on crime and harm might look like. It is one that takes seriously the relationship between a range of violent offences, poverty and inequality. It is one that also takes seriously the relationship between victimisation and a wider set of power inequalities in society.

This does not mean that criminal justice reformism has no place. Some of the most marginalised and vulnerable members of society end up in the coils of the criminal justice system. Criminal justice agencies are an alienating and dehumanising experience for many who come into contact with them, be they offenders or victims, suspects or witnesses. This places a premium on reforming these agencies and recruiting staff of the highest calibre to work within them. It reinforces the need to ensure that responses such as imprisonment are minimised; that those who are subjected to criminal justice sanctions are given the help and support they need to rebuild their lives; that victims are properly supported.

But important though this essentially humanising and civilising agenda is, it should not be confused with the challenge of reducing crime and making society safer. For it has become clear that the question of how crime can be tackled and harm

minimised can only begin to be considered seriously when the criminal justice system, which looms so large in current debates, is put to one side. When the Prime Minister told the Labour Party conference last year that it was the criminal justice system itself that was ‘the problem’ he was indeed right, but for the wrong reasons.

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Right for the wrong reasons

The government never tires of telling us that crime has fallen dramatically in recent years. So why do ministers claim that the criminal justice system is failing and needs radical reform?

According to *Right for the wrong reasons* the criminal justice system is failing, but not for the reasons the government give. The real challenge involves giving up on the hopeless attempts to drive up criminal justice performance and seek a much broader array of solutions to crime than the criminal justice system can ever deliver.

Have your say

Throughout the rest of 2006 the Foundation will be seeking responses to the the arguments made in this paper. For further details on how to submit a response see our website www.crimeandsociety.org.uk.

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