crime and risk

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Risk and crime control

Beginning about the mid-1980s, criminologists began remarking on the ways in which the governance of crime – from policing and crime prevention to sentencing and prison organization – had moved away from a focus on reforming offenders toward preventing crime and managing behaviour using predictive techniques. Some noted that whereas the principal concern of twentieth-century 'penal modernism' had been to understand and scientifically correct offenders, increasingly that was being abandoned in favour of focusing on managing their behaviours (Cohen 1985, Simon 1988). No-one was much interested anymore in the motives and meanings of these people. Instead what was at issue was what they did, how to control them, and how to minimize the harms they generated. Offenders and their offences were coming to be reframed less as the pathological products of societal and psychological breakdowns who needed to be therapeutically reformed, and more as bundles of harmful behaviours and potentialities.

At the same time, other criminologists observed that new techniques and new concerns were emerging in crime control. Reflecting the focus on behaviours, they detected a new emphasis on shaping the environment, and especially the built environment, in order to make crime difficult or impossible (Shearing and Stenning 1985, Reichman 1986). Increasingly, crime was seen as a matter of people taking opportunities rather than in terms of their inappropriate attitudes or disadvantaged backgrounds. Crime prevention accordingly was moving away from building up supportive

environments and improving economically deprived neighbourhoods. The new focus was increasingly on designing crime-proof buildings, crime-preventing streetscapes and communities. As David Garland (1996) was later to term it, interest was focused on 'criminogenic situations'. Reducing the risk of crime by restricting criminal opportunities had become critical.

There were other, linked changes also being reported. Penal modernism – the optimistic correctional approach that deployed scientific knowledge in order to reform offenders – was vitally interested in offenders' pasts in order that they could be understood as individuals. The emerging risk techniques in crime control were also interested in offenders' pasts, but in a different way. Emerging techniques tended to use statistical methods to identify correlations between pre-existing conditions and criminal action and to treat these conditions as 'risk factors'. These factors could be used especially to identify potential offenders and change their ways before they offended, rather than correcting them after offending. Furthermore, what was now of interest was to use such information to assign individuals to a certain risk pool: it was this risk-categorization rather than the unique individual that was of interest.

This had been a phenomenally successful model in the medical sciences, of course. By the 1970s it was already the case that all manner of afflictions could be detected in advance by the presence of certain risk factors such as fatty diet and sedentary lifestyle, a family history of certain cancers or heart disease and so on. By modifying our diet and lifestyle, taking drugs or in extreme cases undergoing precautionary surgery, those of us identified as 'at risk' may ward off some dreaded cancer or debilitating disease. Over the last half century, almost every aspect of our lives has been affected by this ascendant risk model of government. The design of cars, planes, roads, buildings and household equipment; the shaping of our bodies both inside and out; the production and consumption of food and clothing; patterns of saving and investment; education and training – all these and more are now 'governed by risk'. And why not? Who would not wish to reduce their exposure to disease, injury, loss or premature death? Who would not want to mitigate financial harms through some form of insurance? Perhaps it is not surprising that, sooner or later, crime would come to be

approached in the same way. In fact it's surprising that risk management techniques came to crime control so late in the piece, for contiguous fields such as fire prevention had been developed on similar principles almost a century earlier.

By the end of the twentieth century, risk had become a predominant way of governing all manner of problems. Prevention is better than cure. Of course it is true that even with respect to governing health through risk techniques there are political and moral dilemmas. Many people refuse to control their smoking or diet on the basis of a personal preference. The introduction of seat belts met with some resistance as an infringement on personal freedom. Fluoridation of the water supply to prevent tooth decay created pockets of alarm and protest. Yet for the most part, these were objections focused on specific issues, and were short lived, individual or local struggles. The model of risk itself – the use of predictive statistical knowledge linked to techniques of harm prevention – overwhelmingly has been regarded as one of the benefits bestowed by science. However, with respect to the governance of crime, this is not altogether how things have gone, and especially not in criminology.

Broadly speaking a fissure has opened up that divides opinion across almost the whole range of criminological and penological concerns – legislation, crime prevention, policing, sentencing, prison regimes and post-release interventions. On one side are those who take a generally positive view of risk techniques. Frequently those supportive of the use of risk techniques work in psychology and related disciplines, and/or in government offices, police and correctional agencies and institutions. On the face of things their views are not unreasonable. They seek to reduce crime victimization, to lower the public cost of crime, to deflect individuals from a life of crime and punishment, and to use risk techniques to provide services to reduce the risk of prisoners reoffending. Set against these so-called 'administrative criminologists' are their traditional foes – a great number of academic criminologists and certainly most of those coming from critical criminology and social justice disciplines. The warring camps will be depressingly familiar to anyone with even a passing knowledge of criminology, for they are traditional enemies. But why has risk become another of their interminable battlegrounds? And why do increasing numbers of lawyers and judges voice concerns with, and opposition to, risk-based crime prevention?

For critical criminologists, by the late 1990s, risk-based approaches were seen to have played a key role in the emergence of the 'culture of control' in which the reformist and socially inclusive optimism of modernist penal policies has been submerged beneath an exclusionary and punitive approach to crime. Because of its focus on behaviour rather than therapeutic correction, and on offenders as risks to others rather than as disadvantaged people struggling with the challenges of life, the new risk techniques were seen by critics to mesh well with an emerging 'new punitiveness' (Garland 2001, Pratt et al. 2005). Examples that support this view are not hard to find. This is not only because they erode 'progressive' reformism in criminal justice, but also because they have often become high-profile political issues in the media and public consciousness. For example, 'three strikes and you're out' and similar tariff-based sentencing policies focus on the risk that an offender represents rather than on the seriousness of the particular offence at issue. For quite minor offences – but offences that are seen to be part of a pattern of activity that indicates a high risk of future crime – offenders can be imprisoned for long periods. These approaches to sentencing collide with almost taken-for-granted principles of proportionality between wrong and punishment, for a relatively minor offence may result in a lengthy risk-based sentence. They also fly in the face of therapeutic thinking that sentences should reflect the correctional needs of the offender as judged by experts.

Other examples exist in abundance. Curfews imposed on troublesome teenagers and electronic tagging of sex offenders in the name of risk reduction, are condemned as doing nothing to reform the offender while limiting the freedom of many people whose offences are minor. They are also viewed as turning the community into an extension of the prison system. Another prominent instance includes 'Megan's Laws' and 'Sarah's Laws', where in the name of risk minimization the identities and often the addresses of former sex and violence offenders are made public. The stated aim is to warn people in the neighbourhood to take extra precautions in view of this risk in their midst. These laws have become associated with accusations that they promote vigilantism and victimization of past offenders who may be trying to reform themselves or whose offences may in fact be quite mild. They may also create living hells for the families of the offenders.

Such ways of using risk to reduce crime are viewed as extending punishment into an indefinite future after release from prison, and as making unbearable the lives of former offenders and their families without this technique actually being proven to reduce crime victimization (Levi 2000). On top of this, a 'new penology' based on risk is seen to be shifting emphasis from correction to risk-reducing incapacitation or warehousing (Feeley and Simon 1992, 1994). A prime example is taken to be the imprisonment of many of those incarcerated under 'three strikes' laws, who are imprisoned in the name of reducing risk to the community but who receive little or nothing by way of correctional services while they are inside. The goal is simply to remove these 'risks' from society.

Alongside these changes, crime prevention moved from the margins to the centre of policing activities. Many of these new developments have been regarded by criminologists as deeply troubling. Reducing crime opportunities by creating 'gated communities', and the widespread installation of closed circuit television (CCTV) to monitor public spaces, are seen to create a paranoid society. In this view, intervening against the different, the unwanted and the merely annoying is a principal means whereby we are creating an 'exclusive security' (Young 1999). Pre-emptive intervention against 'pre-delinquents' and 'at risk' young people, 'threatening' gangs of youths or 'anti-social' groups of teenagers congregating in shopping malls inflict restrictions on those who may not yet have done anything dangerous or illegal. Crime awareness campaigns aimed at improving public safety are often regarded as increasing the sense of insecurity and adversely affecting the quality of life for all citizens. Such problematic and often worrying developments are viewed by critics as exemplary of risk techniques' *characteristic* forms. In what has become a new orthodoxy in critical criminology, risk appears overwhelmingly as a negative development in crime control and criminal justice, driving out the inclusive model of criminal correction and installing in our midst segregating practices and technologies.

Such critical criminological views reflect social theory's abiding pessimism about the present. It is epitomized by works such as Bauman's (2000) and Young's (1999) sociologies of the 'exclusive society' and Agamben's (2000, 2005) apocalyptic vision of the state of exception.

For Agamben, those who pose threats to security are consigned to a vulnerable form of humanity increasingly stripped of the rights and protections others take for granted, living a life deemed not worthy of living. In these accounts, criminal justice, public security and social exclusion blur together, and in the post-9/11, post-social-welfare state there seems little hope of change except for the worse. It is hard to disagree with many of the points they make, substantiated as they are by copious research.

However, these analyses pick up and maybe over-emphasize just one trend, albeit a powerful one, and they rarely suggest any way out of the nightmare they depict. I will argue that there are other trends and other possibilities with respect to risk. These include 'developmental crime prevention' and some forms of 'risk-needs' service provisions in prisons in which social reform programs and/or individual treatment are provided where a crime prevention risk-reducing effect can be demonstrated. Of course, as David Garland (2001) argues, these can be regarded as part of the culture of control, for they subordinate correctional reform and social assistance to techniques of crime prevention. As this implies, they will only be provided for offenders and the needy to the extent that they are shown to reduce crime risks.

This is a valid and important point. But they can also be seen as sites of resistance by the 'social' professions – psychologists, social workers, psychiatrists and so on seeking to maintain or defend the welfare orientations and the therapeutic corrections that so many criminologists complain are being swept away. More significantly, they can be seen as points from which more promising initiatives can be explored or launched. In this way they are possibly Janus-faced, offering at least *ambiguous* risk-based alternatives to the apparently desolate culture of control. 'Drug harm minimization' is likewise dangerous but promising. As will be seen, it offers therapeutic services and efforts to reintegrate and accommodate drug users in society in the name of reducing the total array of harms illicit drug use creates. On the other hand, it does impose expert domination and subjects therapeutic services to the test of reducing those actions and behaviours judged by experts to be harmful and risk-laden. It also has the potential to extend the net of social control, for example by the use of methadone programs as a 'chemical leash' for users. Whatever their other benefits,

methadone programs are intrusive and constraining, requiring users to report at frequent intervals to an approved drug agency, and often making them submit urine tests to detect illicit drug use. All of these risk-related formations have dangerous potentials. People who have not been convicted of an offence are required to restrict their movements, be available to surveillance and provide personal information. But they may also offer the potential for the reconfiguring of risk in more optimistic, socially inclusive and constructive fashion than is imagined by many of those opposed to crime control through risk techniques. Perhaps it is time, in the twenty-first century, to explore this 'uncertain promise' of risk.

Risk and criminal activity

At the same time, and with the same guarded optimism, it is also important to explore the ways in which social theory can reframe risk with respect to understanding the motives and ways of life that lie behind criminal offending. Positivist criminology has long attended to crime as risk-taking. Usually, it does so in a way that regards risk-taking as pathological. Thus 'short-term hedonism' produced by poor socialization, or 'thrill seeking' produced by the boredom of lower-class working life, are ideas that have been deployed by positivist criminologists (e.g. Miller 1958). These approaches tend to reduce risk-taking to the status of a problem leading to crime, and to attribute it to personal inadequacy and social malaise. This vision is in many ways a remnant of the nineteenth-century view of the poor as feckless, lacking proper prudence and needing an injection of discipline.

Such criminological work can readily be accused of class bias. For example, while some criminologists see crime arising from risk-taking as a response to the boring lives of workers, it is hard to believe that the lives of many white-collar males (including criminologists) are startlingly different when it comes to day-to-day excitement. Indeed, evidence abounds of white-collar workers engaging in binge drinking and illicit drug consumption on the night club circuit (Winlow and Hall 2006). Furthermore, this pathologizing approach to crime as

risk-taking is associated with treatment responses to teach better impulse control and deferred gratification. Consequently it can be accused of seeking to make the poor and especially the young modify their ways in order to conform to the moral standards of the middle classes and the requirements of public order bureaucrats. Other pathologizing criminological models, such as that of Hans Eysenck (1978) suggest that some people are driven to risk-taking because of problems with their autonomic nervous system. People with a 'slow' or unresponsive nervous system are believed to require more stimulus in order to provide levels of satisfaction. Such 'extraverted' individuals are driven to more 'extreme' activities – such as risk-taking – that have a high probability of being associated with crime. Of course, the same is seen to be true for sky divers, arctic explorers and many great achievers – and to be fair to Eysenck and his allies, they do recognize that risk-taking is also socially productive.

Sophisticated variants of this kind of criminology go on to argue that working-class risk-taking is linked to crime largely because there are fewer legitimate outlets for excitement open to the poor. Yet even such approaches still carry with them a baggage of determinism that many critical criminologists find problematic: an assumption that certain people are driven to crime by something in their bodies or their background. Against this kind of approach to risk-taking it is argued in ways epitomized by Jack Katz's (1988) *Seductions of Crime,* that the experience of risk can be analysed as a form of resistance and creativity. Common-or-garden shoplifting, for example, is too widespread across class lines to be explained in conventional terms as either the poor attempting to eke out a living or as evidence of the working classes trying to escape from the tedium of factory jobs. Katz explores the experiential phenomenology of such activities rather than trying to reduce them to an effect of some determining variable. He attempts to render these experiences intelligible as a form of risky flirting with the humiliation of capture that generates 'sneaky thrills', and thus provide excitement available to all. Perhaps the children of the middle class, standing to lose more, would find this even more thrilling, no matter how supposedly less boring their lives are than those of their working-class peers.

Some crime therefore can be understood as 'embracing risk', to use Baker and Simon's (2002) term. Such crimes may emerge as not needing

a pathological, determinist explanation. After all, the current world of consumer culture constitutes excitement as good, as normal and as desirable. Risk-takers who end up committing crimes in pursuit of excitement may thus embrace actions that embody mainstream values. Perhaps their misfortune, and their main difference from other people, is not their background or their nervous system, but that they choose to seek excitement and risk-taking in what is judged to be a 'subterranean', inconvenient or 'inappropriate' fashion (Matza 1964).

The work of 'cultural criminologists' and others has extended this work more recently, linking legally problematic risk-taking to broader themes extolling the virtues of risk-taking in contemporary consumer society. Key examples include writings on 'edgework' – for example extreme sports such as base-jumping (parachuting off cliffs or illegally off high rise structures), or the criminal financial speculation that has blossomed in the morally ambiguous cultural milieu of risk-taking created by the 'enterprise society'. However, even while exhibiting continuities with mainstream values of embracing risk, some criminal risk-taking may be seen as intertwined with resistance to a perceived dominant culture and agencies of authority. While it is easy to slip into romanticizing and patronizing in this way, nevertheless the act of resistance is often itself exhilarating through the risks it bears – even if this takes complex forms of fear, anger, arrogance and even cruelty.

This kind of personal orientation to risk and excitement is not necessarily new. Yet perhaps the expansion of consumer culture, coupled with the neo-liberal political emphasis on risk-taking as valued attribute in the 'entrepreneurial' society, combine to produce an environment in which crimes embracing risk become more attractive to many people, especially young people. At the same time, legitimate forms of risky consumption – such as 'lifestyle choices' associated with certain styles of dress and music, bodily adornment and attending night clubs and casinos – may have become more 'edgy'. That is, in the culture and environment of the consumer society, the boundary between legitimate and illegitimate is becoming more volatile or ambiguous. Resistance and flirting with crime even becomes a theme in many legitimate commodities ranging from alcopops to motorbikes. Perhaps here too, 'risk' offers uncertain lines of flight out of a present that many

commentators and young people alike see as being rendered unfree by a political over-emphasis on security. The allegedly hegemonic 'culture of control' seems to leave little room for resistance, yet risk-taking may be one of the key forms of such potentially transformative activity paradoxically generated by different facets of neoliberal, consumer society.

What may be particularly characteristic of the present era is that a heightened emphasis on risk-taking is colliding with a heightened emphasis on risk-containment. In other words, there have been risk-managing forms of government before now, but they have not been so pervasive, so sophisticated and so politically and culturally salient. Likewise, there have been plenty of examples of risk-taking crimes in the past, but perhaps now risk-taking has become much more widespread and so much more a part of everyday life. As a result more people, and especially more young people, are attracted to styles of living and to activities that have risk-taking as a key part of their make-up. Life may have become more exciting! Or at least there are more opportunities for excitement embedded in the everyday life of consumer society; they are evaluated differently, and more people are interested in taking advantage of them.

But to the extent that this is true, it is on a collision course with a governing focus that makes risk-taking more of a problem and that has developed more and more ways of regulating through risk-management techniques. These intervene in the interstices of everyday life and are more sensitive to 'risky' behaviour than previous ways of governing. In such an environment, especially one served so thoroughly by mass media hungry for spectacle and all too ready to report new 'shocks and horrors', everyone becomes more risk conscious. Borrowing from the old idea of 'deviancy amplification' (for example, Young 1974) in which actions beget social reactions which tend to exaggerate the difference of the initial action, we could speculate that we are caught up in a risk spiral. Perhaps more and more of life's experiences, both of the governed and the governing, are understood and experienced in terms of risk. And perhaps that spiral is pushing us toward something new. Certainly not necessarily all good, but not necessarily all as bad as risk theorists and the culture of control suggests. Just new, different, and as the future always is, full of potentials we can only guess at.

Approaches to risk and crime

For various commentators, all this emphasis on risk, whether as embracing or minimizing risk, reflects a society that has become risk obsessed. For the influential German theorist Ulrich Beck (1992, 1997, 2002), the current environment is characterized by 'risk consciousness'. From top to bottom, from international government to the ways private individuals govern their lives, we are said to think in terms of risks because the world has become a more risky place. It is not simply that there are more risks, for example associated with mundane matters such as the growth of towns and the massively increased use of the automobile. Rather, Beck's concerns are with global 'modernization risks' that are generated out of the unholy marriage of capitalism and technology. These threaten the survival of our species. Global warming, holes in the ozone layer, global financial crises, swine flu, nuclear contamination and the threat of nuclear holocaust are examples of catastrophic risks that seem to announce themselves without warning.

Because technological development is accelerated by capitalist desire for profit, it is said to advance faster than the means to register its potential harmful effects. Because governments are complicit in promoting technological and economic growth it is argued that the capacity to harm escaped democratic regulation long ago. We are reduced to picking up the pieces long after most of the damage has been done, or only brought to act when we are already well down the slippery slope to catastrophe. Such disastrous potentialities usually exist on the margins of scientific understanding, leading to a new era of disputes between experts over what is to be done. Ongoing disputes over greenhouse gas emissions are just one example. Yet the world's peoples are all affected by the reach of these threats. Indeed, as an effect of the global and unpredictable nature of such risks, many traditional risk-management institutions – national governments, trades unions, nuclear families – become obsolete. Unable to cope with these new threats, they are said to be hollowed out or dismantled, leaving individuals more exposed to risk.

Ironically, in the face of the unpredictable nature of this new risky and 'uncertain' world, and confronted by an associated decline in faith in expertise, the demand for risk-based security increases exponentially

as the sense of insecurity balloons out of hand. Equally ironically, the more that risk becomes the framework for dealing with problems, the more that new risks are revealed, thus generating further heightening of risk consciousness and a vicious circle of fear and securitization. It is a condition that many (for example, Ericson and Haggerty 1998) see as affecting the ways in which crime has become a much more prominent issue needing to be governed by new risk techniques.

This is yet another sociological nightmare scenario, and like so much of its kind it reduces the problems of existence to a single grand contradiction in historical development. There are many problems confronting this kind of theoretical analysis. Distrust of experts is not new nor is fundamental disagreement between them. Much of the demand for risk-based security can be traced to its demonstrated effectiveness in areas such as health, engineering and so on, rather than to catastrophic dangers created by out of control science and technology. Little or no evidence is produced to indicate that risk consciousness is as generalized or as novel as is claimed. Most of all, can we plausibly attribute such diverse phenomena as changes in family structure, early-warning testing for cancer, holes in the ozone layer, international terrorism, the changing (and disputed) fortunes of the nation state and the demand for increased security against crime – let alone the interest in risk-taking – to a single development? Maybe this has a political function, for it is explicitly a call to arms that makes for broad mobilization because of its seeming power to explain so much. But even if it is right, does it offer useful ways of thinking about crime and crime control in the twenty-first century? Or is it too abstract, or too vague and general to account for what is going on in such specific fields?

Nevertheless, some influential criminologists have tied their analyses to this model. For example Ericson and Haggerty's (1998) analysis uses exactly this theory to explain why and how contemporary policing has been transformed by risk consciousness, risk institutions (notably insurance) and risk techniques. Hebenton and Thomas' (1996) work likewise has used Ulrich Beck's approach to understand the current focus on the risk management associated with sex-offender laws. Both of these will be discussed in the next chapter. But other approaches are available that might not share the same kinds of difficulty created by using such a grand theory to explain rather specific phenomena.

Risk and governmentality

For the most part, analyses of risk and criminal justice have preferred rather more modest theoretical schemes. Probably the most influential framework for understanding risk minimization has been that of governmentality, an approach that maps out the techniques and rationalities in terms of which government takes place. For example, crime prevention can be understood as shaped by the political turn toward neo-liberalism with its stress on cost-effective governance, in which framework prevention is regarded as more effective than punishment after the event. This governmentality approach is rather hostile to 'grand theories', preferring to focus on the contingent and specific turns of history and politics. The prominence of risk appears as something emerging out of a variety of developments that follow no course set out by some motor of history such as the forces and relations of production, or that appears as the effect of a grand transformation of modernity such as Beck envisages. In this way, governmentality tends to see the present as contingent, and the future therefore as open and malleable. Things needn't be as they are now – hence the future too appears as more open to political possibilities. It is also an approach that is more at ease than most theories with the uncertainties and ambiguities in the way events occur.

By destabilizing the present in this way, and avoiding visions of unfolding historical logics or contradictions, governmentality seems to me to have considerable potential for optimism about changing the future, even if some of its practitioners do not emphasize this aspect. In keeping with this contingent view of history, governmentality is much more concerned to map out the diversity of risk-based approaches to government, and their distinct genealogies, than to collapse them all into one unified category of risk or risk society. For example, writers in the risk society tradition are little concerned about differences between the risk model of public health oriented drug harm minimization and the aggressive and criminalizing risk models (such as workplace and school drug testing) used by the War on Drugs. As both reflect a risk-focus, they are seen to fit with that theory. But clearly their political implications, their implications for crime control, and their implications for the lives of drug users, are significantly different. Governmentality on the

other hand is closely concerned with the different implications of these various configurations of risk with respect to the way we are governed. It focuses on the kinds of subjects government programs wish to make us into – for example, irrational 'drug addicts' versus rational but drug-dependent 'drug users'. It makes central the specific techniques through which such subjects are controlled and shaped, such as needle and syringe exchanges versus compulsory detox facilities. And it attempts to make clear the costs to our lives of being imagined and moulded in such divergent ways. It is precisely because of its strengths in these respects that this book will largely adopt governmentality with respect to understanding risk in criminal justice.

This is not intended to imply that governmentality can help only in the understanding of 'state' government programs, such as those of criminal justice. 'Government' in this approach refers to any way of shaping conduct, right down to the ways in which shopping centres try to govern young people's 'loitering', or individuals try to govern their lives by subjecting themselves to certain risk regimes, such as making their homes more secure against crime (O'Malley 1991). Nor, of course, does it imply that only risk-*minimizing* governance is its subject. Jonathan Simon (2002), for example, has used governmentality to understand how the rise of 'extreme sports' can be linked to governmental programs of neo-liberalism and their stress on risk-taking as enriching (in all senses of the word). As noted above, this broad political rationality generates a cultural milieu in which risk-taking may be regarded as a 'good thing' and be applied to all manner of domains other than those originally imagined. In the nineteenth century, prudence had been such a strong requirement imposed on the mass by Victorian liberal politics, that risk-taking was generally frowned upon except among a privileged few who could afford this luxury. Rich stock market investors, explorers, military heroes, missionaries might all have been approved risk-takers, although in each case their qualification and domain of action was tightly circumscribed. Nowadays (even after the 2008–09 global financial meltdown) we are all supposed to be 'entrepreneurs' of our own lives, to take risks on our own behalf and so on. Therefore it is not surprising when investment bankers pick up such approved ideas and apply them in a 'subterranean' fashion to investment activities that come to be defined as criminally reckless (Smith 2005). One way of looking at this