

Risk, Security, and Criminal Justice

Hilary Term 2016

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Mondays 10am - 11.30am in Seminar Room E

The rise of risk management and security are key features of contemporary crime control. In the 'risk society' suspects are viewed less as bearers of rights than as potential risks that need to be managed in pursuit of the public interest in protection from harm. This course analyses the ways in which risk and security are transforming criminal justice thinking and practices. In order to do so, it examines key changes in policing, crime prevention, risk assessment and management, preventive detention, counter-terrorism and security policies. It explores the costs and benefits of these developments and examines their implications for justice and individual liberties.

Seminar topics:

- Week 1: Risk and the pursuit of security
- Week 2: Policing, crime prevention, and risk management
- Week 3: Risk assessment, actuarial justice and dangerous offenders
- Week 4: Public protection and preventive detention
- Week 5: Counter-terrorism laws and security policies
- Week 6: The burdens of seeking security
- Week 7: Security and justice
- Week 8: Debate and reflection

Background reading:

Kemshall, H (2011) 'Crime and risk: Contested territory for risk theorising', *International Journal of Law, Crime and Justice* 39 (4), 218–29.

<http://www.sciencedirect.com/science/article/pii/S1756061611000565>

O'Malley, P, *Crime and Risk* (2010) chs.1 & 2

Zedner, L. *Security* (2009) esp. chs. 2, 3, & 4

The reading lists are quite long – follow your interests and do as much of the reading as you can. The questions are intended to guide your reading and structure our discussion in class. There is no need to pre-prepare answers to all these questions but do think about them and come ready to discuss to the issues they raise. Anything you do not understand can also be a subject for clarification and deliberation in class.

Week 1: Risk and the pursuit of security

The rise of risk in criminal justice

Schauer, F, 'The Ubiquity of Prevention', in A Ashworth, L Zedner, and P Tomlin (eds.), *Prevention and the Limits of the Criminal Law* (2013)

Kemshall, H *Understanding risk in criminal justice* (2003) especially chs. 1 & 2.

O'Malley, P *Risk, Uncertainty and Government* (2004) ch. 7 **OR**

O'Malley, P 'Experiments in risk and criminal justice' (2008) 12(4) *Theoretical Criminology* 451-469

Ericson, R *Crime in an Insecure World* (2007) ch 1. **OR**

Ericson, R 'Governing through risk and uncertainty' (2005) 4 *Economy and Society* 659.

Mythen, G, *Understanding the Risk Society: Crime, Security and Justice* (2014) esp. chs. 1, 2 & 3

Security

B Hudson and S Ugelvik (eds.) (2012), *Justice and Security in the 21st Century: Risks, Rights and the Rule of Law* esp ch.1 'New Landscapes of Justice and Security' & ch.6 Lomell, HM (2012), 'Punishing the Uncommitted Crime: Prevention, Pre-emption, Precaution and the Transformation of the Criminal Law'

Zedner, L *Security* (2009) ch.1 **OR**

Zedner, L 'Fixing the future: the pre-emptive turn in criminal justice' in McSherry, B et al (eds) *Regulating Deviance* (2009)

Valverde, M (2011) 'Questions of security: A framework for research', *Theoretical Criminology*, 15/1 3-21.

Dupont, B (2004) 'Security in the Age of Networks', *Policing and Society*, 14/1, 76-91.

S Hallsworth and John Lea, 'Reconstructing Leviathan: Emerging Contours of the Security State', *Theoretical Criminology*, 15/2 (2011), 141-58

Ramsay, P (2012) *The Insecurity State*. esp. ch. 10

Waldron, J (2006) 'Safety and Security'. *Nebraska Law Review*, 85, 301-353. Also published as Waldron, J. (2010) *Torture, Terror and Trade-Offs*. ch. 5

Prevention and pre-crime

Crawford, A & Evans, K (2012), 'Crime Prevention and Community Safety', in M Maguire, et al (eds.), *The Oxford Handbook of Criminology* (769-805.

Zedner, L (2007) "Pre-crime and post-criminology?" *Theoretical Criminology* 11(2): 261-281

Questions:

1. What is risk? What is meant by the 'risk society'?
2. Do different meanings attach to the word risk in different settings - technological, environmental, cultural, political and so on?
3. What is the difference between risk and uncertainty?
4. Explore the social, political, economic and cultural dimensions of risk - what ideologies and what politics underlie our preoccupation with risk?
5. Does the increasing focus on risk represent a paradigm shift or is it just a matter of technological change?
6. Given that it is impossible to eliminate risk, what do we mean when we talk of security?
7. Is security an end in its own right or merely a means to other ends or goods? Is security the same thing as safety?
8. How do different authors conceive of, and talk, about security? Are their views reconcilable?
9. What are the implications of the changes described in the readings for criminal justice and for criminology?
10. Is 'pre-crime' a useful concept?

Week 2: Policing, crime prevention, and risk management

Changing patterns of public and private policing

Jones, T 'Governing Security: Pluralization, Privatization, and Polarization in Crime Control and Policing', in M Maguire, et al (eds.), *The Oxford Handbook of Criminology* (5th edn. 2012), 743-6

Ericson, R & K Haggerty, *Policing the Risk Society* (1997) Part 1 only

O'Malley, P, 'Policing crime risks in the neo-liberal era' in K Stenson & RR Sullivan (eds) *Crime, Risk and Justice* (2001)

Johnston, L, *Policing Britain: Risk, Security and Governance* (1999) esp. chs 4 & 10

Bayley, D & Shearing, C, 'The Future of Policing' (1996) 30 *Law & Society Review* 585

Jones, T & Newburn, T 'The Transformation of Policing? Understanding Current Trends in Policing Systems' (2002) 42 *British Journal of Criminology* 129-146

Wood, J & Dupont, B (eds) *Democracy, Society and the Governance of Security* (2006) ch.s 1, 5 & 7

Johnston, L & Shearing, C (2003) *Governing Security: Explorations in Policing and Justice* esp. chs 5, 6, and 7

Risk management and insecurity

Harcourt, B (2007) *Against Prediction: Punishing and Policing in an Actuarial Age* esp ch.3. See also Harcourt, B. (2008) 'A Reader's Companion to 'Against Prediction': A reply" 33 *Law and Social Inquiry* 265

Jackson, J & E Gray (2010) 'Functional fear and public insecurities about crime' *British Journal of Criminology* 50(1): 1-22

Preventive laws and measures

Ashworth, A & Zedner, L (2014) *Preventive Justice* ch.3 'Prevention, Policing and Criminal Procedure' & ch. 4 'Civil Preventive Orders'

Ramsay, P (2010) 'Substantively uncivilized ASBOs'. *Criminal Law Review*, 761-763.

Dennis, I (2012) 'Security, Risk and Preventive Orders' in G R Sullivan & I Dennis (eds) *Seeking Security: Pre-Emptying the Commission of Criminal Harms*

Lomell, HM (2012) 'Punishing the Uncommitted Crime: Prevention, Pre-Emption, Precaution and the Transformation of the Criminal Law', in B Hudson & S Ugelvik (eds.), *Justice and Security in the 21st Century: Risks, Rights and the Rule of Law*

Questions:

1. What impact has risk assessment and risk management had on the way the police organize themselves and carry out their tasks?
2. Examine the claim that the police have become information brokers for other institutions that require knowledge of risk like the insurance industry.
3. In what ways does risk configure working relations between the public police and private policing operations?
4. What do you make of the claim that:
'[M] odern democratic countries ... have reached a watershed in the evolution of their systems of crime control and law enforcement. Future generations will look back on our era as a time when one system of policing ended and another took its place' (Bayley and Shearing 1996: 585) ?

Or does this claim 'overstate the novelty and the "epochal" nature of current trends' (Jones and Newburn 2002: 130)?

5. What evidence is there for a move toward a 'preventive state'?
6. What are the advantages of and reasons for resorting to civil preventive orders?
7. What criticisms might be made of the use of civil preventive orders?

Week 3: Risk assessment, actuarial justice and dangerous offenders

Risk and Actuarial Justice

Feeley, M & J Simon, 'Actuarial Justice: The Emerging New Criminal Law' in Nelken, D (ed) *The Futures of Criminology* (1994) **OR**

Feeley, M 'Origins of Actuarial Justice' in S Armstrong, & L McAra (eds) *Perspectives on Punishment: the Contours of Control*. (2006)

Brown, M & Pratt, J (eds) *Dangerous Offenders: Punishment and Social Order* (2000) chs 1 & 5

Maurutto, P & K Hannah-Moffat (2006). 'Assembling Risk and the Restructuring of Penal Control' *British Journal of Criminology* 46: 438-454.

Assessing risk and dangerousness

Monahan, J (2006) "A Jurisprudence of Risk Assessment: Forecasting Harm Among Prisoners, Predators, and Patients" in *Virginia Law Review* 92(3): 391-435. But see also - Skeem J & Monahan, J 'Current Directions in Violence Risk Assessment', *Current Directions in Psychological Science*, 21/1 (2011), 38-42.

Walker, N (1997) "Harms, Probabilities and Precautions", *Oxford Journal of Legal Studies* 17(4): 611-620

Hood, R et al, 'Sex Offenders Emerging from Long-Term Imprisonment: A Study of Their Long-Term Reconviction Rates and of Parole Board Members' Judgements of Their Risk', *British Journal of Criminology*, 42 (2002), 371-94

Simon, J 'Reversal of Fortune: The Resurgence of Individual Risk Assessment in Criminal Justice', *Annual Review of Law and Social Science*, 1 (2005), 397-421

Wandall, R (2006). "Actuarial risk assessment. The loss of recognition of the individual offender", *Law, Probability and Risk* 5: 175-200

Ansbro, M (2010), 'The Nuts and Bolt of Risk Assessment: When the Clinical and Actuarial Conflict ', *The Howard Journal of Criminal Justice*, 49 (3), 252-68

Zedner, L (2012) 'Erring on the side of safety: risk assessment, expert knowledge, and the criminal court' in Dennis, I & Sullivan, GR (eds) *Seeking Security: Pre-empting the Commission of Criminal Harms* **OR**

Ashworth, A & Zedner, L (2014) *Preventive Justice* ch. 6 'Risk Assessment and the Preventive Role of the Criminal Court'

Wasik, M (2012), 'The Test for Dangerousness', in G R Sullivan and I Dennis (eds.), *Seeking Security: Pre-Emptying the Commission of Criminal Harms* 243

Questions:

1. What do Feeley and Simon mean by Actuarial Justice?

- What are its base assumptions?
 - What are its key features?
 - What are its intellectual origins?
 - What are its main objectives?
2. How convincing do you find the claim that we are now governed by a New Penology?
 3. What is dangerousness? Is it problematic to talk of 'dangerous offenders'? And, if so, why?
 4. How is dangerousness measured?
 5. What difficulties arise in attempting to predict dangerousness?
 6. How well suited is the criminal court to the task of risk assessment?
 7. Can individual risk assessments safely be made using actuarial risk assessment instruments?
 8. What is the role for clinical risk assessment by psychiatrists?
 9. What level of certainty should we require of predictive tools? Does the answer to this question depend upon what use we make of them?

Week 4: Public protection and preventive detention

Origins of the dangerousness debate – optional reading !

Floud, J. and W. Young (1981) *Dangerousness and Criminal Justice*

Radzinowicz, L., & Hood, R. (1981) 'Dangerousness and Criminal Justice', *Criminal Law Review*, 756-761

Bottoms, A. E. and R. Brownsword (1982) "The Dangerousness Debate after the Floud Report", *British Journal of Criminology Special Issue on Dangerousness and Criminal Justice* 22: 229-254

Fear and the demand for public protection

Simon, J (1998) 'Managing the Monstrous. Sex Offenders and the New Penology' *Psychology, Public Policy and Law*, 3, 452

Baker, K (2010), 'More Harm than Good? The Language of Public Protection', *The Howard Journal of Criminal Justice*, 49 (1), 42

Morse, SJ (1998) 'Fear of Danger, Flight from Culpability', *Psychology, Public Policy, & Law*, 4, 250-267

Janus, E 'The Preventive State, Terrorists and Sexual Predators: Countering the Threat of a New Outsider Jurisprudence', *Criminal Law Bulletin*, 40 (2004), 576

Lazarus, L. (2007) 'Mapping the Right to Security', in B. Goold and L. Lazarus (eds) *Security and Human Rights*: 325-346.

Preventive and indefinite detention

Ashworth, A & Zedner, L (2014) *Preventive Justice* ch. 7 'Preventive Detention of the Dangerous'

Stanton-Ife, J (2012), 'Preventive Detention at the Margins of Autonomy', in GR Sullivan and I Dennis (eds.), *Seeking Security*

Wood, D. (1988). 'Dangerous Offenders, and the Morality of Protective Sentencing' in *Criminal Law Review*, 424-433.

Ramsay, P (2012) 'Imprisonment under the Precautionary Principle' in I Dennis & GR Sullivan (eds) *Seeking Security* **OR**

Ramsay, P. 'A Political Theory of Imprisonment for Public Protection', in M. Tonry (ed.) *Retributivism Has a Past: Has it a Future?* (OUP 2011) pp. 130-54

Husak, D (2013), 'Preventive Detention as Punishment? Some Possible Obstacles', in A Ashworth, L Zedner, and P Tomlin (eds.), *Prevention and the Limits of the Criminal Law* (Oxford: Oxford University Press), 178–93.

Questions:

1. What factors drive the demand for public protection?
2. What political and ethical issues does the goal of public protection raise?
3. Do we have a 'right to security'? Should we? What level of protection does the public have a right to expect?
4. Do dangerous offenders deserve proportionate sentences?
5. Are choices about how to deal with dangerous offenders inevitably political?
6. Can preventive/extended/indefinite detention be justified?
7. What restraints should be placed upon preventive detention? What conditions and provisions should those detained on preventive grounds enjoy?
8. Ramsay argues that the rising demand for security in England and Wales has arisen 'from a deficit of political authority rather than from excessive authoritarianism'.

Do you agree? Is this true of other countries?

9. Are some offenders so dangerous they should never be released? What are the arguments for and against full life sentences?

Week 5: Counter-terrorism laws and security policies

Terrorism and Criminal Justice

Walklate, S & Mythen, G (2014) *Contradictions of Terrorism: Security, Risk and Resilience* ch.s 1, 4, & 5 **OR** Mythen, G *Understanding the Risk Society: Crime, Security and Justice* (2014) ch.5 'Terrorism, Risk and Regulation'

Walker, C (2004). "Terrorism and Criminal Justice: Past, Present and Future." *Criminal Law Review*: 311-327.

Braithwaite, J 'Pre-empting Terrorism' (2006) 1 *Current Issues in Criminal Justice* 96 and responses

Ashworth, A. (2007) 'Security, Terrorism and the Value of Human Rights', in B Goold & L Lazarus (eds) *Security and Human Rights*: 203-226

Tadros, V (2007) 'Justice and Terrorism,' *New Criminal Law Review*. 10(4): 658-689.

Pantazis, C & Pemberton, S 'From the 'Old' to the 'New' Suspect Community: Examining the Impacts of Recent UK Counter-Terrorist Legislation', *British Journal of Criminology*, 49/5 (2009), 646-66.

Balancing Security and Liberty

Waldron, J 'Security and Liberty: The Image of Balance' (2003) 11 *The Journal of Political Philosophy* 191-210 **reprinted in** Waldron, J *Torture, Terror and Tradeoffs: Philosophy for the White House* (2010)

Zedner, L (2005). "Securing liberty in the face of terror: reflections from criminal justice" *Journal of Law and Society* 32(4): 507-533

Pantazis, C and Pemberton, S (2012) 'Reconfiguring Security and Liberty: Political Discourses and Public Opinion in the New Century' *British Journal of Criminology* 52: 651

Governing Security

Aradau, C & van Munster, R 'Governing Terrorism through Risk: Taking Precautions, (un)Knowing the Future' (2007) *European Journal of International Relations* 89

McCulloch, J & Pickering, S 'Pre-Crime and Counter-Terrorism: Imagining Future Crime in the 'War on Terror' *British Journal of Criminology* (2009) 49(5) 628-645

Mythen, G & Walklate, S 'Criminology and Terrorism: Which Thesis? Risk Society or Governmentality?' *British Journal of Criminology*, 46/3 (2006), 379-98

Amoore, L & M de Goede (eds) *Risk and the War on Terror* – esp. Intro and chs.1 and 3

Counterterrorism laws and measures

Cole, D (2009), 'English Lessons: A Comparative Analysis of UK and US Responses to Terrorism', *Current Legal Problems*, 62 (1), 136-67

Roach, K (2011), *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge: Cambridge University Press) esp ch.5 on the UK

Tulich, T (2012), 'A View Inside the Preventive State: Reflections on a Decade of Anti-Terror Law', *Griffith Law Review*, 21 (1), 209

Ashworth, A & Zedner, L (2014) *Preventive Justice* ch. 8 'Counterterrorism Laws and Security Measures'

Cape, E (2013) 'The counter-terrorism provisions of the Protection of Freedoms Act 2012: Preventing misuse or a case of smoke and mirrors?' *Criminal Law Review* (5), 385–99

Questions:

1. How did the increased threat of terrorism post 9/11 change thinking about security and counter-terrorism policy?
2. What were the implications of the declaration of a 'war on terror'? What did it make possible? Was the war analogy defensible?
3. What is the role of risk in countering terrorism? What risks does counterterrorism itself pose?
4. Can security and liberty be 'balanced'? What criticisms might be made of balancing? Is it always necessary to sacrifice liberty in order to increase security?
5. Does the threat of terrorism our willingness to act pre-emptively? What are the main casualties of this change?
6. When and on what grounds are pre-emptive counter-terrorist measures justified?
7. Is the 'war on terror' over? Is there any evidence of a revival of human rights protections and away from resort to extraordinary measures?
8. What are the key recent developments in terrorism and counter-terrorist policy?

Week 6: The Burdens of Seeking Security

The costs of seeking security

Zedner, L 'Too much security?' (2003) 31 *International Journal of the Sociology of Law* 155-184

Walklate, S 'Excavating the fear of crime: fear, anxiety or trust' (1998) vol 2, no 4 *Theoretical Criminology* 403-418

Crawford, A 'Community Safety and the Quest for Security: Holding Back the Dynamics of Social Exclusion' (1998) 19 *Policy Studies* 237-253

Hollway, W & T Jefferson 'The Role of Anxiety in Fear of Crime' in T Hope & R Sparks (eds), *Crime, Risk, and Insecurity* (2000) 31-49

Ericson, R (2006), 'Ten Uncertainties of Risk-Management Approaches to Security', *Canadian Journal of Criminology and Criminal Justice*, 48/3: 345-357

Ericson, R. (2008) 'The State of Pre-emption' in L Amoore & M de Goede (eds) *Risk and the War on Terror*

von Hirsch, A, D Garland & A Wakefield (eds), *Ethical and Social Perspectives on Situational Crime Prevention* (2000) ch.s 5 & 8

Simon, J *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (2007) esp. ch.s 1-4

Goold, B 'Technologies of surveillance and the erosion of institutional trust' in K F Aas, H Oppen Gundhus, and H Mork Lomell (eds.), *Technologies of (in)Security: The Surveillance of Everyday Life* (London: Routledge, 2008)

Journalistic but also well worth reading account of the costs of security in the US:

Davis, M (1998) *City of Quartz: Excavating the future of Los Angeles* Ch. 4 'Fortress L.A.'

On the darker side of life in gated communities

Low, S (2004) *Behind the Gates: Life, Security and the Pursuit of Happiness in Fortress America*

And because it is 6th week – FK Dick 'Minority Report' (a dystopian but prescient short story in a book of the same title)

Questions:

1. Explore the costs associated with seeking security from risk. Are these costs inevitable?
2. On whom do the burdens of security fall most heavily?
3. Is it possible to distribute risk equitably? Or is unequal distribution of protection and social exclusion inevitable?

4. Is it possible to pursue security without generating mistrust?
5. What are the implications of thinking of crime as a 'normal social fact'?
6. What is the place of punitiveness in the risk society?
7. Is it possible to reduce risk without also eroding civil liberties?
8. Examine the role of the insurance industry in governing risk.
9. What or who are main casualties of seeking security?

Week 7 Security and Justice

Ashworth, A & Zedner, L (2014) *Preventive Justice* ch. 11 'The Preventive State and Its Limits'

Dubber, MD (2013), 'Preventive Justice: The Quest for Principle', & Dyzenhaus, D (2013), 'Preventive Justice and the Rule-of-Law Project' both in A Ashworth, L Zedner, and P Tomlin (eds.), *Prevention and the Limits of the Criminal Law*

Zedner, L *Security* (2009) ch.7

Loader, I & Walker, N *Civilizing Security* (2007) esp. chs 6 & 7 **OR**

Loader, I & Walker, N 'Policing as a Public Good: Reconstituting the Connections Between Policing and the State' (2001) 5 *Theoretical Criminology* 9-35

Braithwaite, J., 'The New Regulatory State and the Transformation of Criminology' in D. Garland & R. Sparks (eds) *Criminology and Social Theory* (2000)

Shearing, C 'Punishment and the Changing Face of Governance' (2001) 3 *Punishment and Society* 203-220 **OR**

Johnston, L & Shearing, C *Governing Security: Explorations in Policing and Justice* (2003) esp. ch. 8

Hudson, B *Justice in the Risk Society* (London: Sage, 2003) esp. chs. 2 & 7 **OR**

Hudson, B 'Justice in a Time of Terror', *British Journal of Criminology*, 49/5 (2009), 702-17

Hudson, B (2012) 'Who Needs Justice? Who Needs Security?' in B Hudson & S Ugelvik (eds.), *Justice and Security in the 21st Century*

Shearing, C & Johnston, L (2005), 'Justice in the Risk Society', *Australian and New Zealand Journal of Criminology*, 38/1: 25-38

Nickel, J W (2013), 'Restraining Orders, Liberty and Due Process', in A Ashworth, L Zedner, & P Tomlin (eds.), *Prevention and the Limits of the Criminal Law*

Cole, D (2015), 'The Difference Prevention Makes: Regulating Preventive Justice', *Criminal Law and Philosophy* vol 9: 501-519

Questions:

1. In what ways has the 'war on terror' changed the parameters of the debate about what may justly be done in the pursuit of security? Are exceptional measures justified by the threat of catastrophic harm posed by terrorism?
2. Is it possible to distribute risk equitably? Or is unequal distribution of protection and social exclusion inevitable?
3. Do we need a new language and new concepts to think about justice in the risk society? And if so, what might these be?
4. Is security inalienably a public good? What follows from this?
5. Or is security better provided by sources beyond the state?
6. What are the implications of thinking about risk and security for the discipline of criminology?
7. How best can we pursue justice in the risk/security society? What does it mean, if anything, to talk of preventive justice?

Week 8 The Counterfactual Dilemma - a Debate

"If we adopt measures designed to prevent murders in the future, we never can know whether our initiatives have in fact prevented murders that would have happened, or whether the murders would not have occurred even if we had done nothing."

David Cole (2015)

Is this a decisive argument against preventive laws and security measures?