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# The Uncertain Promise of Risk

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Conventional debates over risk in criminal justice (and more generally) tend to fall into several traps. These include the assumption that diverse configurations of risk can be collapsed into a single category, to be contrasted *en bloc* with other approaches to government. However, by attending to the diversity of forms of risk we can begin to develop certain principles that could be put forward as tools for thinking about the promise and limitations of ways of governing by risk. Through contrasting actuarial justice with a number of other configurations of risk-centred government, such relevant issues emerge as whether specific techniques of risk are inclusive or exclusionary, whether they set up a zero-sum game between victims and offenders, and whether they polarise risk and uncertainty. While this is promising, the paper also concludes that a democratic politics of *security* may provide more promise than a politics of risk *per se*.

Liberalism has a distinctly ambivalent orientation to risk, thought of as a technology of government that is based on the probabilistic prediction of futures. Since the late 18th century, risk techniques such as insurance have been promoted as a good that could provide security to the middle classes, teach the poor thrift and reward them for their responsibility. By the end of the 19th century, there were comparatively few households in western Europe not covered by insurance of some sort (O'Malley, 2002; Defert, 1991; Eghigian, 2000). During the first half of the 20th century, contributory social insurance became the cornerstone of social security, positively regarded as maintaining the independence and dignity of labour through the requirement for financial contributions in exchange for benefits. More recently, neo-liberal governments have continued supporting most forms of contributory social insurance for this reason. They have promoted alongside these — and preferably superseding them — multiple regimes in which security of health and property are *purchased* through a multitude of risk-reducing programs and technologies. In such ways, risk-centred government has been valorised as contributing to freedom in liberal societies where uncertainty — especially in the form of the free market — is also constituted as a necessary condition of the wellbeing of all.<sup>1</sup>

Yet this is only half the story. From its foundations, many liberals have regarded statistical probability and government through predictive techniques as compromis-

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ing freedom. In the 19th century, prominent liberals voiced concerns about the implications of statistical prediction for the sanctity of free will. As Porter (1985, pp.164–65) argues, after the publication of Buckle's quantitative *History of Civilisation* in 1847, debates on this issue became at least as prominent and urgent as those generated by Darwin's *The Origin of Species*. Thus Porter quotes an outraged commentator from 1860 suggesting that:

[a] protest may safely be entered against this modern superstition of arithmetic, which if acquiesced in, would seem to threaten mankind with a later and worse blight than any it has yet suffered — that, not so much as a fixed destiny, as of a fate falling upon us, not personally, but in averages.

In the late 20th century, and into the present, these fears and suspicions are alive and well. Peter L. Bernstein (1998), in his phenomenally bestselling *Against the Gods: The Remarkable Story of Risk*, suggests that probabilistic prediction of the future creates a “prison” that consigns us to the endless repetition of past statistical patterns over which we have no control. “Nothing we can do, no judgment that we make, no response to our animal spirits, is going to have the slightest influence on the final result” (p. 229). Bernstein recruits John Maynard Keynes to his cause, for Keynes argued that there was no possibility of using statistical methods to forecast such significant events as whether there will be war next month, or whether stock market prices will rise or fall tomorrow. These are issues subject to what he called “uncertain knowledge”. “About these matters”, said Keynes, “there is no scientific basis on which to form any calculable probability whatsoever. We simply do not know!” Bernstein concludes that a “tremendous idea” lies buried in this statement. “Rather than frightening us, Keynes’ words bring great news: we are not prisoners of an inevitable future. Uncertainty makes us free” (p. 229).

This same unease about risk, especially when translated into government, characterises much of critical social theory's analysis of the place of risk in contemporary society. For Ian Hacking, pessimistically, risk merely introduces new possibilities for domination:

The erosion of determinism and the taming of chance by statistics does not introduce a new liberty. The argument that indeterminism creates a place for free will is a hollow mockery. The bureaucracy of statistics imposes order not just by creating administrative rulings but by determining classifications within which people must think of themselves and the actions that are open to them. The hallmark of indeterminism is that cliché, information and control. The less the determinism, the more the possibilities for constraint. (1991, p.194)

Perhaps most famous, of course, is Ulrich Beck (1992, 1997), who is concerned that in the world of the risk society, risk has become simultaneously hegemonic and dysfunctional. Beck posits a scenario in which the forces of modernisation have generated a giant Hegelian contradiction. The more modernity produces goods, the more it produces harms of unprecedented magnitude. These harms, or “modernisation risks” have two principal characteristics. They occur too rarely for us to make calculations about the probability of their occurrence, or even be aware of their nature until too late. And they are of a scale and form such that none can escape them. Nuclear contamination, holes in the ozone layer and international terrorism

are three examples he is fond of citing. While risk calculation becomes ineffective as a technique for governing the future in this environment, the popular demand for security promotes risk consciousness. Reflecting this, the populace urges scientists and government to refine their risk calculations. A vicious circle is established, for as a result more risks are discovered, and in consequence greater public insecurity is generated. Accordingly, Beck regards risk frameworks in today's world as paralysing action: "risks only suggest what should not be done, not what *should* be done ... To the extent that risks become the all embracing background for perceiving the world, the alarm they provoke creates an atmosphere of powerlessness and paralysis": risk "dims the horizon" (1997, p. 141).

Of course, it is in the nature of much sociology to regard crises as normal and catastrophes as imminent. Perhaps it is therefore unsurprising that most sociological examinations of risk have been similarly negative. Nowhere has this been more evident than in criminology (O'Malley, 2000). The criminological response has been primarily to regard the emergence of risk techniques — almost invariably illustrated by such examples as Actuarial Justice, Megan's laws and risk-needs analysis — as a blight on criminal justice (Hudson, 2000; Baumann, 2000; Hannah-Moffat, 1999; Kempf-Leonard & Peterson, 2000; Miller, 2001; Garland, 2001). Risk techniques appear, explicitly or implicitly, as a negative turn that undermines the modernist advances made toward a reform-centred, inclusive and therapeutic criminal justice during the middle (welfare state) part of the twentieth century. By centring insecurity and threat, this governmental grid of risk is seen to work through negation. Certain persons are defined primarily in terms of their purely negative and dangerous status as threats to others (victims), and accordingly are incapacitated. Therapeutics are abandoned or become subordinate to a regimen of risk reduction (Kemshall, 1998; Hannah-Moffatt, 1999). Risk-avoidance negativity has been taken as the hallmark of risk in criminal justice, just as it has in critical and liberal analysis of government more generally.

In this paper, I want to argue that while risk — like all government — is *dangerous*, critical criminology has attended too much to the negative side of risk. Of course, there are other criminologies, governmentally committed and supported, in which risk is uncritically regarded as the way forward. Most salient here are forensic psychology and developmental criminology (O'Malley, 2001). While it is not at all the purpose of this paper simply to join hands with these criminologists, I do want to argue that a *critical* criminology has a responsibility to consider the promise, as well as the problems, of risk. Such an exercise, however, cannot merely attempt a balancing of the books, a review of the moral arguments for and against protection of victims versus justice to offenders. Nor can it be a review of "what works" — of the effectiveness (or otherwise) of risk techniques for protecting victims, reducing crime, and so on. The result of such an exercise is unlikely to do more than rehearse already familiar arguments. More to the point, such ways of examining risk make assumptions that are problematic. They assume the unity of risk, as if risk-centred government can be imagined as one thing, rather than a heterogeneous array of practices with diverse effects and implications. They assume that risk can only be imagined and operationalised as a zero-sum: a game between potential victims and potential offenders, in which the risks to one party are created by the

other. They assume the existence of an expertise that has possession of an uncontested knowledge on the basis of which risk can be assessed and governed. Accordingly, they assume that risk is a technically neutral condition revealed by statistics. Finally, together with many arguments also put forward by critics of risk, they assume that the difference between risk and other technologies of government is more significant than the differences between diverse risk technologies.

We might begin analysis with very different assumptions, in particular, that risk as an abstract technology is always shaped and given effect by specific social and political rationales and environments (Ewald, 1991). Consequently, risk may take a wide diversity of forms that reflect the purposes to which it is put and the assumptions on which it based. This implies that risk is never technically neutral. It is always a moralised way of governing, and the specific moral foundations should be made explicit. Accordingly, there is no obvious reason why risk cannot be inclusive rather than exclusionary, why risk should pit “offenders” against “victims”, or why it cannot be unifying rather than polarising. Likewise, we may ask whether risk might be associated with therapeutic and restorative regimes rather than with those focused on punishment or incapacitation, or with programs of social justice rather than individual or market justice. Social insurance, for example, achieves a number of these possible conditions. If so, then in relation to the governance of crime why cannot risk form part of a politics of social justice and help realise the visions of security that go along with this?

How could we proceed with such a politics? In the analysis that follows, I have selected three broad categories of risk-centred criminal justice as examples through which to begin such an exercise: Actuarial Justice (the *bête noir* of critical criminologists), drug harm-minimisation, and social programs for governing crime risks. The outcomes of this analysis will be used to attempt a preliminary formulation of how a progressive politics of risk might proceed.

## **Actuarial Justice**

One might say that the aim of the sociologist, historian or political analyst should be to ascertain why at a given moment ... institutions take one particular shape rather than another, and utilise the technique of risk in one way rather than another (Ewald, 1991, p. 198).

Actuarial Justice has been identified as the ascendant strategy of risk-based criminal justice (Feeley & Simon, 1992, 1994). In this form, risk-based justice is predictive and statistical; sentencing is based on the risk represented by an offender. This procedure is linked with merely incapacitating sentences that displace punitive, re-integrative, correctional or deterrent strategies. In turn, it is systematically and managerially arranged in terms of internal or system-focused criteria of efficiency (such as speed of throughput rather than reduction in recidivism rates).<sup>2</sup> Examples include curfews or detentions imposed on at-risk individuals; the emergence of Three Strikes legislation; and the massive expansion of incapacitating prison warehousing and home detention. All these, and more, have been examined as part of the “evolving formation of knowledge and power” that Feeley and Simon label Actuarial Justice. In their discussion of the context and shaping of Actuarial

Justice, Feeley and Simon (1994, p.190) go to some lengths to emphasise that “actuarial thinking represents a deeper ‘pre-political’ thought that cannot easily be associated with conventional political labels”. Thus they point out that conservatism is associated with a deep-rooted juridical individualism that does not sit well with the categorical forms of Actuarial Justice. At best, politics is seen to provide indirect influences. For example, conservative policies are seen to have created penal population pressures that facilitated the institutionalisation of actuarial techniques. But there is little or no *constitutive* role given to politics. This seems surprising at first glance, because the rise of Actuarial Justice historically coincides with the ascendancy of a more general, and conservative, penal politics. This was profoundly hostile to what Garland (1985) refers to as the “welfare sanction”. It sought to empty prisons of social workers, reduce costs, restore punishment and introduce Truth in Sentencing (O’Malley, 1992; Rose, 1996). Such conservative political concerns appear consistent with major features of Actuarial Justice: tariff-based sentencing, the evacuation of therapeutic content from prisons, and a focus on fiscal and system efficiency.<sup>3</sup> In other words, Actuarial Justice might reasonably be regarded as an explicitly political creation.

However, the weakness of this argument is that neo-conservative politics has headed in other, more punitive, directions than mere warehousing — notably the current array of “emotive and ostentatious” punishments (Pratt, 2000a, 2000b). Likewise, its ally neo-liberalism would appear to have fostered progressive forms of rehabilitation, including *enterprising prisoner* schemes and the delivery of *risk-needs*-based services in prisons (O’Malley, 1999b). Hence, Feeley and Simon can argue, politics are no more than a facilitating condition rather than a major constitutive influence in the formation of Actuarial Justice. Such an argument does reveal weakness in the *political* case — if by that term we mean, as do Feeley and Simon, the “pendulum swings” to Right and Left of the political field. Yet it reveals an equally difficult, indeed identical, problem for their own case; that is, why does risk take the specific shape of Actuarial Justice when there are many other risk-based alternatives to warehousing, such as the identification and therapeutic treatment of offenders’ *criminogenic risk-needs* in prison?<sup>4</sup> To answer this, we need to examine elements of the genealogy of Actuarial Justice so carefully outlined by Feeley and Simon.

In discussing the possible impact of the law and economics movement in this genealogy, they differentiate “economic” thinking from “actuarial” thinking (1994, p. 189). Both, they stress, emphasise the utilitarian purposes of punishment over the moral purpose. But an “economic” approach treats the offender as a rational-choice actor, whereas Actuarial Justice “treats the offender as *inert*, from the point of view of influencing decision making”.<sup>5</sup> Economic reasoning is thus associated with deterrence rather than incapacitation, while incapacitation is identified as the “pure” actuarial response. But what is pure actuarialism? For example, if effective risk-reduction is its characteristic goal, then risk-needs and preventative interventions have been argued to be superior to incapacitation (see O’Malley, 2001). If it is cost-effective risk management, isn’t this an economic actuarial argument? And in any case, long-term reform programs have been claimed by some as more cost-effective than incapacitation (Rand Corporation, 1995). In short, it is not clear on what criterion incapacitation can appear as pure or undiluted actuarialism.<sup>6</sup> The point,

rather, would appear to be that, as Ewald (1991, p.198) observes, the technology of risk is highly abstract. Any applications in an institutional setting should not be considered as “*the* application of a technology of risk; they are always just *one* of its possible applications”. As well, it would be difficult to argue that other technologies, such as situational crime prevention, are somehow *not* risk-based because they deploy a rational-choice actor as their subject (see, e.g. Clarke et al., 2000). This point is by no means trivial or marginal to our understanding of the character of Actuarial Justice. As David Garland has argued (1996, 2001), the rational-choice actor is the subject of what he terms a “criminology of the self”. That is, a criminology that defines crime as normal, in the sense that anyone could be a criminal — the criminal is not a distinctive type of person. Thus Felson and Clarke (1997) stress, for situational crime prevention, “nobody is exempt from the temptation to commit crime since human weaknesses are widespread and not confined to any one segment of the population”. In short, situational crime prevention and other rational-choice risk-based approaches do not seek to exclude types or categories of persons, or sectors of the population. Rather, by putting obstacles in their way, they seek to deter abstract and universal would-be offenders by rendering the effort and risk of offending greater than the likely benefits. Moreover, they do so by seeking to govern “criminogenic situations”, that is (more generally), to govern risky conditions, rather than categorically risky types of person (Garland, 1996).

How, then, are we to understand the *specific* assemblage of risk technologies that is Actuarial Justice? The critical point again is made by Feeley and Simon (1994, p.189) when they note that “the rise of incapacitation and the other instruments of Actuarial Justice (is) a reflection of social forces ... pushing a large portion of the population out of the range of normal economic signals”. In short, deterrence will not work for this category. Thus Feeley and Simon see the distinction they make between the assumptions of deterrence and the assumptions of Actuarial Justice as critical to their case. This population sector is the largely Black and Hispanic *Underclass*, envisioned as permanently excluded from economic integration by global restructuring of the economy (see also Baumann, 2000). Not only is deterrence imagined as unworkable for this subeconomic category, but also reintegration and rehabilitation are rendered irrelevant. There is simply nothing to integrate them into: the heavy industrial and related economic sector that once provided employment for these people has — as a consequence of globalisation — disappeared from the local economy. What therefore is installed is a strategy designed quite specifically for this irredeemable, irremediable and dangerous Other population.<sup>7</sup> Looked at in this way, in line with Feeley and Simon’s own analysis, Actuarial Justice emerges not as a “pure” form of “prepolitical” risk management but as a specific actuarial strategy actively tailored and assembled for a governmental — and in this sense *political* — purpose. In contrast to the risk technologies that deploy the universal rational actor as their subject, the subjects of this strategy are neither abstract–universal, nor are they normal, or subject to normalisation. To these Others — that are not like us and cannot become like us — the specific strategies of categorically-exclusionary risk are applied.

Despite the realist dimensions of their Underclass argument, Feeley and Simon also emphasise that the Underclass is a governmental category largely mobilised by

conservative politicians and commentators. More specifically, I would argue that the Underclass appears as the product of a neo-conservative political rationality (O'Malley, 1999b). The same strategies of "global" governance that were implicated in removing the Underclass members' means of employment to the Third World — in the name of competition and efficiency — are also responsible for inventing the spectre of welfare dependency. The Underclass was invented and deployed at the same time that welfare was being withdrawn as counterproductive and costly — and in relation to a population that now could be defined as having become dependent. They are imagined as having lost the will (rather than the opportunity) to work and the ability to make an enterprise of their lives. A governmental invention that, on the other hand, would have defined this population as a product of global restructuring, as Baumann (2000) for example sees them, could well have rendered these people candidates for welfare inclusion and "empowerment" rather than exclusion and incapacitation.

In keeping with this interpretation, the strategy and techniques of categorically-exclusionary risk, to which Actuarial Justice belongs, have subsequently been applied to other categories that fall specifically under the umbrella of irremediable and dangerous Otherness. Persistent violent and sexual offenders are the prime candidates. These have become subject to the array of Megan's laws, which in various ways notify the community as to the identity of former offenders. As Simon himself has subsequently noted, the veneer of technical neutrality of Actuarial Justice is transformed in the risk-based Megan's laws into a politics of vengeance:

[t]he development of modern institutions, particularly the prison, was aimed at displacing popular emotions from the centre of punishment by extending the control of state based professionals. From a spectacle of solidarity between state and the people against their common enemies, punishment became a vehicle for inculcating habits of order suitable to a democratic society. Megan's law is a shift away from this process of modernisation. Starting with its name, and with the central role given to local prosecutors in applying the risk classification, Megan's law advertises itself as a new hybrid of public and private vengeance (1998, p. 464).

Thus, while similar to risk strategies such as situational crime prevention, and while certainly mobilised in the name of potential victims taking rational and reasonable steps to protect themselves (Levi, 2000), these risk strategies are distinct. They are aimed at a category of subjects who are popularly, politically and governmentally demonised and excluded as Other. They are not inert, as I think Feeley and Simon mistakenly identify the subjects of Actuarial Justice; they are rendered "monstrous" (Simon, 1998). Significantly, as indicated by Simon's reference to the move away from modernist penology that is represented by Megan's laws, these responses are like those directed at the Underclass: they abandon the modernist project of inclusive reform, establish a zero-sum relationship between risk creators and potential victims, and accordingly adopt a technology of categorical exclusion.

What this analysis suggests is that developments such as actuarial justice and Megan's laws do not take on the characteristics to which critical criminologists object as a result of their nature as risk-centred justice. Rather, it is clear that these developments reflect what Garland (2001) regards as the emergence of a "culture of

control” or that Pratt (2000a, 2002) regards as the effect of a decivilising process. However we theorise its social foundations, the character of these changes is political rather than technological. More precisely, risk is not the issue: it is the vehicle or means whereby these politics of the reconstituted Right have been translated into a categorical and exclusionary form of criminal justice. Other technologies than risk — as vividly depicted in Pratt’s (2000b) imagery of “the return of the wheelbarrow men” — have also been put to this task. Conversely, as I will now argue, it is equally the case that risk can be put to ends that are profoundly hostile to such an exclusionary and punitive turn in criminal justice.

### **Inclusive Risk: Drug Harm-minimisation**

The War on Drugs certainly is not a risk-based strategy of justice, although it employs many risk-based techniques, including Actuarial Justice, in its repertoire of weapons. This affinity between Actuarial Justice and a military analogy of government lies in no small measure in their shared categorically-exclusionary cores. As with Megan’s laws, the militarisation of drug-policy shifts emphasis dramatically away from any sense of a technically neutral statistical deployment of risk. A threat is created and identified simultaneously as the source of risk and as Other, whether this is the foreign drug producers; manufacturers and smugglers from alien and lawless countries in the Third World; the drugs themselves and their “addictive” properties held to be destructive of freedom; or with the monstrous (and not coincidentally, frequently Black and Hispanic) traffickers, dealers, addicts and abusers. Such a moral and military agenda identifies risks with evil, with the appropriate response being armed exclusion and the destruction or neutralisation of those identified with creating such risks. At the borders, the military and quasi-military seek to exclude the enemy, while Actuarial Justice excludes the enemy within.<sup>8</sup> Alongside Actuarial Justice, an array of risk-based techniques such as workplace, traffic, and now domestic drug-testing extend the strategy of exclusion, even into the recesses of domestic life (O’Malley & Mugford, 1992; Moore & Haggerty, 2001).

But against the American moral War on Drugs is set the quite contrary risk-based strategy of harm-minimisation. In certain of its Australian and New Zealand realisations, and to a somewhat lesser extent with the British version, harm-minimisation is explicitly associated not only with specific risk techniques, such as drug testing and risk identification, but more centrally with risk as a strategy; that is, its long-range goals and overall mode of operation are defined in terms of risks, of locating and minimising risks (e.g., Victorian Government Department of Health & Community Services, 1993).<sup>9</sup> As with the War on Drugs, much of its character is intelligible once we recognise how and where it defines risk. For harm-minimisation the risks are multiple. They include health risks to users and bystanders; risks of corruption; risks of criminal violence by and upon users; and risks to property created by the need to buy drugs. But these risks are not understood as embedded in the nature of particular substances, or of particular categories or types of person. Rather, the risks of harm-minimisation are situationally pathogenic; that is, risks created by the contexts and ways in which drugs are deployed. For example, intravenous administration of drugs is linked to specific health risks;



high-intensity policing in turn is identified as a risk factor because it encourages high-risk means and contexts of administration; even effective drug interdiction at the border is seen to generate risks associated with drug adulteration and price increases. Or again, methadone maintenance programs take a central role in harm-minimisation. This is not only because they lower health risks by stabilising opiate intake; as well, the low price of methadone reduces the pressure to commit property crime in order to buy drugs. And because of its lengthy half-life, methadone allows users to take up paid work more easily — thus having roll-on effects on crime and health risks. (O'Malley, 1999a). As Marsha Rosenbaum indicates (1997), this is quite distinct from the situation in the US, where “by the mid 1980s methadone usage has moved essentially from medical treatment to the *containment* of addicts — just as the criminal justice system had moved from rehabilitation to containment of ‘the rabble’”. Thus even where seemingly identical techniques are deployed, the model of risk is distinct: the one abandoning the modernist project of normalisation, and consigning subjects to the status of Otherness, the alternative wholly embracing it.

While the linking of such risk techniques to a framework of rational-choice subjectivities is not a necessary feature of harm-minimisation, in contemporary neo-liberal environments this has become central, at least in the Australian and New Zealand contexts. Actual and potential drug-users are addressed as if their drug-taking choices are, for the most part, morally neutral, but they are provided with information on the adverse risks created by drug consumption. It is then assumed they will perform the felicity calculus. As well as through deployment of this rational choice “criminology of the self”, illicit drug-users are also normalised in other, more explicit, ways. Their drug-taking is rendered directly comparable with licit drug-taking — alcohol, tobacco and pharmaceuticals — each of which is compared unfavourably with illicit drugs in terms of aggregate health risks. They are expressly addressed as users rather than as (irrational) addicts or (morally corrupt) abusers. Any processes that are associated with demonisation, pathologising and exclusion of users are deliberately neutralised (see, generally, O'Malley, 1999a).<sup>10</sup> In this process, coercion is likewise minimised or displaced, as participation in any program is to be voluntary. In consequence, criminal justice is to be deployed minimally rather than maximally, as in the case of Actuarial Justice, and even then primarily as a conduit to treatment or therapeutic practices rather than as a means to punishment or incapacitation. Of course, this is not in some senses a perfect arrangement. For example, harm-minimisation is associated with the progressive encroachment of government on drug consumption as more and more risks are identified and measured more and more minutely. It can also be a form of government-by-stealth as normalisation is deployed only because it “works”, in the sense of most effectively aligning the behaviours of the users with the aims of the strategy. Particular programs and techniques are deployed not because in some vague sense they are humane, enlightened or democratic, but because they are effective. Thus coercion, punishment and blame are displaced explicitly because current knowledge suggests them to be counterproductive. The instrumental ethos of harm-minimisation would imply that were knowledge to change — for example, were it to be discovered that coercion is effective in minimising harms — then there would be

no barrier (as there might be in a rights-based framework) to extensive coercive regimes. Consequently, whereas evaluation of the effectiveness of programs appears redundant in Actuarial Justice (Feeley & Simon, 1992, p. 459), in harm-minimisation — and in inclusive risk strategies and techniques generally — evaluation of effectiveness geared to preventative and rehabilitative outcomes is critical to “good government”.

### **Risk and the Revised Social**

At face value, the implications of Actuarial Justice encompass the subordination of corrections to incapacitation. In support of this argument, much research has indicated that the focus on risk and containment has reshaped professionals such as social workers in the correctional system. Often this has rendered them little more than the practitioners of low-grade routines for estimating the risks presented by inmates, and thus for advising on their suitability for release (Kemshall, 1998). There is no doubt that such exclusionary practices are widespread, even in Australia and New Zealand. However, two important caveats must be made here.

The first is that such transformations have not dismantled the welfare professions so much as redeveloped and revalorised certain themes within their practice and knowledge (Dean, 1995). The initial formation of social work in the 19th century, for example, clearly involved a measure of policing, and it has long incorporated practices for assessing the *at-risk* status of its subjects (Donzelot, 1979). This rendered social work available for transformation into a penal risk-assessment practice in the late 20th century. Yet the image of disciplines and professions being passively operated on and selectively neutralised in this fashion is one that cannot be taken for granted. As Kemshall's (1998) work shows, various forms of resistance are available to such professionals confronted by risk regimes. We should thus be sensitive to the instabilities created within emerging strategies such as Actuarial Justice, rather than seeing them as inchoate forms on their way to a preordained fruition. In this sense, the politics of risk emerges in a third form. As well as the pendulum swings of party politics, and the sea-changes associated with the ascendance of new political rationalities such as neo-liberalism, there are the politics of knowledge exerted by expertises and their practitioners.

The second caveat builds upon this. Simply put, it is to remember that Actuarial Justice with its exclusionary focus does not exhaust the spectrum of risk practices in criminal justice and crime prevention. Harm-minimisation is intelligible as a revised form of welfare regime. No doubt it is: a risk-based strategy incorporating neo-liberal ideas of free choice and empowerment. Nevertheless it provides or facilitates therapeutic interventions to self-governing drug-users. In this sense it was a precursor to one of the most salient developments in risk during the past decade: the resurgence of pivotal disciplines of the welfare-state under the sign of risk. Another clear example of this is developmental psychology — itself a key component of social work — reborn in criminal justice under the banner of *developmental criminology*. The characteristic approaches of this discipline in the era of social welfare were modelled primarily in terms of pathologies requiring authoritative expert intervention that took over responsibility for the problem from its subjects. In current advanced liberal formulations, however, governmental emphasis is on

the danger of such interventions producing powerlessness, apathy and passivity in interactions with welfare agency personnel. Instead, the emphasis now is to be on “accessibility”, “assistance”, “help”, “support” and “empowerment”. That is, it is assumed that subjects are rational-choice agents capable of self-government who require skilling and advice, rather than counterproductive subordination to expertise, in order to make an enterprise of their lives. Thus, with respect to the “crime-risk factor” of abuse, it is stressed that:

(t)he professional focus on the medical model popularised in the 60s has changed. Now, the notion of community and neighbourhood services to assist vulnerable families with child rearing in order to diminish abuse is gathering momentum ... The thrust of our work has been maximising the empowerment of families (Tolley & Tregeagle, 1998, pp. 6–8).

Despite these rhetorical shifts, the “empowering” practices of this born-again discipline bear a very strong family resemblance to the interventions of the welfare era, involving “family support, early intervention, and home visiting programs” (National Crime Prevention, 1999a, p. 17). Likewise, developmental psychology’s list of crime-risk factors — “family isolation”, “inadequate parenting”, “single parents”, “attachment difficulties”, “low self-esteem”, “poor social skills”, “poor cognitive skills” and so on — is seemingly identical with the lists of causes of crime with which it worked under the welfare state. The preventative and rehabilitative agendas of the former era are thus revised and reintroduced under the banner of risk and empowerment. Similarly, Australia’s National Crime Prevention (1999b, p. 13) lists “socioeconomic disadvantage”, “population density and housing conditions”, “lack of support services” and “social or cultural discrimination” among its crime-related “cultural and community factors”. The agenda, although situated within a risk discourse, gives expression to a revision of welfare techniques, and in so doing begins to hint at social justice and at the kinds of socially ameliorative programs that were associated with the welfare state.<sup>11</sup> Nor are such developments restricted to such “peripheral” justice areas as considered by crime prevention: the emergence of risk-needs analysis in prisons and the contests to contain its welfare implications (Hannah-Moffatt, 1999); the rise of programs of *therapeutic jurisprudence* in relation to the drug-courts movement (Nolan, 1998); and the array of therapeutic programs for prisoners incarcerated under actuarial legislation relating to sex and violence offences (Pratt, 1998).

Such examples, both of harm-minimisation and the revised-social forms of crime prevention, indicate that the terrain of risk is a good deal less stable than would be supposed from much of the recent literature on Actuarial Justice. For better or worse, integrative welfare and the therapeutic professions and their discourses are still exerting pressures on the formation of risk-based justice, and risk-based justice shaped by such discourses is still contested. For a politics of risk that is linked to issues of social justice and social welfare, they might be regarded, at worst, as ways of beating back against the tide of punitive crime control and its associated techniques of risk-based government. To move beyond this, we might explore how to foster risk models that deliver preventative and restorative resources to disadvantaged sectors of the population, and how to mobilise these against

models such as Actuarial Justice and Megan's laws without resurrecting the tyranny of welfare expertise.

## Uncertainty and the Promise of Risk

The purpose of this analysis has not been simply to promote harm-minimisation or practices of the revised social. Both, as have been stressed, should be recognised as dangerous, as well as promising. It has been more important to stress the divergence, in form and implications, that exists among risk technologies. Given this, perhaps an agenda can be set up, in the form of an ethics of risk. This may be considered in two parts, one focusing on risk and its varieties, the other on the place of risk and uncertainty in the government of security.

The first issue, then, concerns how we may set up some preliminary guidelines for developing a "strategic knowledge" of risk technologies.<sup>12</sup> That is, in this context, a knowledge of how risk may be designed and practised in specific ways to preventative effect but with a minimum of domination.<sup>13</sup> The three examples of government through risk, outlined above, may provide some insights in this respect. To begin with, Actuarial Justice and harm-minimisation exist almost at polar extremes with respect to two axes. The first is that of inclusion/exclusion, the second that of victim/offender focus. Harm-minimisation seeks to govern by inclusion, by drawing the subjects of risk into the field of government and integrating them into social networks. The problem ceases to be the problem of the drug-user, instead becoming one of drug risks in a society understood to be characterised by drug risks. It is, or at least has the potential to be, a way of rendering drugs a *social problem*, in the sense of a collective problem in which the collective includes what would otherwise be defined as the risk-creating individuals. A similar point can be made about the revised social forms of risk governance, whatever their dangers with respect to identifying *at-risk* individuals and earmarking them for interventions. Actuarial Justice, by contrast, is exclusionary. Its purpose is to separate risky subjects from the populace, to diminish the risks they represent by obliterating or disrupting their social connectedness. It abandons problem individuals. Promising ways of deploying risk, this suggests, are ways that collectivise risk or at least respond to risks by dealing with them as problems to be identified with individuals or categories that are to be socially included. It is of course disputable that inclusion is necessarily a good, especially where inclusion is solely a means to a normalising end. But where the goal is to rearticulate risky individuals, the possibility emerges of a dialogue in which riskiness is to be governed *among* the parties concerned.

It is at this point that the second axis becomes both obvious and critical. Actuarial Justice establishes a zero-sum relationship between victims and offenders, such that (potential) offenders represent risk to (potential) victims. In a sense, this can result only in the trading of injustices. That is, the question of injustice to potential offenders (e.g., the false-positive problem that inevitably occurs with risk-based sentences) is neutralised by arguing that this represents only the shifting of the burden of risk from victims to offenders. Letting the risk lie where it falls, on the other hand, represents the victim as the bearer of a risk that rightly belongs with the risk-creator, and thus as the sufferer of injustice. Such debates (e.g., Floud & Young, 1982) set up risk-management in a way that prevents any kind of win-

win outcome, as the relationship is imagined in zero-sum terms. As seen, alternative ways of deploying risk are possible. Harm-minimisation may appear as an invalid contrast to such a zero-sum approach to risk, for it deals with so-called *victimless crime*. However, this appearance is precisely an effect of the refusal to create a zero-sum game. Harm-minimisation takes as its problem the net harm to society, which is established in such a way as to *include* harms to the drug-taker. Thus, for example, administering methadone is understood to reduce risks to the user, such as risks associated with unsafe administration and overdose, but by the same process to reduce accidental needle-stick injuries to nonusers. Imagined in this way, the needle is the risk, not the negligence or moral laxity of the user. Likewise, methadone is imagined to increase the user's ability to function on a day-to-day basis, while also reducing the crime risks to society created by their need to commit crime in order to purchase drugs. This suggests that inclusive and non-zero sum strategies of risk offer a route whereby risk may combine prevention and restorative possibilities. They may also provide symbolic benefits, representing means whereby *all* can gain from interventions aimed at minimising risk. In principle, these ways of governing through risk seem infinitely preferable to the War on Drugs and Actuarial Justice. Of course, this may be read as starry-eyed and as taking easy examples. Perhaps so, and doubtlessly there are limits to all things — although it does have the virtue of setting up a positive research and theoretical agenda. But even hard cases such as sexually violent offenders and pederasts can be thought through in similar terms. Deploying techniques such as Megan's laws may make a moral statement about sexual predation, although there is little or no evidence that it reduces risks. However, as with the contrast between drug-abusers and drug-users, it allows security to be defined in terms of a rotten apple theory. If the risk is defined as a social problem in terms of a society that is culturally and socially saturated with sexual violence, then neither the victim-offender binary nor the exclusionary response appear adequate or even productive.

It is not difficult to imagine other principles linked to these that might provide useful prospective guidelines for governing the deployment of risk. One, already briefly discussed, concerns avoiding the polarisation of experts and others in the assessment and governance of risk. One mistake of Ulrich Beck has been unwittingly to reduce nonexperts' estimations of uncertainty to an inferior technology, a fallback necessitated where risk fails or cannot be applied. But as Brian Wynne (1996) has stressed, expertise in this sense refers to abstract universal knowledge, a form exemplified by actuarial calculation of risk. Whenever it is applied to specific conditions, failure of prediction becomes possible. Often this failure takes a form attributed to particularistic or local variations, variables unaccounted for in the risk calculus. Under such conditions, particularistic or local-knowledges uncertainty — rather than risk — may provide more practicable forms of intervention. More to the point, Wynne argues, local knowledges locate problems of risk and security (and their solutions) in different ways to those of expertise. The point has been made many times with respect to women and expert definitions of crime prevention. Maximisation of security may be expertly defined in terms of responses that put the onus of risk avoidance on women, and trade off security against a defining of freedom as avoiding situations (especially at night) that remain available to men

(Stanko, 1990, 1996; Walklate, 1997). More broadly, as Sparks et al. (2001) have shown, concerns about crime-risk often relate not simply to calculations of crime risks (an expert conceptualisation), but to more complex articulations of anxieties relating to such matters as unwanted social change and the weakening of familiar social boundaries. Neither risk nor security are simply given by expert knowledge, nor is it possible to regard them as neutral, scientific categories. Or rather, perhaps we should say that while they are scientific categories, they are not thereby morally or politically neutral, but are loaded with cultural assumptions (cf. Latour, 1987). Wynne's observations on this are particularly acute:

The basis of lay public responses to expert knowledge is always potentially an epistemological conflict with science about the assumed underlying purposes of knowledge, or at least the scope of that epistemic remit, which is wrongly assumed to be just given in nature. This raises questions not only about the basis of the relationship between "objective" scientific knowledge and "subjective" lay knowledge, but about the extent to which scientific knowledge is open to substantive criticism and improvement or correction by lay people. In other words, how far might lay people be involved in shaping scientific knowledge, and thus in providing the basis of alternative forms of public knowledge that reflect and sustain different dominant conceptions of the human, and of the social purposes of public knowledge? (1996, p. 61).

Here Wynne is speaking to the limits of risk, constituted as an expert, statistical form of knowledge. The critique which can be offered from the lay standpoint is neither inferior nor superior nor simply different. The point, rather, is that risk, however sophisticated its statistical adequacy, is inevitably a moral, ethical and social judgement about security. Its statistical nature cannot distance it from judgement about what it is that is regarded as the state to be avoided, the state to be achieved, and the acceptability of ways whereby the two conditions should be governed. Implicit in this is a *democratisation of risk*. This does not involve some equivalent to Stalinist science, in which expertise is turned on its head by ideology, or where the results of analysis are preordained by dogma or a romantic privileging of the local and the lay. Rather, the question concerns the nature of that which is to be achieved by risk techniques in the name of security. It concerns dialogue over what will work, a dialogue that allows challenges to risk-based expertise and its assumptions about what this term involves, and whether the abstract knowledges are adequate to the setting. It would raise questions about such things as alternative definitions and identifications of risks; the diverse knowledges and standpoints from which risks are identified, calculated or otherwise known; the various evaluations of proposed and existing solutions; why they are valued; what they are expected to achieve; and how it is that they are expected to produce their effects.<sup>15</sup> The requirement, as I see it, is for the establishment of what Foucault refers to as an *agonic politics*: "rather than speaking of an essential freedom (or an essential domination) it would be better to speak of an *agonism* — of a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confrontation which paralyses both sides than a permanent provocation" (1982, p. 222). In this sense, an agonistic politics, the democratisation of risk, is a forever-unfinished project.

Yet as soon as this possibility is raised, the question at issue becomes rather broader. We might say that most of what has been discussed immediately above

relates to risk and the dangerous potential it has, through its statistical and probabilistic nature, to privilege expertise. In a paper whose concern is with the promise of risk, it is important to keep in mind this focus on the diversity of configurations of risk and their implications. But implicit in all of this is the question of the *limits* to risk, as well as its promise. Consider the following brief example drawn from the history not of criminal justice, but — if I may have the licence to wander from criminology here — from that of insurance.

During much of the 19th century, governments across western Europe, and especially in Britain, fostered working men's mutual insurance fraternities. These were regarded as promoting thrift and self-help, and as making reliance on poor relief less likely. Such mutuals were often small and intensely democratic. Members were not distinguished from each other by different risk-ratings, and benefits were not tied to contributions. Meetings were often held in the local pub, and members could draw on the social support from their fellow policyholders, and on support in kind, as well as being able to draw money benefits. After the middle of the 19th century, governments began to be concerned that these mutuals often failed financially. The reasons were obvious enough: many members were at high risk yet paid only the ordinary contribution, and they could draw indefinitely on the funds even if only newly-joined. This fact could not have escaped the notice of members, but the principal of fraternal solidarity was held to be more important even than a guarantee that the fund would not fail. To governments of the time, however, a concern developed that there was much "wasted thrift" wherever a mutual collapsed. Accordingly, members could take the view that diligence and saving were not rewarded. Not only would failure provide a disincentive to thrift, but it would also expose the system of poor relief to added burdens. As a consequence, governments promoted the view that all insurance funds should be run along actuarial lines, and provided various incentives to favour this. The result was a period of frequently bitter political turmoil, in which control over mutuals was gradually taken up by actuaries. Management became alienated from members and members became divided from each other by risk classification. The regular social meetings and their associated collateral benefits disappeared. In effect, the governmental project of actuarial risk provided one kind of security. It was a kind of security that could not be delivered by *uncertain* fraternal solidarity. Nevertheless, as the triumph of actuarialism indicates, it was one that many working people came to value and embrace. In the process, however, it destroyed another, also highly valued, form of security.

Of course, there can be no attempt, even retrospectively, to determine which of these ways of achieving security was right. Clearly, the question was at the centre of its own agonistic politics. Equally, however, it is important to recognise that risk itself was the nub of the issue. The problem was not how risk was to be defined, measured, and responded to. It was whether risk — in the form of an insurance actuarialism — was capable of providing the forms of security that at least some of the parties sought. Beck (1992) and Giddens (1994) might believe that faith in expertise is shattered only by reflexive modernity and the concomitant disagreements that are created between experts. But lay challenges to risk-based expertise are as old as risk itself, as is shown at the beginning of this paper. The objections

voiced there contrasted a constricting and monochromatic imagery of risk against an imagery of uncertainty as a *freedom* that implied an implausible perfection of liberty and agency. However, we do not need to go down that route. We may ask, instead, whether risk is really the issue at the heart of the questions that are posed throughout this paper and the risk-research literature. If the questions are revised to be questions of security, then neither risk nor uncertainty is privileged, nor are they set against each other in an all-or-nothing binary. They become available to be melded or hybridised in configurations that prioritise ends rather than techniques (O'Malley, forthcoming). That they have been posed, mutually exclusively, as alternatives may be a problem of social theory's (and particularly the risk-society theorists') own making. It is clear that even in insurance — the supposed heartland of risk — risk and uncertainty are constantly being combined in order to effect specific functions. We may thus add to the reasons for eschewing a conventional debate over risk versus uncertainty, for the question need not be posed as if we must choose one or the other. Uncertainty and risk take their place as resources in a democratised, agonic politics of security.

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### Endnotes

- 1 Risk and uncertainty are used in specific ways in this paper. While a detailed discussion is not possible here (see O'Malley, forthcoming), risk refers to government based on statistically predictive techniques, as in actuarial forecasting. Uncertainty refers to techniques based on predictive rules, such as professional judgement, reasonable foresight and some scientific laws. Intermediate forms exist where, for example, risk classifications are used but statistics are avoided (Rose, 1998). In turn, this difference can be regarded as related to predictions of aggregated futures (risk) versus predictions of singular futures (uncertainty). Both are regarded as ways of calculating the future rather than as realist descriptions of it. Thus the same event, such as a patient's diagnosis, may be subjected to both prediction on the basis of risk factors and/or prediction on the basis of professional judgment. Likewise, scientific epistemologies in the 20th century shifted from explaining the "inaccuracy" of lawlike predictions in terms of uncertainty (e.g., uncontrolled variables at work in the case at hand) to a framework in which such inaccuracy is merely a property of an irreducible stochastic universe.
- 2 Thus Feeley and Simon (1992, p. 457) argue that "(t)hese new forms of control are not anchored in aspirations to rehabilitate, reintegrate, retrain, provide employment and the like. They are justified in more blunt terms: variable detention depending on risk assessment".
- 3 A typical response was that of Michael Yabsley, New South Wales Corrective Services Minister: "We had the prisons crowded with counsellors, social workers, teachers and various representatives from a multitude of organisations, all intent on bringing a sudden and irreversible change in those who were considered to be unfortunate, disadvantaged, inadequate and who were in need of care, guidance and understanding" (quoted by Brown, 1992).



- 4 It should be stressed that there are many issues of interest in this genealogy, only some of which are raised by Feeley and Simon. For example, Glaser (1985) points out that knowledge of the superior predictive power of actuarial decision-making in criminal justice has been firmly established since the 1920s, yet it was not taken up until parole boards adopted them during the 1970s. This suggests that the identification of extralegal and possibly political pressures are critical, since “prepolitical” technological knowledge had been available for nearly three quarters of a century before being taken into sentencing practices. The underlying question, of course, is whether the delay occurred because actuarial accuracy produced injustice in the eyes of such key players as the judiciary.
- 5 A number of objections made be made to this assertion. For example, as the film *Silence of the Lambs* suggests, incapacitation might be associated with visions of the offender as intrinsically evil rather than inert; as having irrational or moral propensities that cannot be dealt with by deterrence or correction. I will return to this point later in the paper.
- 6 It should be stressed that some apparently actuarial sentencing decisions may not be actuarial. With sex offenders, for example, it is fairly clear that the risk of reoffending is something that was not a statistically-based estimation in the mind of legislators introducing mandatory sentences. Rather, it is that this offence is considered so serious that almost any risk was considered unacceptable. In the case of Three Strikes laws, as Greenberg (2002) has argued, the foundation appears never to have been actuarial or statistical, but rather rested on a political *tough-on-crime* basis.
- 7 This may contradict Feeley and Simon’s claim that these offenders are regarded as inert rather than rational-choice. If it is argued that the Underclass falls below the economic threshold at which deterrence works, they could still be regarded as rational-choice subjects. It is simply that their situation shifts. While the deterrent effect of imprisonment may not enter their felicity calculus, other factors may. This strongly suggests that it is not the absence of rational choice that is the key characteristic, but rather the assertion that these people are in some sense regarded as fundamentally different.
- 8 The majority of offenders incarcerated under Three Strikes legislation in the USA are sentenced with respect to drug-offending or drug-related offending (Austin, Clark, Hardyman, & Henry, 1999).
- 9 *Strategy* in the sense used in this paper, refers to the organisation of particular techniques into a coherent plan in order to secure a desired end. In this sense, Actuarial Justice and harm-minimisation as risk-based strategies deploy many techniques that are not based on risk (e.g., disciplinary techniques of data accumulation or enforcement of orders), being characterised as risk-based rather by their overall character of problematising as risks that which they seek to govern. Thus a relevant example of a risk-based strategy is the *Victorian Drug Strategy 1993–1998* (Victorian Government Department of Health & Community Services, 1993), precisely because “(t)he specific objectives of the Drug Strategy focus on changing behaviours and reducing other risk factors which have been shown to increase the potential for drug-related harm ... There is a strengthened commitment to the principle of harm-minimisation in its broadest sense. All objectives are defined in terms of risk factors linked to specific harms, with emphasis on prevention wherever possible and on minimising the negative impact of drug use problems where they occur.”
- 10 There is little room for doubt that part of the genealogy of harm-minimisation involves the intellectual formulations of theorists in drug research. For example, the National Deviancy Conference development of processes of *deviancy amplification* and the *demonisation* of drug users (Young, 1971) are equally echoed in harm-minimisation discussions (e.g., Premier’s Drug Advisory Council, 1996). But perhaps more centrally, it is worth recalling that Howard Becker’s classic essay “Becoming a marijuana user” (1965) deliberately eschews the language of addictions, instead referring to “drug users” throughout, and regards users as making rational decisions in a process that is “easy” and voluntary: “anyone can become a marijuana user but nobody has to” (1965, p.62). The convergence of this rational-choice subject with that of

harm-minimisation is significant. It is indicative that however much rational choice models are regarded as conservative, this is not necessarily their effect: much depends on how they are deployed. However, it should be recognised that whereas Becker stresses the element of pleasure, this usually is absent from harm-minimisation discourses, which are largely silent on this “positive” side of the felicity calculus (O'Malley & Valverde, 2004). More broadly, the implications of this point are indicative of what Rose (1996) has seen as the diverse elements in the formation of advanced liberalism — which included criticisms of the welfare state from both Left and Right. Criticisms aimed at the paternalistic and technocratic authoritarianism of welfare expertise and knowledge certainly were common to both sides. The rational-choice subject gains its prominence in advanced liberalism from precisely such a convergence, and, narrowing the focus again, allows us to see why Howard Becker and the neo-liberal Milton Friedman might converge on the issue of free choice and libertarianism in the drug market.

11 I am of course alive to the distinct possibility that all this is rhetoric rather than practice. But the same was equally claimed to be the case with the welfare state.

12 “(T)he role of theory today seems to me to be just this: not to formulate the global systematic theory which holds everything in its place, but to analyse the specificity of mechanisms of power, to locate the connections and extensions, to build little by little a strategic knowledge” (Foucault, 1980).

13 Compare Foucault:

I do not think that a society can exist without power relations, if by that one means the strategies by which individuals try to direct and control the conduct of others. The problem, then, is not to try to dissolve them in the utopia of completely transparent communication, but to acquire the rules of law, the management techniques, and so the morality, the *ethos*, the practice of the self, that will allow us to play these games of power with as little domination as possible. (Foucault, 1997, p. 298)

14 Walklate suggests exactly this point when she notes that:

[t]he debate in the policy field frequently marginalises the reality of women's relationship to fear and risk and also renders invisible aspects of the relationship between fear, risk and danger experienced by men ... . These implications raise both specific and general questions. For example, how can policy initiatives be put in place which do not presume that risk avoidance equates with risk management? How can we develop a theoretical framework for criminology which captures a structurally and reflexively informed conceptualisation of risk, which might erase the victim-blaming connotations currently embedded in the context of multiple victimisation? ... [P]art of the answer to these questions may lie in reconceptualising the concept of risk (Walklate, 1997, p. 44).

15 Beck makes substantially this point, although with a narrower reference, when he suggests (1997, p. 151) that a politics of risk must attend to four basic questions:

- a. How shall risk be defined, and by whom?
- b. By what means is the truth of risk established?
- c. How shall the risks be governed?
- d. How will the consequences of such governance be judged, and by whom?

As will be argued shortly, this brings into question not just the configuration of risk, but the relationship between risk and uncertainty.

16 See, for example, Bougen's (2003) discussion of the ways in which actuarial calculation and uncertain techniques of business speculation are combined in high-risk areas such as catastrophe insurance. Elsewhere (O'Malley, forthcoming), I have discussed at some length the nature and implications of this “assembling” approach to risk and uncertainty.

## References

- Austin, J., Clark, J., Hardyman, P., & Henry, D. (1999). The impact of "Three Strikes and You're Out". *Punishment and Society*, 1, 131–162.
- Baumann, Z. (2000). Social issues of law and order. *British Journal of Criminology*, 40, 205–221.
- Brown, D. (1992). Crime and punishment in the corporation: Putting the value back in punishment. *Legal Service Bulletin*, 15, 239–247.
- Beck, U. (1992). *Risk society*. New York: Sage.
- Beck, U. (1997). *World risk society*. London: Polity Press.
- Becker, H. (1965). Becoming a marijuana user. In H. Becker (Ed.), *Outsiders: Studies in the sociology of deviance* (pp. 41–58). New York: Free Press.
- Bernstein, P. (1998). *Against the gods: The remarkable story of risk*. New York: Wiley.
- Bougen, P. (2003). Catastrophe risk. *Economy and Society*, 32, 253–274.
- Castel, B. (1991) From dangerousness to risk. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality* (pp. 281–298). London: Harvester-Wheatsheaf.
- Clarke, J., Gerwitz, S., & McLaughlin, E., (2000). *New managerialism, new welfare*. London: Sage.
- Dean, M. (1995). Governing the unemployed self in an active society. *Economy and Society*, 24, 559–583.
- Defert, D. (1991). Popular life and insurance technology. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality* (pp. 211–34). London: Harvester-Wheatsheaf.
- Donzelot, J. (1979). The poverty of political culture. *Ideology and Consciousness*, 5, 71–86.
- Eghigian, G. (2000). *Making security social: Disability, insurance and the birth of the social entitlement state in Germany*. Ann Arbor: University of Michigan Press.
- Ewald, F. (1991). Insurance and risks. In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality* (pp. 197–210). London: Harvester/Wheatsheaf.
- Feeley, M., & Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology*, 30, 449–470.
- Feeley, M., & Simon, J. (1994). Actuarial Justice: The emerging new criminal law. In D. Nelken (Ed.), *The futures of criminology* (pp.173–201). London: Sage.
- Felson, M., & Clarke, R. (1997). The ethics of situational crime prevention. In G. Newman, R. Clarke, & G. Shoham (Eds.), *Rational choice and situational crime prevention: Theoretical foundations* (pp. 197–218). Aldershot, UK: Ashgate.
- Floud, J., & Young, W. (1982). Dangerousness and criminal justice. *British Journal of Criminology*, 22, 213–228.
- Foucault, M. (1980). Power and strategies. In C. Gordon (Ed.), *Power/knowledge: Selected interviews and other writings* (pp. 134–145). Brighton, UK: Harvester-Wheatsheaf.
- Foucault, M. (1982). The subject and power. In H. Dreyfus, & P. Rabinow (Eds.), *Michel Foucault: Beyond structuralism and hermeneutics* (pp. 208–26). Chicago, IL: Chicago University Press.
- Foucault, M. (1997). The ethics of concern for self as a practice of freedom. In P. Rabinow (Ed.), *Michel Foucault: Ethics, subjectivity and truth* (pp. 280–301). New York: The New Press.
- Garland, D. (1985). *Punishment and welfare*. Aldershot, UK: Gower.
- Garland, D. (1996). The limits of the sovereign state. *British Journal of Criminology*, 36, 445–71.
- Garland, D. (2001). *The culture of control*. Oxford, UK: Oxford University Press.
- Giddens, A. (1994) Living in a post-traditional society. In U. Beck, A. Giddens, & S. Lash. (Eds.), *Reflexive modernization* (pp. 56–109). London: Polity Press.
- Glaser, D. (1985). Who gets probation and parole: Case study versus actuarial decision making. *Crime and Delinquency*, 31, 367–378.
- Greenberg, D. (2002). Striking out in democracy. *Punishment and Society*, 4, 123–138.

- Hacking, I. (1991). How should we do the history of statistics? In G. Burchell, C. Gordon, & P. Miller (Eds.), *The Foucault effect: Studies in governmentality* (pp. 181–195). London: Harvester-Wheatsheaf.
- Hannah-Moffat, K. (1999). Moral agent or actuarial subject: Risk and Canadian women's imprisonment. *Theoretical Criminology*, 3, 71–95.
- Hudson, B. (2000). Punishment, rights and difference. In K. Stenson, & R. Sullivan (Eds.), *Crime, risk and justice* (pp. 144–173). Exeter, UK: Willan.
- Kempf-Leonard, K., & E. Peterson (2000). Expanding realms of the new penology. The advent of actuarial justice for juveniles. *Punishment and Society*, 2, 66–96.
- Kemshall, H. (1998). *Risk in probation practice* Aldershot, UK: Ashgate.
- Latour, B. (1987). *Science in action*. Cambridge, MA: Harvard University Press.
- Levi, R. (2000). The mutuality of risk and community: The adjudication of community notification statutes. *Economy and Society*, 29, 578–601.
- Miller, L. (2001). Looking for postmodernism in all the wrong places: Implementing a new penology. *British Journal of Criminology*, 41, 168–84.
- Moore, D., & Haggerty K. (2001). Bringing it on home: Home drug testing and the relocation of the war on drugs. *Social and Legal Studies*, 10, 377–395.
- National Crime Prevention. (1999a). *Pathways to prevention*. Canberra, Australia: National Anti-Crime Strategy.
- National Crime Prevention. (1999b). *Hanging out: Negotiating young people's use of public space*. Canberra, Australia: National Anti-Crime Strategy .
- Nolan, J. (1998). *The therapeutic state: Justifying government at century's end*. New York: New York University Press.
- O'Malley, P. (forthcoming). *Risk, uncertainty and freedom*. London: Cavendish Press.
- O'Malley, P. (2002). Imagining insurance: Risk, thrift, and life insurance in Britain. In T. Baker, & J. Simon (Eds.), *Embracing risk: The changing culture of insurance and responsibility* (pp. 97–115). Chicago, IL: University of Chicago Press.
- O'Malley, P. (2001). Risk, crime and prudentialism revisited. In K. Stenson, & R. Sullivan (Eds.), *Crime, risk and justice* (pp. 89–103). Devon, UK: Willan.
- O'Malley, P. (2000). Criminologies of catastrophe? Understanding criminal justice on the edge of the new millennium. *The Australian and New Zealand Journal of Criminology*, 33, 153–167.
- O'Malley, P. (1999a). Consuming risks: Harm minimisation and the government of drug users. In R. Smandych (Ed.), *Governable places: Readings in governmentality and crime control*. Aldershot, UK: Dartmouth.
- O'Malley, P. (1999b). Volatile and contradictory punishment. *Theoretical Criminology*, 3, 175–196.
- O'Malley, P. (1992). Risk, power and crime prevention. *Economy and Society*, 21, 252–275.
- O'Malley, P., & Mugford, S. (1992). Moral technology: The political agenda of random drug testing. *Social Justice*, 18, 122–146.
- O'Malley, P., & Valverde, M. (2004). Pleasure, freedom and drugs: The uses of "pleasure" in liberal governance of drug and alcohol consumption. *Sociology*, 38, 25–42.
- Porter, T. (1985) *Trust in numbers: The pursuit of objectivity in science and public life*. Princeton, NJ: Princeton University Press.
- Pratt, J. (1998). *Governing the dangerous*. Sydney, Australia: Federation Press.
- Pratt, J. (2000a). Emotive and ostentatious punishment: Its decline and resurgence in modern society. *Punishment and Society*, 2, 417–441.
- Pratt, J. (2000b). The return of the wheelbarrow man: Or the arrival of postmodern penalty. *British Journal of Criminology*, 40, 127–45.
- Pratt, J. (2002). *Punishment and civilization*. London: Sage.
- Premier's Drug Advisory Council. (1996). *Drugs in our community: Report of the Premier's Drug Advisory Council*. Melbourne, Australia: Author.

- Rand Corporation. (1995). *Diverting children from a life of crime*. Washington, DC: Author.
- Rose, N. (1996). Governing advanced liberal democracies. In A. Barry, T. Osborne, & N. Rose (Eds.), *Foucault and political reason* (pp. 37–64). London: UCL Press.
- Rose, N. (1998). Governing risky individuals: The role of psychiatry in new regimes of control. *Psychiatry, Psychology and Law*, 5, 177–95.
- Rosenbaum, M. (1997). The de-medicalization of methadone maintenance. In P. Ericson (Ed.) *Harm reduction* (pp. 25–35). Toronto, Canada: University of Toronto Press.
- Simon, J. (1998). Managing the monstrous. Sex offenders and the new penology. *Psychology, Public Policy and Law*, 4, 453–67.
- Sparks, R., Girling, E., & Loader, I. (2001). Fear and everyday urban lives. *Urban Studies* 38, 885–898.
- Stanko, E. (1996). Warnings to women: Police advice and women's safety in Britain. *Violence Against Women*, 2, 5–24.
- Stanko E. (1990). When precaution is normal: A feminist critique of crime prevention. In L. Gelsthorpe, & A. Morris (Eds.), *Feminist perspectives in criminology* (pp. 123–148). Milton Keynes, UK: Open University Press.
- Tolley, S., & Tregagle, S. (1998). *Children's family centres' integrated support services to prevent abuse and neglect of children*. Sydney, Australia: Bernado's Australia.
- Victorian Government Department of Health and Community Services, (1993). *Victorian drug strategy: 1993–1998*. Melbourne, Australia: Author.
- Walklate, S. (1997). Risk and criminal victimization: A modernist dilemma? *British Journal of Criminology*, 37, 35–45.
- Wynne, B. (1996). May the sheep safely graze? A reflexive view of the expert-lay knowledge divide. In S. Lash (Ed.), *Risk, environment and modernity* (pp. 44–83). New York: Sage.
- Young, J. (1971). *The drugtakers*. St Albans, UK: Paladin.
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