

***Papers from the British Criminology Conference***

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www.britsoccrim.org

ISSN 1759-0043; Vol. 16

**Panel Paper**

## **Built for inequality in a diverse world: The historic origins of criminal justice**

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### **Abstract:**

Forty years ago a number of revisionist histories of the institutions of criminal justice were published. Collectively they located the emergence of the institutions of police and prisons in modernity and the advent of capitalism (see for example Foucault, 1977; Ignatieff, 1978; 1979; and Melossi and Pavarini, 1981). One book, published in 1976, that was largely overlooked by both historians and criminologists was Thorsten Sellin's *Slavery and the Penal System*. Sellin (1976) proposed a radically different history, rather than focus on rupture he emphasised continuity. The contemporary criminal justice system, he argued, had its roots not in modernity but in the slave societies of Antiquity.

This paper draws on both Sellin's *Slavery and the Penal System* and my paper 'Is the Empire coming home? Liberalism, exclusion and the punitiveness of the British State' presented to the 2014 BSC conference (Moore, 2014). This allows me to demonstrate not only criminal justice's origins in Antiquity's slavery but also how these roots equipped criminal justice to play a central role in the colonial project of domination and exploitation.

I argue that by understanding this history we can see that the tendency to reinforce inequality and oppress the 'other' that characterises contemporary criminal justice is not an aberration but a natural consequence of its genealogy. Criminal Justice (and the associated discourse of criminology) was built for maintaining and enforcing inequality in diverse societies. Creating equality in a diverse world will require a strategy based around abolition, transformative solutions and decolonisation.

**Keywords:**

Penal history; colonialism; Thorsten Sellin; institutional inequality; justice

‘The enslaved are the fittest to be governed by laws, and free men by custom’

(attributed St John of Antioch, 4th century AD)

Forty years ago, Thorsten Sellin (1976) published *Slavery and the Penal System*, which sought to locate the origins of the contemporary criminal justice system in slave societies. His thesis was radically different from the revisionist penal histories published at around the same time by, among others, Rothman (1971), Foucault (1977), Ignatieff (1978) and Melossi and Pavarini (1981), which collectively sought to explain the emergence of the modern prison through linking it with the enlightenment, modernity and the rise of capitalism. These accounts all highlighted change and rupture. This was most clearly expressed by Foucault’s (1977) comparison of the spectacular execution of the regicide Damiens in 1757 with the order and disciplined routine of the *Maison des Jeunes Détenus* à Paris in 1838. Although these revisionist accounts, and indeed previous Whig histories, do not agree on the exact date of the emergence of the modern prison, they are united in a belief that its emergence represented a transformation in punishment from the pre-modern, uncivilised, corporal punishments aimed at the body to a new modern, civilised, carceral punishment aimed at the mind. In *Slavery and the Penal System*, Sellin (1976) challenged this genealogy, and offered a radically different account; one that highlights continuities in punishment. The modern prison, he argues, does not have its origins in modernity but can be traced back to the slave societies of Antiquity.

The theme of this year’s British Society of Criminology conference was *Inequality in a Diverse World*, an area where much work is being done in the academy as well as in political and civil society. However, much of this reform work is based on the broad assumptions firstly, that criminal justice is, whatever its immediate failings, potentially ‘just’ and secondly, that achieving this potential justice can be realised through reforms. Using the insights of Sellin and published research on the deployment of criminal justice by the British state in its Empire, I want to challenge these assumptions and explore the

possibility, as suggested by Foucault's (1977) insights into the role of the modern prison, that what we routinely perceive to be criminal justice failure may in fact be success. Through exploring criminal justice's origins, I argue that it was not only designed and built to generate and reinforce inequality but to also utilise human diversity to facilitate social domination by the powerful. The implication of this analysis is that efforts to build a more just and equal society in a diverse world will not be achieved through criminal justice interventions.

This paper starts with an analysis of contemporary criminal justice failure particularly highlighting how it disproportionately targets both minority ethnic communities and the most socially excluded and vulnerable sections of society. It then summarises Sellin's account of the history of penal law, demonstrating how criminal justice was not intended to promote justice for citizens but to enforce an unjust social order. Sellin's history focuses on Euro-America and ignores the history of criminal justice in the European colonies which I introduce to both reinforce Sellin's thesis and to illustrate penal law's capacity to exploit human diversity to facilitate an unjust social order. The paper then returns to the contemporary criminal justice system to argue that by refusing to accept its claimed objectives at face value it becomes possible to understand it as a success in achieving a number of important functions that maintain the existing social order. The final section of this paper argues that if we are to achieve a more just society for all sections of our diverse communities we need to develop non-penal strategies based around abolition, transformative solutions and decolonisation.

### **Diversity, inequality and criminal justice 'failure'**

Contemporary Britain is characterised by a high level of diversity. Migration over recent decades has created a diverse society, particularly in London. In the period directly after the Second World War these migrations were primarily from former British colonies but since the introduction of the free movement of citizens within the European Union migration has been increasingly from Europe. Conflict, often linked to Western military interventions, combined with widespread poverty, often generated by Western economic intervention, have also seen migration from the Global South. At the same time, legislation has been passed aimed at removing discrimination – for example the opening up of

marriage to same sex couples – and responding to individual ‘hate crimes’ against people victimised on the grounds of race, sexuality, religion or disability. Within this diverse society official crime statistics provide some insight into how Black and Minority Ethnic (BME) communities experience the criminal justice system. Despite BME communities only comprising 12.9% of the population they make up 30% of those stopped and searched (MOJ, 2013: 9). The figures for Black people are even more disproportionate with 14.8% of those stopped being Black despite their being only 3.1% on the overall population (ibid: 9). This disproportionality, particularly for Black people, continues through all stages of the criminal justice system with for example Black people making up 10% of those given custodial sentences (ibid: 9). Whilst the average length of sentence for white people sentenced to prison is 15.9 months, for Black people it is 23.4 months and for Asian people 22.4 months (ibid: 60).

There is evidence that such discrepancies are the result of stereotyping and other racist practices within the criminal justice system. For example, research by Patrick Williams and Becky Clarke (2016) has showed how police, prosecutors and courts use the legal concept of joint enterprise to target young Black men. The researchers highlight a serious dissonance between the ethnicity of those responsible for serious youth violence and those classified as gang members. For example, in the Manchester area they identified that white young people perpetrated 77% of serious youth violence but represented only 11% of those identified by the police as associated with gangs (ibid: 11). Joint enterprise, originally introduced to target those who attended duels, allows for criminal liability to be extended, on an equal basis, beyond the principal who carried out the actual offence to all those associated with them. Establishing this association is often achieved through alleged membership of a gang (ibid: 15); inevitably, given the racist way this label is applied by police, this leads to a disproportionate number of Black people being convicted using this prosecution strategy. It is important to also note that not only have BME communities much greater levels of the fear of crime – nearly three times as many BME adults worry or think they are likely to be a victim of violent crime as white adults (MOJ, 2013: 25) – but Black people report the lowest levels of confidence in police (ONS, 2015: 9).

As well as being a diverse society the United Kingdom has increasingly become more unequal (Wilkinson and Pickett, 2009). Although the most comprehensive analysis of the

prison population carried out by the Social Exclusion Unit (SEU, 2002) is now over a decade old its findings remain the most detailed analysis of the social profile of whom we imprison. Whereas one in twenty of the general working population is unemployed, of those imprisoned two out of three were unemployed in the four weeks before their incarceration (ibid: 20). This disproportionality of the economically marginalised is also reflected in educational disadvantage with 49% of male and 33% of female prisoners having been excluded from school compared with a 2% rate within the general population (ibid: 19). Indeed 27% of prisoners (compared to 2% of the general population) have been taken into state care during their childhoods (ibid: 18). In terms of mental health, although 5% of men and 2% of women suffer from more than two mental disorders for prisoners this rises to a staggering 72% of men and 70% of women (ibid: 20). Rough sleepers, the most obviously socially excluded of our society are 47 times more likely to be imprisoned than the general population (ibid: 21). Criminal justice is overwhelmingly focused on the most socially excluded as well as disproportionately targeting Black and other minority ethnic communities.

Increasingly these characteristics - criminal justice's institutionalised racism and its focus on the poorest and most marginalised - are being accepted as weaknesses and failings (for example, PM's Office, 2016). This adds to an extensive and persuasive literature identifying the failure of criminal justice to not only prevent crime and but also to respond adequately to the needs of those who have been harmed. In particular, the stated justifications of the penal system - deterrence, rehabilitation, retribution, and incapacitation - have been shown to fail (Mathiesen, 1990). In addition to general critiques of its failure to address the needs of victims (Christie, 1977) it has been particularly criticised for its failures of the victims of domestic violence (Dobash and Dobash, 1992; Hall and Whyte, 2003) and sexual violence against women (Brownmiller, 1975; Bumiller, 2008; Leander, 2013). The immediate response to these critiques has been to perceive the criminal justice system as failing and in need of reforms. Political discourse around crime in recent decades has been increasingly characterised by an acknowledgement of criminal justice failure combined by proposals for reforms that will be 'tough on crime, tough on the causes of crime' (Blair, 1993), turn 'prisons from places of idleness into places of work' (Cameron, 2012) and more recently a promise that prisons which, '(f)or too long, we have left ... to fester', will '(n)o longer ... be warehouses

for criminals' but instead 'now be places where lives are changed' (Cameron, 2016). The, almost immediate, failure of these good intentions needs an explanation and in the next section I use Sellin's (1976) account of the history of western penal systems to offer one.

### **Sellin and the historic origins of penal law**

Whereas most scholars studying historic punishment have focused on state sanctions and ignored household and slave punishments (see for example Mackenzie, 1981), Sellin places them at the centre of his account, highlighting how in Ancient Greece, Rome and the early Middle Ages two parallel systems of justice emerged: a state system whose main focus was on managing disputes between free (male) citizens and a private domestic system through which free citizens maintained discipline within their household and over their slaves, the former through establishing fixed levels of financial penalties and the latter through corporal and carceral means (Sellin, 1976).

Ancient Greece's philosophers' discourses on crime and punishment are remarkably similar to 20th and 21st century criminology. Plato (Mackenzie, 1981) believed communities where wealth and poverty existed side by side engendered crime and Aristotle (Sellin, 1976: 12) speculated on the possibility that some crime was generated by a lack of necessities. They discussed punishment's capacity to reform and deter, debating whether its aim was to provide a response to past offences or to prevent future crime. When Plato conceived that the rule of law required that citizens avoid wrongdoing through the exercise of their rational capacities rather than merely blindly obeying the law in response to threats of punishment, he was anticipating criminological theories developed two and half millennia later (Cohen, 2005: 188-9). However, whilst debates over citizens 'rational capacities' are important it is essential that they do not hide the reality of the social structure of Plato's Athens. It was a slave society in which punishment was directed predominately at slaves who were not considered to have rational capacities. The absence of slaves from ancient Greek discourse on punishment reflects an acceptance of the slave owners' right to inflict routine corporal and capital punishments in the private realm without recourse to philosophical consideration or justification.

In Ancient Rome slave owners also had unfettered powers to punish slaves. This could involve whipping, branding, mutilation, and execution. Confining slaves in a private

prison, the *ergastulum*, became common although abuses in these institutions, including the confinement of kidnapped freemen, led to attempts to suppress them (Sellin, 1976: 21-22). The evolution of Roman penalty shows however that over time those punishments originally reserved for slaves were gradually extended to poorer freemen (Bradley, 1994: 170). Enslavement itself became a punishment for lower class freemen whilst 'upper class offenders were spared the brutal capital and corporal punishments which the poor had to suffer' (Sellin, 1976: 29).

Tacitus's (1999) description of the communities of central and northern Europe at the end of the 1<sup>st</sup> century AD identifies a clear distinction between the disciplinary power of the tribal state and those of the head of the household. The former was restricted to acts that were deemed to offend the gods or threatened the safety of the tribe. Disputes between households were resolved through private vengeance and feuding, although mediated by a socially imposed code designed to ensure the settlement and ending of feuds. Tacitus (1999: 35) observed that 'even murder is atoned for by a specific number of cattle and sheep and the entire family accepts the settlement'. All other matters were the prerogative of the head of the household whose disciplinary powers were unlimited. Slaves could be killed with 'no fear of punishment' and the adulterous wife's 'husband drives her naked from the home, with her hair cut off, and whips her through the whole village' (ibid: 39, 33).

The barbarian penal codes that emerged in the first millennium sought to limit feuds and private retribution by transferring conflict resolution functions to the emerging state. These codes reflected the social economy of power with separate provision being set out for different classes of freemen, the nobles, middle and lower classes, and for those below them in the social structure, the half free freedman, serfs, and at the very bottom slaves (Sellin, 1976: 33). This transition was intended to regulate inter-household disputes facilitating resolution of conflicts between freemen by both imposing indemnities on the offending party or in some cases handing over the offender to the accuser for public execution (Drew, 1967). It left intra-family and slave discipline largely in the hands of the head of the household. Enslavement became the punishment for the widow and children of executed freemen and for freemen unable to pay imposed indemnities (Sellin, 1976: 34-5).

Building on these origins, Sellin (1976) shows how penal law developed by transferring disciplinary functions to the emerging state. In Europe, by the Middle Ages, penal codes were largely established, with the state beginning to become the dominant disciplinary power despite the Church, local land owners and the head of households retaining significant disciplinary powers. For Sellin (1976) this development of penal law and state sanctions represents not the replacement of domestic slave punishments but their integration into state practices. Concerning the historic origins of criminal justice and penal law Sellin (1976:35) is clear:

The legislator simply made the practices employed by slave-owners within the domestic establishment – flogging, castration, cutting off the hand, blinding, death, and physical force to elicit confessions – into public punishments and judicial procedures.

### **Empire, Law, Race and Colonial Domination**

The first nine chapters of *Slavery and the Penal System* set out a history of penal systems in Europe starting with Ancient Greece and ending in the middle of the 20<sup>th</sup> century. The final three chapters provide a history of penal law in the United States from its European colonisation until the 1970s. The United States is a classic example of two of the main types of European colonialism, it is both a settler colony and a former slave colony. A substantial and impressive body of work has been published in the 40 years since *Slavery and the Penal System*, detailing the links between contemporary United States criminal justice and its history of slavery (see for example, Davis, 2005; Blackmon, 2009). However, these accounts suggest this link is something peculiarly American without any direct relevance to the development of European penal systems. However certain characteristics of United States criminal justice – its institutionalised racism and targeting of the powerless – are also apparent in European criminal justice systems. This I wish to explain by introducing a parallel history of colonisation, missing from not only Sellin but also from nearly all other histories of western penality (Moore, 2014), which shows how criminal justice was used to facilitate imperial domination, cultural destruction and economic exploitation (Brown, 2014).



Empires are creations of conquest. A land is invaded, resistance crushed and a new order, based on the domination of the conquerors, forcefully imposed. The justifications vary from the concept of terra nullius – seeing the lands as empty spaces despite being inhabited by a people with their own culture, society and economy – to the concept of a just war (Chatterjee, 2012: 52). My focus is on the modern colonialism that developed alongside capitalism in Western Europe. Modern colonialism did more than extract tribute, goods and wealth from the countries that it conquered – it was more than a parasite – it required a complete restructuring of the lands occupied, sometimes involving depopulation through systematic genocide, sometimes requiring repopulating with enslaved Africans or indentured Indians and Chinese labour, always requiring the decimation of existing social structures, moral economies and social order and their replacement with new arrangements structured to the advantage of the colonising power (Loomba, 2005: 9). This process in the colony was dramatic. To establish the colonial state a pre-existing order needed to be removed. A process described by Aime Césaire (2000/1955: 43):

I am talking about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, extraordinary possibilities wiped out ... natural economies that have been disrupted ... food crops destroyed, malnutrition permanently introduced, ... the looting of products, the looting of raw materials.

The concept of 'justice' and the 'rule of law' were central to the colonising project. It legitimised the 'swift and bloody' response to a slave rebellion in 1831 in Jamaica after which 312 slaves were hanged, their severed heads displayed on poles for over a year and many more were shot without trial (Paton, 2004: 30, 31). In 19<sup>th</sup> century British India, courts regularly, following trials conducted scrupulously in line with the standards of British justice, ordered Indians to be 'blown away by canon' (Brown, 2014). This spectacular penalty was not only reserved for extraordinary events such as the 1857 Rebellion but seen as legitimate responses to political threats for decades afterwards (ibid). In colonial Kenya the British state's response to the Mau Mau rebellion, in which 32 white settlers were killed, was both judicial and institutional (Elkins, 2005: xiv). Courts ordered in excess of 1,000 hangings (Anderson, 2006) including for offences such as 'conorting with terrorists' and 'supplying and aiding terrorists' (Maloba, 1993: 93).

This judicial intervention was accompanied by the deportation and forced villagization of over a million people and the detention of tens of thousands in resettlement camps. It was as Caroline Elkins (2005: 190) has described, 'organized terror, violence, and degradation' with, for example, women detained in 'resettlement camps' being routinely 'beaten, whipped, and sexually violated with bottles, hot eggs' (ibid: 220). It was not only the resettlement camps that experienced this violence. As Elkins (2005: 313) has reported: 'A pornography of terror, including public brutality, rape and starvation swept through the villages as well, and thousands died there.' As conditions deteriorated in these villages mass graves were dug in which the dead, including children's corpses 'tied in bundles of six babies', could be buried (ibid: 228).

Focusing on extraordinary events, particularly responses to challenges to the legitimacy of colonial rule, risks overlooking the everyday reality where 'violence was ... endemic rather than ephemeral' (Kolsky, 2010: 2). By focusing on everyday violence two key facilitators become clear, law and 'race'. To justify the imposition of the metropole's law a myth of the lawlessness of indigenous peoples had to be created. As Sir Thomas Stamford Raffles (1835: 98) lamented: 'Nothing has tended more decidedly to the deterioration of the Malay character than the want of a well defined and generally acknowledged system of law.' At an ideological level law legitimized the exercise of colonial power. It was presented in official discourse as the 'guarantor of liberty and (an) agent of civilization' (Kolsky, 2010: 232) whilst simultaneously, in practice facilitating the appropriation of land, the imposition of capitalist employment relations, as well as for providing impunity for everyday white violence. To achieve this, it had to dilute its claims to universality by repeatedly invoking colonial exceptions.

Writing about the tea plantations of British India, Elizabeth Kolsky (2010: 147) has highlighted how legal arrangements 'placed the planter above the law and justice beyond the reach of the laborer's grasp.' The order that colonial rule brought entailed as 'routine elements of everyday life on the plantation ... Public and private floggings, as well as confinement, cuffing, kicking and other forms of physical assault' (ibid: 158). The enforcement of criminal law on plantations, in the West Indies, across Africa and Asia, was routinely delegated to planters who used it to impose labour discipline with a violence that, despite habitually involving the raping and killing of women, children and men under their jurisdiction, was carried out with an impunity provided by law. In

practice this law offered no redress for, as Franz Fanon (1967: 41) observed, 'the native is always presumed guilty'. Race was at the core of the colonial administration of justice. As the radical Indian nationalist Bal Gangadhar Tilak observed in 1907: 'The goddess of British Justice, though blind, is able to distinguish unmistakably black from white' (cited in Kolsky, 2010: 4).

It was not just the law, racism permeated virtually every aspect of Europeans' interaction with indigenous populations. In the British Empire, as Satadru Sen (2012: 300) has pointed out, 'race' was 'the primary grid for the organisation of power, possession and knowledge'. The 'politics of exclusion and subordination' necessary for colonial domination,

... required mechanisms of differentiation to describe and legitimize who the rulers were and who the ruled were. As the empire expanded, race became a primary register of difference that was used to establish and naturalize imperial inequality (Kolsky, 2010: 14).

In a fundamental way Empire was dependent on 'race', it required it to be real, scientific, and natural both in terms of ideological justification and in its day to day administration. Race allowed the colonised to be separated from the coloniser and to justify their different treatment. As Clare Anderson (1997:170) has pointed out it is through 'the "scientific" discourse of "race" ... (that) concepts of the criminal class, the criminal caste and the criminal tribe were developed' in British India. More recently the institutionalised racism of 20th century British South Africa included, as Ivan Evans (2005:191) has described,

Political disenfranchisement, 'job color bars' that legally reserved certain jobs for whites only, residential segregation, a pass system for controlling the mobility and involuntary servitude of blacks, and a bifurcated legal system that subjected blacks to draconian administrative control.

Within the colony domination was legitimised by a process of liberal exceptions, concepts like justice, law and order were filtered through the paradigm of race – the colonial 'other' was both the victim and the excuse – they were not white, and therefore both unworthy of legal protection and, like the slave in Antiquity, unable to respond to anything less than corporal brutality (Pierce, 2006). Colonial rule required categorisation by race. Diversity

provided an opportunity for domination, exploitation and injustice. Empire required racism – everyday racism and institutionalised state racism.

### **Diversity, inequality and criminal justice ‘success’**

This history, both in the metropole and in the colony, suggests that we should not take the criminal justice system’s declaration of its contemporary objectives literally. Debates about its ineffectiveness in terms of controlling crime or responding to the needs of victims are incomplete without a consideration of its historic roots, the functions criminal justice was originally built for. Can the slave origin of criminal justice help explain its disproportionate deployment today against the most excluded? Can the history of penal law’s deployment in Empire explain its tendency to target BME communities? The functioning of criminal justice is a case where we should consider the possibility that the menu is not the meal. Indeed, a number of sociological studies of criminal justice and punishment suggest ways in which it succeeds.

In Antiquity domestic discipline focused on the behaviour of the slave whose minor misdemeanours were often harshly dealt with whilst their owner’s violence had complete impunity. In contemporary society we see this mirrored in a criminal justice system that focuses on the predominately minor and relatively harmless ‘crimes’ of the powerless whilst looking away from the much more serious harms of the powerful (Hillyard and Tombs, 2004). Both Antiquity’s domestic discipline and Empire’s criminal justice were effective mechanisms for maintaining unequal power structures and disciplining the poor, functions Wacquant (2013) has highlighted the penal system replicates today. The centrality of race to the colonial administration of justice (Kolsky, 2010: 10) imbedded racist attitudes into British culture, governance and institutions that makes the disproportionality experienced by BME communities in Britain today a clear legacy of colonial rule (Moore, 2014). This historic focus on exclusion can be seen replicated in the contemporary criminal justice system’s success as a tool for disposing of the homeless, mentally ill and other marginalised sectors of society (Bauman, 2004). A critical analysis of criminal justice policy indicates that it is also successful in creating an appearance of the state’s concern for citizens’ security despite it simultaneously implementing a programme of austerity that causes real insecurity for the majority of the population

(Neocleous and Rigakos, 2011; Reiman, 2007); likewise, as Angela Davis (2016: 6) has highlighted, prisons succeed 'as a strategy of deflection of the underlying social problems – racism, poverty, unemployment, lack of education, and so on'.

In understanding the criminal justice system and the apparent punitive turn in contemporary Euro-America a historic analysis can enable us to see beyond the liberal rhetoric of criminal justice and its advocates. To some extent this has been undertaken in the United States with the impressive body of work identifying the continuities from slavery, through Jim Crow and into the contemporary policies of mass incarceration (Davis, 2005; Blackmon, 2009; Alexander, 2012). However, I would argue this work is incomplete as it suggests a very specific genealogy that does not apply outside the United States. A fuller history – exposing criminal justice's slave roots in the domestic social control mechanisms of Antiquity and its central role in the colonisation of the Global South, where it facilitated and legitimised slavery, genocide, rape and economic exploitation, whilst simultaneously ruthlessly suppressing any resistance from the colonised – shows that the United States experience is not exceptional but can be directly related to criminal justice's historic roots and global deployment.

### **Abolition, Transformative Solutions and Decolonisation: Towards a diverse, socially just and equal society**

The central argument of this paper is that a history of criminal justice shows it was built not as an instrument of social justice but as a mechanism targeting the most powerless with the intention of generating and maintaining an unjust social order. This must lead us to question if it can be utilised as a progressive force, to promote social justice and address inequality? Indeed, to take the example of gendered violence, where feminist critiques have led to radical and extensive reform of both the law and the attitudes and performance of criminal justice practitioners, criminal justice failure continues with, despite these revolutionary reforms, the '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' (Moore and Roberts, 2016:127). If, as the title of this paper suggests, criminal justice was 'built for inequality' and is therefore an inappropriate mechanism for promoting a more

just society, what are the alternative approaches? In this final section I want to suggest three.

Firstly, abolition. The consistent failure of criminal justice both in terms of its failure to meet its stated aims and its consistent focus on the BME communities and the most socially excluded provides an almost irresistible temptation to advocate for its reform. However, if criminal justice is inherently unjust, an instrument designed for oppression rather than liberation, such reforms are likely, in the long-term, to prove futile. We need to become conscientious objectors to its deployment pointing out the unsuitability of penal sanctions as tools for generating social justice. We should be arguing for the shrinking and ultimate abolition of the institutions of criminal justice and focusing our efforts on developing new approaches to social harms, conflicts and social problems that are better suited to the task of creating more equal and just societies.

Secondly, developing transformative solutions. Moore and Roberts (2016) have recently argued that to move beyond criminal justice we need to start developing transformative solutions. Citing an initiative of the Centre for Crime and Justice Studies in London, 'Justice Matters', they argue that, rather than focus on alternatives to criminal justice, the starting point should be the underlying primary harm or problem. By focusing on the real problem rather than the current criminal justice response to it, a wider range of expertise and knowledge can be deployed in developing solutions. 'Justice Matters' workshops provide a template whereby participants firstly identify a social harm or social problem, secondly explore the limitations of current criminal justice responses, before thirdly being tasked to explore the development of an alternative social justice response (ibid: 119-122). By seeking to locate the development of transformative solutions democratically within the communities directly affected and firmly locating them within the paradigm of social justice such solutions are not only more appropriate and effective but also avoid incorporation as 'they are ideologically incompatible with criminal justice's function of maintaining an unjust social order' (ibid: 131).

Thirdly, decolonisation. The influence of colonisation on modern societies is increasingly recognised (Chatterjee, 2012) and its impact on criminal justice in England and Wales has begun to be explored (Moore, 2014). This paper has only touched on this briefly but that has been sufficient to identify that penal law and criminal justice were central to the

colonial project. In particular, our understandings of 'race' have been shaped by an ideological project of 'othering' that both legitimised racism in colonial administration and institutionalised it in the metropole. The need for decolonisation operates at many levels and a full agenda is beyond the scope of this paper. However, we need to start thinking and acting in ways that at least begin the process of decolonising society, the academy and our own discipline of criminology.

Agozino (2003) and Brown (2014) have highlighted the intimate links between criminology and colonisation. Bonger (1943: 71) observed that for Lombroso, the generally acknowledged founder of the discipline, 'race, explains everything.' Forty years after Sellin (1976) sought to explore the consequences of the penal system's slave roots it is time to highlight the links between criminology and colonialism. Developing a process of decolonising criminology would involve exploring the history of the discipline, its complicity in colonialism, its adoption and deployment of racism, its fixation on individuals and its failure to address structural harms or the major crimes against humanity perpetrated by Euro-America: colonialism, genocide, and slavery. Such a process would not be risk free and in deconstructing the discipline the danger is that: 'Things fall apart; the centre cannot hold; Mere anarchy is loosed upon the world' (Yeats, 1920). But would that be a bad thing?

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