
Understanding risk in criminal justice

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Open University Press

Series editor's foreword

Understanding Risk and Crime is the ninth book in Open University Press' successful *Crime and Justice* series. The series is now established as a key resource in universities teaching criminology or criminal justice, especially in the UK but increasingly also overseas. The aim from the outset has been to give undergraduates and graduates both a solid grounding in the relevant area and a taste to explore it further. Although aimed primarily at students new to the field, and written as far as possible in plain language, the books are not oversimplified. On the contrary, the authors set out to 'stretch' readers and to encourage them to approach criminological knowledge and theory in a critical and questioning frame of mind.

Professor Kemshall is the leading UK expert on the concept of risk as applied to issues in crime and criminal justice. She has written outstanding books and articles on the topic, particularly in relation to probation work and to the risk assessment and management of sexual and violent offenders. Her writing displays the unusual combination of depth of theoretical analysis, detailed knowledge of policy and practice, and ability to present complex ideas in a straightforward and readily comprehensible manner. In this book, her main focus is upon key arguments and evidence relating to the growth of new forms of penal thinking and practice centered around the organizing principle of risk: what is now widely referred to as the emergence of forms of 'actuarial justice' or a 'risk penalty'. She frames the discussion within the broader debates on risk inspired by major social theorists such as Beck and Giddens, including its integral significance to life in late modern societies, but grounds her account firmly in research evidence about particular processes of risk assessment and risk management, as well as practical and policy developments in individual criminal justice institutions. Thus, in addition to chapters on the 'rise of risk' and its new cultural meanings, and on its role in criminal justice generally, there are chapters on the tools used to assess levels of risk, on the practices of multi-agency public protection panels, and on the short and long term implications of risk focused thinking

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in probation, policing and the crime prevention field. In doing so, she raises major concerns associated with exaggerated attention to risk, including the erosion of individual rights and civil liberties, the widening of nets of social control, the growth of privatized 'fortress' cities, and the rise of authoritarianism.

Other books previously published in the *Crime and Justice* series – all of whose titles begin with the word 'Understanding' – have covered criminological theory (Sandra Walklate), penal theory (Barbara Hudson), crime data and statistics (Clive Coleman and Jenny Moynihan), youth and crime (Sheila Brown), crime prevention (Gordon Hughes), violent crime (Stephen Jones), community penalties (Peter Raynor and Maurice Vanstone) and white collar crime (Hazel Croall). Two are already in second editions and other second editions are planned. Other new books in the pipeline include texts on prisons, policing, social control, criminological research methods, sentencing and criminal justice, drugs and crime, race and crime, psychology and crime, and crime and social exclusion. All are major topics in university degree courses on crime and criminal justice, and each book should make an ideal foundation text for a relevant module. As an aid to understanding, clear summaries are provided at regular intervals, and a glossary of key terms and concepts is a feature of every book. In addition, to help students expand their knowledge, recommendations for further reading are given at the end of each chapter.

Mike Maguire
2003

Acknowledgements

I have experienced extensive support during the years I have researched risk in criminal justice and probation work. Thanks are extended to all those who have contributed so generously to my work over this time, and indeed continue to do so.

Particular thanks to Chris Neville for friendship and kindness, and to my colleagues at DeMontfort University, who continue to support my work with unstinting generosity. Warm thanks to Mike Maguire, series editor, who provided coaching and sound advice in the early stages of writing this book. My initial project on risk was sponsored by the Economic and Social Research Council's 'Risk and Human Behaviour' programme grant number L211252018.

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Introduction

Risk assessment and its appropriate management is 'big business' (Adams 1995), fuelled by a growing precautionary principle in which risk is to be avoided at all costs. Crime risks have been no exception. The identification, assessment, prevention and management of risk have become big business in crime policy, practice and research. The extent of this preoccupation has led some commentators to claim that we have entered a new era of justice, 'actuarial justice', that is the management of crime opportunities and risk distribution rather than the management of individual offenders and behaviours (Feeley and Simon 1992, 1994). Reichman (1986: 153) has characterized this as 'an insurance concept of crime control' in which hazard reduction strategies such as zero tolerance, hard targeting, surveillance, selective incapacitation and exclusion are key features (Kemshall and Maguire 2001). In policing for example this has led to a shift from the 'reactive investigation of individual crimes' to a 'strategic, future-oriented and targeted approach to crime control' (Maguire 2000: 316). In probation practice the traditional rehabilitative focus has been replaced by a risk management and public protection agenda (Kemshall 1998).

The emergence of risk in crime policy has been linked to the demise of the modernist penal agenda, the perceived failure of the rehabilitative and individual corrective aims of modern penality (Garland 1995). The 'grand narrative' and traditional disciplinary techniques of modern penality are in decline, superseded by what Pratt (1995) has called an 'informative system' in which the production and exchange of risk knowledge is a central feature. The extent to which actuarial justice has displaced traditional penal practice is a matter of considerable debate (Garland 1995; Pratt 2000a, 2000b), but the inexorable rise of the 'logic of risk' (Ericson and Haggerty 1997) is manifest in many areas of contemporary criminal justice policy and practice. This book explores the role of risk in contemporary British criminal justice, and in particular the role of risk in framing current penal policy within the **risk society**. By drawing on key areas of criminal justice practice such as

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policing, probation and situational crime risk management, the case for a new risk-based penology will be explored.

The book is divided into seven chapters. Chapter 1 examines the rise of risk and the emergence of a risk-based *discourse* in contemporary society. Chapter 2 goes on to examine broad risk trends in criminal justice and the recent case made for 'actuarial justice'. In Chapter 3 risk assessment and the emergence of key tools are reviewed. Chapters 4–6 provide exemplars of risk in contemporary criminal justice policy and practice in the areas of probation, community policing and crime prevention.

The final chapter concludes by pulling the threads together and briefly revisits the case made for risk-based criminal justice.

chapter one

The rise of risk

Introducing risk

What is risk?

Summary

Late modernity and the risk society: new risks or new ways of looking at risk?

The contention that the distinction between traditional and late modern risks is overstated

The thesis that risks are under-regulated and weakened social control of technology has contributed to risk proliferation is incorrect

The claim that the end of traditional bonds exacerbates risk is overstated

The multiplication of risk is overemphasized

Summary

Risk and Crime

The demise of the modernist agenda

Postmodernity and the rise of risk

Summary

Further reading

Introducing risk

Risk has been described as the ‘world’s largest industry’ (Adams 1995: 31). It is ubiquitous, pervasive, diverse and global. As one headline put it: ‘Warning: You’re Risking Death by Being Alive’ (Alice Thomson, *Daily Telegraph*, 27 October 2000: 21). A plethora of risks for the twenty-first century were noted, from risks to newborn babies from their mothers’ kisses, to vaccines, cot death, food risks and paedophile abductions enroute to school. As the writer put it: ‘Being a mother in the 21st century is a fraught business. Everyday there is another reason to worry’.

Myriad risks confront us, from voluntary risks we choose to run (such as

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smoking, alcohol use, bungee jumping) to involuntary risks imposed upon us (such as environmental pollution), from personal risks (such as choices on lifestyle) to public risks (such as crime). Risks also come in different sizes, with differing levels of probability, impact and consequence. Ranging from low probability/high consequence risks such as nuclear discharge to high probability/low consequence risks often associated with small-scale gambling (for example many of us regularly spend £1.00 on a lottery ticket for the chance of winning millions but consider the high risk of loss as 'worth it'). Some risks are localized, associated with living in 'high crime' areas for example, and some are global with their origins far from the final site of impact, such as acid rain or the risk of flooding from climatic change. The word risk can carry different meanings, positive and negative connotations, and different levels of tolerance and acceptability. Subsistence farmers may choose to live on flood plains for the added benefit of irrigation and soil fertility (Wildavsky 1985), and view the risk of flooding as a natural, seasonal hazard that has to be accepted. Involuntary risks are generally more resented than voluntary risks (Slovic et al. 1980), hence public 'NIMBY' (not in my back yard) reactions to the location of hostels for offenders or the release of paedophiles into the community.

Risk then is a complex phenomenon, not simply about calculating the odds of 'mischance', 'hazard' or 'danger'. While often presented as a 'commonsense' value-neutral term (Adams 1995), risk is increasingly recognized as highly politicized and value-laden (Douglas 1992), with views over probability, impact and consequence hotly contended. As Lupton (1999a: 59) puts it: 'Debates and conflicts over risk have begun to dominate public, political and private arenas'.

What is risk?

The *Oxford English Dictionary* (1989: 987) defines risk as: 'Hazard, danger; exposure to mischance and peril'. The contemporary interrelationship of hazard, danger and peril, and the negative connotations of risk, has a long history. Ayto (1990: 446) notes the derivation of the English word 'risk' from both the seventeenth-century French term *risqué* and the Italian word *risio*, both meaning to 'run into danger'. By the seventeenth century English usage had clearly associated risk with 'peril, jeopardy, danger, hazard' (*Oxford English Dictionary* 1989: 987), later reflected in Dr Johnson's dictionary in 1755 (Alaszewski 1998). This usage was paralleled by the use of risk to mean 'taking a chance' epitomized by the Latin *risicum*, and the association of risk with gambling (for example the Roman soldiers dicing for Christ's clothes at the foot of the cross). The association with gambling inevitably rooted risk in the world of probability, literally 'calculating the odds', particularly from the seventeenth century onwards as formalized mathematical models of probability and statistical models were

developed (Hacking 1987, 1990). The increasing linkage of risk to danger and negative consequences was also significant, particularly in areas such as marine insurance where calculating safe return to port with precious cargoes and insuring appropriately against loss was important. The debt owed to Shylock in Shakespeare's *Merchant of Venice* was incurred through a shipping loss. The spread of the slave trade and the growth of shipping fuelled the emerging insurance industry (for example Lloyd's of London), and the use of statistics, particularly on death rates, enabled the rise of 'prudential insurance' based upon actuarial tables (Hacking 1987). In 1762 Equitable Life set up the first life assurance actuaries, calculating life assurance policies based upon statistical tables of death rates among the population as a whole. (This company was sold to avoid bankruptcy in 2001, a situation that arose through its miscalculation of future financial risks and subsequent over-exposure on policies sold.)

By the nineteenth century risk was in common usage, not only as part of the lexicon to describe actions, events or games of chance, but also as part of an industry concerned with the prediction of, and insurance against, future risks. The development of mathematical models and the application of statistics moved insurance from the realm of personal calculation of misfortune to a formalized probability calculation of risk (Daston 1987). Probability and the possibility of prediction were linked and risk calculations were seen as the way to 'tame chance' (Hacking 1987, 1990). The vagaries of nature could be subject to probability models of calculation. However, understanding of risk was not entirely negative or risk averse. During the eighteenth and nineteenth centuries risk had a key role in the development of capitalism, with risk-taking acknowledged as a key feature of entrepreneurship and venture capital (Higgs 1931), a feature of capitalism that continues to the present day.

Actuarial risk, or the calculation of risk probabilities derived from statistical models based on aggregate populations, was extended to numerous areas of social and commercial life throughout the twentieth century (Rowe 1977). Insurance spread from the merchant and corporate spheres into the personal realm with the extension of personal and life insurance to other sections of the population. Workers began to self-insure against the possibility of accidents through friendly societies such as the Cooperative Society, and mutual societies were formed as insurance against the possibility of unemployment and illness. Working-men's clubs and societies often gave the security of insurance as well as social and leisure opportunities, based upon the pooling of collective resources against the possibility of individual risk. After the Second World War and the Beveridge Act 1948, the welfare state adopted such a notion of collective insurance through systems such as National Insurance and the National Health Service.

The twentieth century also saw the rise of high consequence/low probability risks such as nuclear discharge arising from new technologies

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and the process of industrialization (Douglas 1986). The need to accurately assess, manage and contain these 'manufactured risks' (Beck 1992a, 1992b; see also Giddens 1990, 1991) located risk in the scientific and engineering arenas for much of the century (Ansell and Wharton 1992). This resulted in an 'artefact' approach to risk, in which risk was viewed as a material object amenable to objective calculation and measurement (Horlick-Jones 1998). The 1983 Royal Society Report framed risk in entirely these terms, locating concerns with risk firmly in the arena of science and engineering. The society's main concerns were with the accurate and objective identification of risks and their appropriate management, and in correcting 'exaggerated' public perceptions of risk or public failures to act appropriately upon risk information (for example to increase the efficacy of public health campaigns). In addition to its artefact approach this view of risk also assumed a *homo prudens* view of risk actors, the prudential (hu)man who will make the correct and rational choice if only given the right information by experts. Risk information is presumed to be the preserve of experts, and the relationship between experts and lay public is a didactic one. Accidents for example are seen as caused by human fallibility and error (Reason 1990) that can be learnt from and eradicated from future at-risk situations. 'Zero-risk' human is the aim, held up by large corporations such as Shell as the ultimate risk-aware worker (Visser 1991).

The notion of *homo prudens* is usually accompanied by inquiries and hindsight bias in which both blame allocation and learning are key features. While the imperative is that 'this must never happen again', it often does (Sheppard 1996). Adams (1995: 16) contends that this is because 'Zero-risk man is a figment of the imagination of the safety profession'. We are risk-takers as well as risk-averse, *homo aleatorius* or gambling (hu)man exists, and in many walks of life is positively lauded and rewarded. As Adams (1995) points out, the oil industry owes its existence to the early risk-taking entrepreneurs and 'wild-cats'. Risk then is often double-edged, balancing the benefits of positive risk-taking against our risk aversion to the costs that may follow.

In the early twenty-first century the 'myth of calculability' has been challenged (Reddy 1996), not only by a fin-de-siècle preoccupation with risk and safety (Furedi 1997) but also by the changing nature of risk. This change has been linked to the transformation from **modernity** to **late modernity** or **postmodernity**, concepts that are integral to debates about the contemporary nature of risk. Sociological debates about the extent and nature of this transformation abound (Kellner 1999), along with disputes about the relative usefulness of the terms modernity, late modernity and postmodernity. For those like Giddens (1990, 1998a, 1998b, 1999) who see the transformation as a gradual one, the term late modernity is preferred; for those who see a more radical departure (Leonard 1997) the term postmodernity is used. In brief (a further discussion is provided

in the 'Risk and crime' section), the modern age or modernity has been largely characterized as the historical period stretching from the late eighteenth-century Age of Enlightenment to around the 1970s. The age is characterized by faith in reason, scientific knowledge, progress, capitalist development (particularly in the west), and an evolving social order (Leonard 1997).

Contemporary social theorists such as Giddens (1990, 1998a, 1998b, 1999) and Beck (1992a, 1992b, 1999) have argued that since the severe challenges to capitalism in the 1970s the relationship between labour and capital, and between citizen and state has been radically transformed. This is most readily epitomized by the global market, the spread of information technology and technological advances that have radically redistributed both markets and sites of production. This has been paralleled by cultural and social transformations (Leonard 1997) in which claims to universal truths are increasingly doubted and science and reason are subject to challenge and dispute.

Postmodernity describes the period from the late 1970s onwards and the social transformations emerging at the start of the twenty-first century. Postmodernity is characterized by global risks, indeterminate and contingent knowledge about the probability of such risks, and uncertainty over future outcomes and impacts. Postmodernity has been characterized as 'the end of certainty' and the 'politics of difference' (Leonard 1997: 12), a period of late capitalism in which flexibility of labour and capital supply, mass global production and ever-shifting markets are the key features.

Criminologists have also adopted these terms in contemporary analyses of risk and crime, with attention focused on the relationship between risk, postmodernity and new penal forms (Feeley and Simon 1992, 1994), and the centrality of risk to emerging forms of social control (Rose 1996a, 1996b, 2000) (this is discussed in more detail in the section 'Risk and crime').

What Giddens (1990, 1991) and other commentators have dubbed the modern age was characterized by known and calculable risks, predictable and hence controllable. 'Artefact' risk was rooted in objective, scientific knowledge, part of a world in which both the social and the natural 'may be measured, calculated and therefore predicted' (Lupton 1999a: 6). Risk was known through statistical models and the language of probability (Bernstein 1996), based upon knowledge of patterns and frequencies that 'happen regularly enough and often enough in a whole population of people to be broadly predictable, and so insurable' (Giddens 1998a: 27). In essence, aggregated knowledge of past events assisted future prediction (for example death rates to predict life expectancy, previous convictions to predict future offending). However, Beck (1992a, 1992b) and Giddens (1990, 1991, 1998a) have argued that risks in *late* or *postmodernity* are characterized by their global nature, uncertainty, indeterminacy and our

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contingent knowledge of them. The risks facing us constantly outstrip the tools and technologies used to assess and 'tame' them, producing what Giddens in his 1999 Reith lectures referred to as the 'runaway world' (Giddens 1999). The industrialization and technological developments of late modernity produce risks, or 'manufactured uncertainties' and unintended consequences, often knowable only with hindsight. As Giddens expresses it: 'We just cannot know beforehand when we are actually "scaremongering" and when we are not' (Giddens 1998a: 30). We cannot know the consequences of future risks until we get there.

Late modernity has transformed risk from a probabilistic, calculable artefact to risk as uncertainty, plagued by indeterminate knowledge and subject to a number of 'it depends'. Calculating risk and choosing subsequent courses of action is itself infused with risk as customary patterns of responding to the world are challenged (Giddens 1998a).

The individual's life course is no longer mapped out with any certainty. Choices and the subsequent risks arising from such choices must be individually navigated. However, little help is given 'as to which options should be selected' (Giddens 1991: 80), leaving the individual in a constant state of **reflexivity**, constantly processing and adapting to risk information and myriad risk choices. This personal navigation increases both personal responsibility for risk decisions, and personal anxiety about getting such decisions right. Self-monitoring and anxiety are key features of individual experiences of risk in late or postmodernity.

Summary

Myriad risks confront us and risk has diverse meanings. While often presented as a value-neutral term, risk is actually a highly politicized and contentious concept, and has changed both in terms of meaning and usage through history. The modern view of risk was risk as artefact, measurable, knowable, calculable and predictable. Risks in late or postmodernity, as it has been dubbed, are characterized by uncertainty, indeterminacy, contingency and their global impact. Contemporary risks also require personal choice and navigation, resulting in increased uncertainty, anxiety and reflexivity.

Late modernity and the risk society: new risks or new ways of looking at risk?

The late twentieth century saw a major paradigm shift in social theory with a growing emphasis upon the consequences of postmodernity, in particular the consequences of industrialization and globalization and the rise of what Beck (1992a) has labelled the 'risk society'. The multiplication of risk

and its increased spread and impact within the compressed social space of globalization have become key issues for contemporary theorists (Turner 2001). The risks of traditional society have been characterized as fatalistic, framed by a pre-Renaissance discourse of fate in which risks were seen as the product of destiny and the 'will of the Gods' (Green 1997). The Black Death was seen in exactly these terms, unseen and spreading at the whim of the Gods. With the hindsight of the twenty-first century we see the Black Death rather differently: as a powerful disease carried by fleas on the back of rats, transported across the world from the Middle East as shipping and trade routes expanded. However, for the villagers of Eyam in Derbyshire, all but wiped out by the Black Death, this must have seemed like the terrible hand of fate.

The risks of modernization have been characterized as increasingly calculable, knowable and controllable through mathematical models and the advances of science. The risks of nature could be tamed, and the 'will of the Gods' need not be accepted. Advances in medical science in the nineteenth century for example began to tame the threat of numerous 'natural' risks such as cholera, typhoid, smallpox and bubonic plague as disease was subjugated to the discipline of science (Adams 1995). However, Beck argues that this very industrialization of society itself produces risk: 'new technologies', 'atomic fallout', 'ecological disaster', all arising from the very processes of science and technology associated with a relentless modernization, industrialization and globalization (Beck 1992a). For Beck, these risks are different: global in nature, high impact, unseen and 'open to social definition and construction'. No longer is nature the source of risk, it is nature itself which is threatened by risk. The risk society is also peculiarly defensive, characterized by fear and anxiety: 'the commonality of anxiety takes the place of the commonality of need' (Beck 1992a: 49). While the 'class society' of modernity had been concerned with the equitable distribution of goods (everyone getting a fair share of the pie), the risk society is concerned with the equitable distribution of risks, and in particular the avoidance of risks: 'one is concerned not with attaining something good, but with preventing the worst' (Beck 1992a: 49). The risk society's central feature is the 'precautionary principle', better safe than sorry, underpinned by a critique of the Enlightenment's promise of progress (Leonard 1997) and lack of trust in experts (Freudenberg 1988, 1993). The risk society is also characterized by the increased democratization of risks. While Beck does acknowledge that disadvantaged groups are likely to experience the highest degrees of risk and have the least resources to successfully manage them, we are all exposed to some degree. Acid rain is no respecter of social class.

However, some commentators argue that Beck's notion of the risk society is overstated (Steuer 1998; Turner 2001). Critiques of the risk society tend to cluster around the following themes: