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THE VIOLENCE OF CRIMINALISATION

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Public perceptions of crime are permeated with the image of violent activities and of the dangerous people who perpetrate them; gangsters, terrorists, murderers and sex offenders being the most prominent examples. Violence in this sense is directly related to the idea of physical aggression and harm, which is either realised or threatened by the activities involved. Even beyond these extreme cases, criminals are commonly thought to be dangerous, and crime is almost inherently perceived to be violent. Even crimes that do not directly involve physical aggression tend to have an aura of violence around them, be it because of the harm that they reportedly cause to their victims (for instance, think of the fraudulent activity that deprives a pensioner of their lifelong savings), or because of the danger they might pose to public order and social relations. Prosecutors often rely on these images of dangerousness and violence to convince juries of the defendants' guilt and criminal character.

It is undeniable that the idea of violence is intimately connected with notions of crime. However, it is often easy to naturalise this connection, by assuming that certain activities—and certain individuals—are criminalised because they are violent, and that criminal law is simply reacting to such violence by regulating it and protecting the public from it. Instead, it is important to see this relation as complex and problematic, not only shaped by the context of crime but also having a significant role in shaping it in return. This short intervention aims to raise a few reflections focused on examining the complexities involved when unpacking the relationship between crime and violence. In particular, I am interested in discussing how an uncritical understanding and deployment of this violence-crime link contributes to perpetuating discrimination, marginalisation and miscarriages of justice in society.

It is worth starting this reflection with a simple yet often neglected

note: that the violent character of certain activities, even in relation to the most serious crimes, is not self-evident. Rather, our conceptions of what constitutes violence, and especially unlawful (criminal) violence, are constructed; that is, they are conditioned by their social, cultural and historical context, and shaped by political pressures and power relations. For instance, a significant number of deaths is caused each year by industrial activities and commercial decisions, many of which in circumstances which could easily be described as violent, but these are rarely, if ever, deemed to be criminal. Why is it that it is easy to talk of murder when someone kills another person for financial profit, and so difficult to do the same when the death of several people is caused by the actions of a company? Even cases that attract a significant degree of public condemnation, such as the fire at Grenfell Tower in London in 2017, are only uneasily discussed as violent in nature, and rarely lead to criminal prosecutions.¹

There is a myriad of harms, both individual and social, that go unrecognised by criminal justice institutions. Even those that might otherwise easily fit within an established form of crime can have their status as violent activities significantly contested. For instance, in formal terms, rape is considered one of the most serious and violent crimes in most legal systems, and in many jurisdictions, it is widely condemned. However, in practice, it is a crime that has very low conviction rates, even now that levels of detection, at least in many parts of the western world, are on the rise. Independently of the harm experienced by victims/survivors, perceptions of what constitutes rape are often tied to cultural values and social biases, which often lead to a reluctance to convict those who do not appear to fit into popular images of what constitutes a 'violent offender'.

But just as we are reluctant to see violence in circumstances that do not conform to preconceived ideas of crime and violence, the opposite is also true: we tend to infer the existence of crime, and to identify individuals as dangerous offenders, when circumstances link these activities and people to images that we recognise and accept as violent, even when that might not actually be the case. A prime example of

1. For a discussion of how and why the Grenfell fire should be characterised as social murder, see A. Norrie, 'Legal and social murder: what's the difference,' *Criminal Law Review* 7 (2018): 531–542.

that can be seen in relation to the treatment of gang violence by the criminal justice system in England and Wales. Gang violence has for decades now been identified as a serious social problem in the United Kingdom, a perception that has been made more acute in recent years, due to the rise in instances of knife crime.² As a result, a broad range of different powers has been given to criminal justice agents to deal with gangs, including preventive measures such as gang injunctions and criminal laws aimed at facilitating criminalisation in these instances, such as the infamous law of joint enterprise.³

While it is impossible to deny the violence inherent to activities such as knife crime, it is also essential to appreciate how the way in which we interpret such violence, and indeed how we identify it as the result of individualised crimes, can misidentify the problem and lead to significant injustice. More specifically, linking this kind of violence with the activity of gangs leads to forms of criminalisation that disproportionately affect racialised and marginalised populations, as they are “reliant upon a ‘common-sense’, racialized and stereotypical discourse that links BAME [Black, Asian and Minority Ethnic] men with an involvement with gangs, drugs and violence”.⁴ This link generates a skewed perception of what this kind of violence involves and where it originates; as a result, not only are instances of knife crime that cannot be tied to BAME groups less likely to be detected and dealt with, but also, and most importantly, BAME individuals and groups are much more likely to be identified as ‘gang members’ and thus be targeted by criminalisation, even if they cannot be said to have committed any violence in the first place. “When it looks like a gang—and especially

2. Office for National Statistics, *Crime in England and Wales: year ending June 2019* (2019). Available Online at <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2019> (Accessed 15 November 2019).

3. For a more detailed discussion of joint enterprise, see H. Carvalho, ‘Feeding the prison crisis through hostile criminalisation: the case of joint enterprise’ *Prison Service Journal* 243 (2019): 41–47; H. Carvalho, ‘Joint enterprise, hostility, and the construction of dangerous belonging,’ in: J. Anderson and J. Pratt (eds.), *Criminal Justice, Risk and the Revolt against Uncertainty* (London: Palgrave Macmillan, forthcoming 2020).

4. P. Williams and B. Clarke, *Dangerous Associations: Joint Enterprise, Gangs and Racism* (Centre for Crime and Justice Studies, 2016), 16.

when the police call it a gang—it must be a gang”.⁵

To understand how our conceptions of violence are constructed, and especially how they are linked to the notion of crime, we need to examine how these conceptions are underpinned by a series of social, cultural and political processes that emphasise certain kinds of violence, link them to certain types of individual and group, and identify them as criminal. This is an urgent matter, because the same processes that make visible and naturalise the individualised violence of crime also blind us to other, more pervasive—and, one could argue, more dangerous—kinds of violence upon which criminalisation depends. These include the structural violence embedded in contemporary societies, which preserves and promotes structures of inequality that, among many other things, protect patriarchal structures and socio-economic exploitation, and the epistemic violence that makes society see and treat racialised and marginalised populations as dangerous criminals first, and human beings second—if at all.

In short, before we can tackle the violence of crime, we need to seriously engage with the violence of criminalisation.

5. P. Squires, 'Constructing the Dangerous, Black, Criminal 'Other', *British Society of Criminology Newsletter* 79 (2016): 1–4, 2.