Risk and the management of crime

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There is now a well-established international consensus among criminal justice policy-makers and practitioners that various forms of risk management can be used as predictive tools. Internationally, governments identify crime as a major problem which needs to be managed through various forms of individualized actuarially based risk assessment. Risk management constitutes a significant paradigm change within criminal justice practice throughout Europe, the USA, Canada, Australia and New Zealand.

In this chapter risk-based policies and practices will be placed within the context of a wider societal shift towards the ‘risk society’ in neoliberal and social democratic states over the past 20 years. Although the contours of criminal justice policy have been shaped by a political preoccupation with risk, there are important differences in policy approaches to crime, personal and collective security. It will be argued that ‘problem, policy and political streams’ drive ever-changing and frequently contradictory master risk narratives. Risk discourses are modified and re-created by politicians in an attempt to read and respond to public ‘mood’. However, concentration on individualized risk assessment has diverted attention from the risks to public safety created by structural inequalities. A now well-established risk grouping process is in place across international jurisdictions where offenders are categorized through various forms of institutionalized risk assessment instruments. These risk assessments have become forms of rationing and allocating scarce resource (Mythen et al., 2012). Moreover, an emphasis on risk appears in many instances to be accompanied by a more punitive approach, particularly to young offenders. It will also be argued that the privatization of criminal justice services distributes risk across the private and public sectors which in turn create new forms of risk.

Core concepts

The emergence of risk has become a focus of interest within social science. In Beck’s classic text Risk Society: Towards a New Modernity he describes changing patterns of values provided by social institutions as ‘reflexive modernity’. Whereas in the traditional society political control is institutionalized through the state, law and administrative procedures, political control in the post-traditional society becomes more fragmented and disjointed. Beck has argued that ‘normal’ linear biographies which characterized traditional societies have been transformed. Beck’s work
leads to a position in which calculating risk is part of a political rhetoric in which the state criminal justice system no longer gains its legitimacy through its capacity to rehabilitate offenders, but through its ability to identify and prevent offending. Beck describes risk as a ‘systematic way of dealing with hazards and insecurities induced and introduced by modernization itself’ (Beck, 1992, p. 21).

Risk now constitutes a guiding principle in societies where the:

Place of the value system of the ‘unequal’ society is taken by the value system of the ‘unsafe’ society. Whereas the utopia of equality contains a wealth of substantial and positive goals of social change, the utopia of the risk society remains peculiarly negative and defensive. Basically, one is no longer concerned with attaining something ‘good’ but rather preventing the worst.

(Beck, 1992, p. 49)

The designation and sorting of individuals into various risk categories has been greatly influenced by the prolific psychologistic research of David Farrington whose work has been hugely influential internationally in establishing the risk factors associated with criminal behavior. He and his colleagues have linked crime to large families, child-rearing methods, low parental involvement, neglect and disrupted families (Farrington and Welsh, 2007). However, the allocation of individuals to particular groupings, although ostensibly based on levels of measured risk, tend to reflect class divisions and to regulate an underclass (Miller, 2014). Within the criminal justice system risk factors are routinely identified through the administration of various forms of risk assessment which can be seen at its most simplistic level as the ‘process of identifying hazards which may cause an accident, disaster or harm’ (Manthorpe, 2000).

The actuarial nature of these assessments within criminal justice systems bears remarkable similarities to assessments pursued in the commercial insurance industry. Such forms of risk assessment ostensibly calculate the regularity of criminal events and the likelihood of crime being committed in the future with respect to specific populations. Risk, according to Ewald, represents an attempt to master time and discipline the future (Ewald, 1991).

Many criminal justice systems now routinely classify offenders into levels of dangerousness using various actuarial risk prediction tools. A Canadian tool LSI-R (Level of Service Inventory) was one of the first risk assessment tools to be adopted by a number of probation services, including the UK. In the UK, this was replaced by the OASys Offender Management System which now constitutes the starting point for the assessment and intervention of offenders. These tools identify static risk factors but frequently fail to take account of the significance of dynamic risk factors.

The development of risk-based criminal justice systems

O’Malley makes an important distinction between the anti-welfare form of neoliberalism most obviously present in the USA and the UK, and the more welfare-based neoliberalism of Australia, Canada and New Zealand. O’Malley analyzes the different trajectories of criminal justice policy-making since the Second World War. In the USA and the UK, a criminal justice system has developed based on a form of pragmatism expressed through exclusion and control of high-risk populations. The other, less conservative traditions seen in Australia, New Zealand and Canada have to some extent been shaped by experiences of colonization. Criminal justice policies are conceptualized in terms of an attempt to correct the wrongs that have been done to oppressed people, thus aiming to create a more inclusive society. Inequality from this perspective creates the risk of a segregated and fragmented society which can possibly create the risk
of social segmentation and division. In New Zealand and Canada, for instance, the development of restorative justice programmes in the 1970s represented an attempt to reintegrate offenders into the community while acknowledging the wrong that had been done to them and also recognizing the heritage of indigenous peoples. In New Zealand, restorative justice draws upon elements of Maori justice which had been abandoned during the colonial period. Similarly, ‘circle sentencing’ used as part of the restorative justice process in Canada bears some resemblance to ‘First Nation’ forms of justice.

Criminal justice policies in Australia have also been rooted in the need to acknowledge cultural heritage and individuals who have been made vulnerable to crime through circumstances located within structural inequalities and a history of colonialism. In the 1980s, the Australian Labor government adopted a policy with the specific intention of integrating aboriginal people and to right some of the wrongs perpetrated by colonialization. By the late 1990s, however, Pauline Hanson’s ‘One Nation’ Party had transmogrified previous policy approaches into an attack against the worst excesses of what she conceptualized as ‘political correctness’. The risk for Hanson lay in the fragmenting impact of ‘preferential treatment’ given to any cultural group. Throughout this policy shift the need to remain one nation, avoiding the risk of segregation and aboriginal exclusion, was emphasized. In her maiden speech in the Federal Australian Parliament, Hanson made the distinction between a ‘social’ and ‘racial’ problem. A ‘social’ problem confronted two different races who live in two separate societies, even if those societies are side by side (Hanson, 1996). Australia has consistently sought to enable people to live together in one society, or, as O’Malley puts it:

The social democratic tradition in Australia has generated distinctive responses which neoliberalism has shaped in important ways – but the hybrid form of Australian politics is far more consistent with mentalities of categorical inclusion.

(O’Malley, 2004, p. 44)

The more conservative USA aims to identify high-risk populations, and to separate and exclude them in order to protect the law-abiding majority. This policy emphasis will be compounded during the presidency of Donald Trump. Here the central aim of criminal justice policy is public protection, while particular groupings are conceived of as constituting high risks to the USA. In the first days of President Donald Trump’s administration, executive orders were signed specifically designed to exclude identified groupings by the construction of a border wall, more stringent deportations policy, development of refugee resettlement programs, and a ban on the admission of individuals from certain majority-Muslim states (Migration Policy Institute, 2017). This position is built firmly on the precautionary principle and the political imperative of creating policies ostensibly designed to create greater security for US citizens. This central rationality underpins policy objectives which are designed, as Castel has argued, to anticipate all possible manifestations of the future eruption of danger (Castel, 1991). The precautionary principle is based on the proposition that hazards can be identified before they occur and that appropriate precautions can then be taken to ensure that harm to the public is kept to a minimum (Denney, 2005). A major impetus and justification for this approach to criminal justice has been the increase in the incidence of global terror attacks. Global fatalities due to terrorism rose from 6,000 in 2005, to 33,000 in 2014 (University of Maryland, 2016). British Prime Minister Teresa May in a speech to the Centre for Strategic and National Studies in Washington argued that there had been 16 attacks in Europe between February 2014 and 2016, the majority inspired or directed by the Islamic State (Daesh) (May, 2016).
At the time of writing there has been an increase in the rate of attacks in the UK. The Westminster Bridge attack in March 2017 killed 6 people, including the attacker and a police officer, while 50 others were injured, some of them severely. Two months later 22 adults and children were killed and 60 injured at the Manchester arena suicide bombing during a concert. Some two weeks later, on 3 June, 7 individuals were killed and 93 injuries sustained by members of the public in an attack on London Bridge and Borough Market. All these attacks occurred at symbolic locations or at high-profile events and were designed to kill as many citizens as possible while instilling the maximum amount of fear in the population. It is notable that two of these attacks occurred in the UK during a general election campaign and were possibly designed to disrupt democratic processes.

The UK government has responded to the risk of terrorism through its Counter-Terrorism and Security Act 2015 which, among other things, imposes a legal duty upon schools, universities, charities, the NHS and other social institutions to ‘have due regard to the need to prevent people from being drawn into terrorism’. The UK’s counter-terrorism policy, first developed in 2003, is split into the four Ps: Prevent, Pursue, Protect, Prepare. The strategy has been widely criticized from a number of perspectives as unfairly targeting British Muslims, interfering with academic freedom in schools and creating a form of domestic spying (Guardian, 2016).

There is a policy balance to be struck here between protecting citizens from the risk of terrorist atrocities and protecting human rights and facilitating the integration of different groups in society. A growing tension has developed between an endless search for protection against risks, due process and human rights. Overemphasizing risk can make justice synonymous with punishment (Hudson, 2001).

From rehabilitation towards risk-based social control

As is the case with terrorism, a number of writers have analyzed the shift towards a risk-based form of punitive social control in other parts of criminal justice systems. Garland describes how during the second half of the twentieth century a shared ‘culture of control’ arose in neoliberal states like the USA and the UK (Garland, 2001; Kemshall, 2016). In another seminal text published in the early 1990s Feeley and Smith described a ‘new penology’ developing in the USA. Criminal justice is not concerned with rehabilitation or punishment, but with the identification and management of unruly groups. Institutionalized risk assessment processes form the basis for identifying dangerous individuals who pose a significant risk to public safety (Feeley and Smith, 1992).

However, risk rationalities are by no means consistent. This to some extent reflects the amorphous notion of risk itself (Denney, 2005) Kemshall has shown how the concept of risk is applied in different ways within various forms of public service provision. She argues that different rationalities of risk can operate in different forms, while concepts of the ‘responsible’ service user are complex (Kemshall, 2010). Thus, the dominance of a risk-based penology is not straightforward and can be exaggerated. In the USA, for instance, the risk-based technologies are dominantly incapacitant. Three-strike laws requiring courts to impose mandatory custodial sentences to offenders convicted of three serious offenses form the basis for ‘formulaic sentencing’ and the reappearance of curfews (O’Malley, 2004). Other projects in the USA have concentrated on tackling the physical environment, cleaning up rubbish and graffiti (Wright, 2002).

Many of these strategies have proved to be of limited value. The ‘three strikes and you’re out’ movement was largely symbolic and provided a tough message about law and order. However, the impact of three strikes has been limited (Jones and Newburn, 2006). Preventive
measures are sometimes taken by the state in order to reduce the risk of harm to citizens. These measures may involve a loss of liberty (Ashworth and Zedner, 2014).

Bullock has described some level of subjectivity in the way in which probation officers can fail to fully complete OASys risk assessments in the UK Probation Service. Risk assessments generally make poor indicators of future criminal behavior, while failing to take sufficient account of exceptional circumstances, and individual characteristics which are less predictive for young offenders. The tests also fail to take sufficient account of the socio-economic circumstances of the offender (Bullock, 2011).

**Impact of risk-based policies on offenders**

Emphasis on individualized risk is often associated with a more punitive approach to sentencing. Risk factors become reified entities used to identify those who pose danger to public safety. Such an approach has led to the introduction of radical measures being taken with regard to those designated as posing a risk to themselves and to wider society. The use of drug therapy, for instance, has been used to treat those deemed to be at high risk of disorderly conduct. There is, as Walsh argues, a tendency to treat conduct disorders therapeutically. The enthusiastic use of Ritalin to treat children designated as suffering from ADHD (Attention Deficit Hyperactivity Disorder) has been well established (Walsh, 2011).

One of the most significant responses to risk-based criminal justice has been the increased use of mass incarceration. Muncie notes a reversal of policy in the Netherlands from the mid-1980s onward with a major prison-building program being linked to a tendency towards pre-trial detention and longer sentences (Muncie, 2004). Between 1993 and 2015 the prison population in England and Wales nearly doubled with an extra 41,000 people being incarcerated (Bromley Briefings, 2016). Sentenced prisoners comprised around 89 percent of the total at the end of 2016. Of these, adults accounted for around 95 percent of prisoners, 18- to 20-year-olds 5 percent and 15- to 17-year-olds around 0.6 percent (Allen and Watson, 2017).

Although, as Muncie points out, there has been a move towards the greater use of imprisonment across Europe, England and Wales have the highest imprisonment rate in Western Europe, incarcerating 147 people per 100,000 of the population. In France, 103 per 100,000 are imprisoned, while in Sweden the figure is 53 per 100,000 – half that of the UK (Muncie, 2004; Bromley Briefings, 2016).

Knepper has argued that in around 1973 or so the United States began its experiment in ‘mass imprisonment’. At the same time as crime rates fell, some suggested that mass incarceration had reduced risk to the public from criminal acts. Knepper argues that crime rates fell for a number of possible reasons in the USA, including changes in gun laws, illicit drug markets, economics and demographics (Knepper, 2012). Thus, as the risk of crime declines, there would appear to be a concomitant rise in the use of imprisonment.

**Problems, policies and politics: a case study of emerging risk agendas**

The use of mass incarceration as a crime-reduction strategy carries with it further ‘externalities’ which in themselves constitute a reflexive risk. In crime policy, externality describes the situation when measures undertaken to fight crime create unforeseen (but foreseeable) demands on social welfare (Knepper, 2012).

One such externality is cost. The cost of incarceration could impact upon spending elsewhere in the welfare system, since budgets are being cut across the welfare spectrum. However, policy strategies are, as Stenson points out, not just responses to external problems. The
‘problems’ that they address are given shape and recognition by emerging policy discourses (Stenson, 2002). The implementation of criminal justice policy change should not necessarily be regarded as a rational response to any particular problem. Jones and Newburn draw upon the work of Kingdom (1995) who described ‘streams’ which lead to the development of criminal justice policy. A variety of policy ideas float around in what he terms the ‘policy primeval soup’ (Kingdom, 1995, in Jones and Newburn, 2005). Problems which need to be dealt with by policy-makers tend to stream rather than appear in sequential stages. Policy ‘streams’ may be seen as the complex changing and often contradictory responses to streams of problems. Consequent political responses shape and modify policy in response to streams of events (Kingdom, 1995, in Jones and Newburn, 2005). New problems will often occur as policy is being implemented, resulting in the modification of political responses. In the risk society, criminal justice ‘problem’ streams may more accurately be regarded as ‘risk streams’.

**Problem streams and risk**

Criminal justice policy is now shaped by competing and contradictory demands which frame events in terms of threat or danger. At any one time, there will be competing constituent elements running through a risk stream. Individuals (e.g. serial killers), groups of individuals (e.g. high-risk populations in areas of social deprivation) and events (e.g. economic crises and terrorist atrocities). All these factors form part of the risk stream. The hybrid discourse of risk and criminal justice has become enmeshed within wider problem streams relating to the global economy. Current political rhetorical streams across Europe warn of the risks associated with global conflict, terrorism, the refugee crisis in Europe and high levels of public expenditure which take precedence over the impact of criminal behavior. There is a risk that the cost of mass incarceration could impact upon other areas of spending in the criminal justice system which are less punitive and potentially more rehabilitative. The fearful image of the chaos created by unrestrained public spending, cheap lending and the tenuous position of the euro against the dollar has given rise to an urgent call for public expenditure cuts. The risks associated with uncontrollable borrowing have become the global ‘dread’ risk. This comes at a time when the USA has massive debt repayment problems. At the time of writing, the USA is facing a $19 trillion debt crisis which adds to a sense of impending doom (www.usgovernmentdebt.us/).

The fall-out from the global economic crisis of 2008, together with the lingering financial pressures in, for instance, Greece and Italy, combines with the decision taken by the UK to leave the EU in June 2016 to define, shape and reinforce the discourse of economic risk. Concerns about the Irish, Spanish and Portuguese economies have added to the sense of crisis within the eurozone. Rapid deficit reduction and high levels of incarceration are part of the same problem stream in the risk society. Radical solutions to these problems carry political risks, while policy often has to be redirected in order to accommodate changing perceptions of the political impact of the risk stream. Political responses are often shaped by unfolding events and political perceptions of the public acceptability of policy proposals.

It is difficult to argue that the implementation of a mass incarceration policy has brought any tangible societal benefits. On the contrary, recent research indicates in the USA that the tough stance taken on crime by policy-makers has resulted in increasing numbers of individuals moving through a revolving door in and out of prison at great cost to the public purse. This constitutes a very serious and expansive policy failure which, far from preventing crime, has increased numbers who are brought into contact with the criminal justice system (Kelly, 2015). It may be argued that an overemphasis on risk of crime could have created a greater risk to the public by
involving more individuals in a system which potentially provides socialization into further crime while also disrupting the possibility of rehabilitation.

**Risk and the privatization of criminal justice services**

One policy response to risk of crime with an underlying controversial rationality may be seen in the recent privatization of the UK Probation Service. It is possible to see risk-based policies as providing an impetus for privatizing criminal justice services. Privatization has been gaining momentum in European criminal justice systems and in some areas in the USA. Prisons, bail and escort services have become increasingly privatized for a number of years (PPRI, 2005).

Criminal justice services are now increasingly provided by private companies or partnerships between the private and public sectors. The policy paper *Transforming Rehabilitation* laid out the Conservative and Liberal Democrat coalition approach to probation (Ministry of Justice, 2013) and the partial privatization policy was implemented in the 2014 Offender Rehabilitation Act. The result of this legislation is that the state-funded National Probation Service (NPS) continues to supervise 30 percent of high-risk offenses while the remaining 70 percent are supervised within 21 private community rehabilitation companies (CRCs), replacing 35 state-funded Probation Trusts.

Before the implementation of the privatization agenda, the House of Commons Justice Committee recognized the creation of two probation services which moved this part of the criminal justice system into previously uncharted risks. In the same geographical locale, it was necessary for separate services to forge relationships with organizations and bodies for the delivery of joint complementary services. This creates risks of wasted resources and the further risk that the tendering systems could award contracts to the cheapest bidder without due regard to the standard of service being supplied (House of Commons, 2014).

The lack of evaluative research on the reforms makes the full impact of the changes speculative at the time of writing. However, it seems possible that a more expensive and less efficient system could result. The implementation of the *Transforming Rehabilitation* agenda has brought with it a concomitant deprofessionalization of services for all but the very ‘high-risk’ cases. This seems to counter evidence particularly in the field of mental health suggesting that specialist probation mental health practice has the potential to decrease re-arrests, lower levels of imprisonment and illegal drug use while enhancing possibilities for employment and stable housing (Brooker et al., 2014).

**Discussion**

One of the most common criticisms of Beck’s position is that he fails to take account of the specific complexities of risk situations. Beck has also been accused of failing to fully appreciate the continuing existence of inequality regarding poverty in absolute rather than relative terms (Dingwall, 2000). Other commentators have pointed to the danger of focusing too heavily on risk which is one aspect of the social world (Denney, 2005).

Notwithstanding these criticisms, it has been argued that conflicting discourses of risk are at the center of political processes and the formulation of criminal justice policy. A ‘risk factor prevention paradigm’ has now replaced more traditional criminological concerns with crime causation (Muncie, 2004). Yet risk assessments only tell part of the story. Over-reliance on individualized risk assessments can be politically pragmatic by providing a justification for an unpopular policy while risk factors related to the commission of crime constitute a relatively narrow set of questions. Moreover, concentration on risk factors individualizes the causation of
crime, drawing attention away from the underlying inequalities, social conditions and historical context which gave rise to the risk factors in the first place. The instruments used for assessing risk are also of questionable value, diverting funds from other parts of the criminal justice system. Ideas about risk assessment in criminal justice will change in the future. One possible future scenario is technologically led, marking a return to a variation on biological determinism reminiscent of early criminologists, most notably Lombroso (Lombroso and Ferrero, 1893). It is claimed by some researchers that neuro-imaging techniques could reveal bio-markers for conduct disorders. Such a development is potentially within the realms of neuro-scientific possibility and would add a further dimension to risk prediction. There is a growing belief among some neuro-scientists that there are characteristics which could be used to identify and aid in the management of psychopathy (Walsh, 2011). In the US context Rutherford has described juvenile justice as being caught between *The Exorcist* and *A Clockwork Orange*. Children are portrayed as being demonic or as potential subjects for reprogramming (in Walsh, 2011).

More recently some commentators have observed a ‘colonization’ of the risk agenda by police, particularly with respect to those convicted of sexual offenses, although this process has now been extended to include other types of offense. Despite the emphasis on community sentences playing a central role in risk management through the 1990s as Kemshall has argued, it is the police who come to dominate the management of risk in the community. This was clear in the role of the police in administering the sex offenders’ register and the administration of VISOR, the national system for monitoring individuals who are a risk to the public. Risk assessment tools can become vehicles for rationing services and allocating resources. Matching risks to the public through systems of dispersal between the public and private sectors, as we have seen above in relation to the UK probation service, has a potential for a ‘passing-the-buck’ approach to the management of criminal justice. This effectively weakens government responsibility for public safety (Kemshall, 2016).

Canton identifies three new risks created by the privatization of the criminal justice systems. First, it is unclear whether commercial companies could (or even should) have regard to the public interest. Second, it is in the nature of capitalist enterprise to expand, and privatization will unavoidably have a net-widening and inflationary effect on an already bloated penal system. Third, there are areas in which the market should have no part to play. Criminal justice reflects societies’ duties towards the victims and offenders and should not be commercialized (Canton, 2016).

**Conclusion**

A theme which seems to run through criminal justice policy is that state intervention encourages bureaucratic waste and offender idleness. Policy-makers appear to have become engulfed in a wider search for security in a battle being waged against invisible and unknowable global dangers. Problem streams are characterized by conflicting discourses of risk associated with global economic crises, over-incarceration, risks associated with rapid deficit reduction, and the political need to look tough on serious crime. The balance between the need to maintain confidence in the criminal justice system and keep control of public expenditure is a recurring dilemma in social policy. However, individual responsibility does not automatically preclude state-centered welfare institutions (Taylor-Gooby, 2000). There is no doubt that absent parents, childhood abuse, drug and alcohol addiction, mental illness, and poor education are closely associated with crime, but they describe and reflect deep-seated socio-economic inequalities which divide society. Risk technology systems used in the criminal justice systems can only provide snapshots upon which to base judgements. The effectiveness and practicability of implementing risk-based policies
seems highly questionable while there remains no consensus as to what constitutes a risk. Risks are often invisible, complex and based on interpretation, and have been exaggerated, dramatized and minimized by policy-makers. The proliferation of risk management in criminal justice systems has yet to be fully justified.

There is a belief that the machinations of the market can become more efficient and ultimately benefit society by providing financial incentives to rehabilitate offenders in the community. However, as has been suggested above, there are a number of reflexive risks emanating from this policy. There is the risk that the deprofessionalization of probation will ultimately lead to greater and not reduced levels of incarceration. This will ultimately cost the state more. The risks inherent in privatization could prove to be a false economy.

References


**Internet references**


