

THE Critical Criminologist

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THE COMMERCIALIZATION OF JUSTICE: Public Good or Private Greed?

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Eastern Michigan University

Largely without notice or fanfare, a multi-billion dollar per year criminal justice industry has emerged -- an industry with local, state, national and international implications. However, the effect of privatizing and commercializing justice has received limited attention. Increasingly, criminal justice is about commerce and profit, with policy being driven by business, political and private interests. To continue ignoring the economic context in which criminal justice occurs and the corresponding policy implications is politically naive and socially irresponsible.

There is strong evidence to support the existence of a corrections-commercial complex similar to the military-industrial complex President Eisenhower spoke of in 1961. He used this term to describe a relationship between the Federal bureaucracy, key members of Congress and private industrial interests. Eisenhower warned that this elite group had the power to determine national defense policy free from public scrutiny with far-reaching economic, political and social consequences (Adams, 1982).

The arrangement depicted by the military-industrial complex is also referred to as an iron triangle or a subgovernment. The sides of the triangle protect the participants from external influence, regulation and public accountability. An exchange of personnel links the Executive and industry sides of the triangle and creates a closed network of shared, homogeneous ideas in the particular policy area. The potential conflicts of interest created by this arrangement can affect prices, supplies and free-market competition.

The relationships in this closed network are reinforced by corporate contributions to political action committees (PACs) as well as membership in trade associations and governmental advocacy committees. PACs provide political education for corporate managers, supervisors and employees as well as a guide for lobbying efforts. Contributions to PACs strengthen the relationship between the industrial and Congressional sides of the iron triangle. Trade associations maintain regular working groups of corporate representatives who serve on Federal advisory committees. The trade associations are a critical link between industry and government. Advisory committees, composed of private sector and government representatives, provide advice on

national policy issues. They are an avenue of company access to national policy formation and membership results in significant advantages to the companies involved.

Robert J. Lilly, in his 1993 article, "The Corrections-Commercial Complex", uses the concept of subgovernmental policy-making to describe the working alliance between federal agencies, for-profit corporations and professional organizations. This closed network of participants operates together to control policy making and has four key characteristics:

- 1) Participants share a close working relationship which stabilizes over time and is dependent on a steady exchange of information, access, influence, personnel and money.
- 2) Each subgovernment displays an overlap between societal interests and the particular government bureaucracy involved. The ties between industry and the government are reinforced by the exchange of personnel.
- 3) Subgovernments maintain a low profile, operating outside of public awareness
- 4) A subgovernment takes on the quality of permanence within the given policy area. Partisan politics does little to disturb the relatively autonomous arrangement.

Emergence & Growth

A number of issues have converged to enable the emergence and growth of a corrections-commercial complex. McDonald (1990) suggested that interest in privatized corrections services has been stimulated by facility overcrowding and the need for immediate cell space, tougher penal policies, and the use of tough on crime policies for political gain or advantage.

Overcrowding of penal institutions was not the only economic incentive for engaging the private sector in the criminal justice industry. The projected cost savings of private sector provision of services was politically attractive. Given the lack of dramatically increasing crime rates during the time of rapidly expanding prison populations, the monetary concerns generated by facility overcrowding were merely the most visible concerns.

Various changes in sentencing practices have resulted in the incarceration of a rapidly growing number of people. The most popular measures among politicians have been the "three strikes" and "career criminal" laws. Although it is highly improbable that the average citizen is aware of the wide range of "crimes" to which these laws are applied, limiting their application would also limit

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From the Editors...

This issue is the third of our editorship and marks the end of our first year. We hope that you have found the newsletter to be thoughtful and stimulating. (If not, write something and send it to us!) Our goal is to build on the history the newsletter has of publishing intelligent commentary on a wide variety of issues — a history reflected in the list of back issues that is printed on page 9. Back issues are for sale for \$4 and the articles frequently make for good classroom handouts. (Thinking of critical scholarship, check out the list of Collective Press titles and the correction on the next page.)

The current issue explores some new topics and includes new voices. Marlyce Nuzum, a graduate student at Eastern Michigan University, writes a concise and provocative article on the perils of privatization. Jeanne Flavin shares a short version of her ongoing work on how to deliver humane treatment to people who are (or are suspected of being) HIV+ when the police and society in general have high levels of AIDS-phobia. George Rigakos and Matt Robinson remind readers what the ‘critical’ part of critical criminology is about. Rigakos starts to deconstruct the risk profiling and actuarialism that are part of ‘risk society’. Robinson uses the current controversy about the tobacco industry to highlight the wrongs they have done and remind criminologists not to limit their inquiry only into officially designated ‘crimes’

In this brief time period we have been producing this newsletter, a theme has emerged that will continue in the next issue and our meetings at ASC in November: the vibrancy that marks critical scholarship is not shared by the division. Stuart Henry reports on the next page about the current division membership, its finances and some of the reasons for a recent dip in participation. We hope the article will inspire further debate and discussion, and we welcome follow-up letters.

Even though there are concerns about the division’s membership, the newsletter will return with volume 9 #1 in

November. All too soon, we will start soliciting contributions. As a reminder, we also welcome ‘uncoerced’ articles, poetry and letters. Please send a hard copy and diskette version, no longer than 2,500 words (to offer room for many voices) and specify the software/word processing software being used. We ask that references be in the (Author Date: Page) format with minimal use of endnotes. Conversations or less formal non-referenced articles are also acceptable, but we expect that they will still represent polished final manuscripts that have been subjected to spell check and proofreading. For other ‘style’ requirements, simply check one of the articles in this issue.

Submissions should be sent to:

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Short announcements or calls for papers can be sent by e-mail to
SOC_Leighton@online.emich.edu

The Critical Criminology Homepage is maintained by Jim Thomas. It contains more information about the division along with links to a wide variety of data, current statistics, legal resources, political writings, teaching and mentoring information, and the Division’s parent organization — The American Society of Criminology.

<http://sun.soci.niu.edu/~critcrim/>

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Look for the next issue in November, before the American Society of Criminology Conference.

Division News

Correction 1

In some versions of the last newsletter, the *Collective Press* advertisement contained inaccurate information. Proceeds from *Thinking Critically About Crime* are donated to the Division's Journal.

Collective Press can be reached at 604/869-8270.

Their FAX is 604/869-7620.

E-mail bdsmp@aol.com

Check out the full page listing of available titles in this issue of the newsletter.

Correction 2

To the Editor:

For the sake of historical accuracy, I'd like to correct an error made in my recent article on the Oklahoma City Bombing ("Tragic Irony: State Malfeasance and the Oklahoma City Bombing Conspiracy," Winter 1998). On page 11, I stated that Timothy McVeigh is believed to have joined the Arkansas Ku Klux Klan sometime in 1988, prior to enlisting in the U.S. Army. That is incorrect, and I take full responsibility for the mistake. McVeigh joined the Arkansas Klan after his military service, in 1992.

In Struggle,

Mark S. Hamm

April, 1998

State of the Division, Continued...

Stuart Henry

Eastern Michigan University

Several months ago, the Division head Gregg Barak discovered that our finances were not looking especially healthy because our expenditures exceeded our membership dues. Brian MacLean had reported that at the time he sent out the latest issue of the journal, there were only 166 paid up members of the Division for 1998. That seemed odd, especially since I had mailed out the previous issue of the newsletter (vol 8 No 2) to nearly 350 "members" by combining members of the 1997 list with those who had subscribed since 1997. We decided to do two things: first, verify the figures on membership with Sarah Hall at ASC and second, conduct a postcard survey of members to find out if there was a pattern of reasons for non-renewal. The results are interesting.

Sarah provided me with three lists: (1) current members paid for 1998 (2) 1997 members who had not renewed with the critical division, and (3) the lists for 1996 who had not renewed since then. These were the data on May 4:

Current paid membership of the DCC = 186 (of these 78 are new since 1997)

Non-renewals since 1997 = 158 (of these 32 renewed ASC but not DCC)

Non-Renewals between 1996-1997 = 95 (of these 24 are still ASC members)

So, since 1996 the division DCC has had 439 members – and lost 253! This was a worrying prospect, so we sent out our survey in the hopes of both nudging delinquent non-renewers into renewing and finding out why determined non-renewers had not. The postcard survey went to the 158 nonrenewing members who

had been members in 1997. Again the results were interesting, although it is based on only 29 responses that were received by mail or e-mail (18.3% of non-renewers).

The overwhelming majority of these either believed that they had renewed (true in only one case), simply had not got to it, claimed they did not receive a renewal notice or did not realize that the renewal came as part of the ASC notice (especially true for three year subscribers who only paid their division dues in the first year). Most, interesting were the range of other reasons given. These included the following:

#1] "I tend to skip a year or two in paying dues for the ASC and attending the Annual conference. There are times where I haven't paid for membership nor the conference (Badges?, I don't need no stink'n badges). Basically I usually renew my ASC membership when I go to the Annual meeting (discounts and all that). Second reason: I had not gone to a couple of the recent Division meetings, even though I was attending the Annual Meeting, because I lost confidence in its leadership and direction. But the renewal of membership really had more to do with the finances (first reason). I suppose it is an extra task to just try and renew for the Division."

#2] "As a student every penny counts and I found the general membership to ASC to be sufficient."

#3] "Probably what I resent the most about the division is its self-induced marginalization, like boohooohoo, we know everything but nobody listens to us and we're so good but all the right-wing fascists got all the money and the good jobs and this totally discriminating society keeps us down although we have brains larger than anything you've ever seen before. I hate it, hate it with contempt, for one, because it doesn't produce shit. And then I hear all this crap about how we should change the system and broaden the standards (e.g. of criminological research) and so on,

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where in actual fact all that these weenies are after are easier (!) ways to get promoted or tenure or have their stupid books sold for their freakin' royalties, which was the only reason they produced the crap anyway. I am extremely distressed every time I see so many signs of this righteousness and there's lots of it. The Division has played some part in all of this, mostly because it is run by people not principle. If you wanna be in, you better kiss up to this or that person. And don't ever think it's about any of the ideas that you would represent, no sirrie, just make sure to tell them you're a lesbian with mental probles and you'll count! Fer-sure! Cuz these old whities in the Division really drool on that. And then you can watch them in their unshaven selves (and really badly dressed) walking around at the annual meetings. How very very risque they are, my my! I think there is a place for critical criminology though and I think I practice it. But I practice it in the ASC mainstream. There is in my opinion no viable alternative to invading the bastion and a revolution from within. Therefore, here is my humble advice: work hard, harder than yesterday; work even harder than that; talk with the people that matter; publish in the big-time journals; apply at the elite schools! Change something, change something and make a difference (or die trying)!"

Same person, responding to a follow-up e-mail: "I readily admit that my comments are totally wrong inasmuch as they were presented in a generalizing manner. Absolute statements are wrong because they are absolute. Apart from that, however, there is an enormous amount of truth and value to what I said. I notice very well that some folks who do manage to get their work matter and count. They don't have this attitude simply because they don't need it, but what about all those would-bees, might-have-beens, etc., it is their complacency I'm up against. And, yes, like it or not, this kind of attitude is more prevalent among the so-called critical wing. Self-induced victim-status and all that. Also, I think, some of my sentiments probably make more sense given that I'm a junior scholar who is trying to make a way for himself despite the obvious antagonisms."

#4] "I believe that part of the problem is that there are so many organizations that tend to pull people one way or another. I know I am in a couple of sections of ACJS also; and I would probably join more if I had the time and money. From what I have heard, the journal will help the Division some; but it needs a little maturity, to be published a little more regularly and to gain a little status as a place to publish before it will become a big draw. Let me know if there is anything I can do to help."

#5]"The newsletter seems to reflect strong political perspectives. What about some attention to culture or structure without a preoccupation with power and conflict"

#6] "1) Some of us a simply lax in paying membership dues generally -not for want to \$\$, but simply for lack of being able to keep track of everything. But the rate of drop-out is too high to be explained that way. 2) I do know that some women dropped because they were unhappy with the style of meeting conduct that emerged in the division shortly after its beginning. Knowing this, it suggested we change the style of the business meeting to something more inclusive, but it was thoroughly trashed, and a number of women who had promoted those ideas walked out of the division then and never returned. However, I suspect we have lost

more than female members. 3) ... a personal vendetta that has nothing to do with anything professional, 4) there was a lot of excitement about the division throughout the struggle to create it. A lot of buy-in. It is not atypical of any struggle that once the goal is accomplished some people move off because the "revolution" falls short of their expectations, or simply because struggle is more interesting than routine. So some of it may be the typical moral career of "radical" movements. 5) Another, a I suspect important possibility is that the division has not been able to develop a clear message/focus/purpose. Part of this may be due to its "big tent" character. This makes it hard to come to agreement about directions. There is (to me) a disturbing tendency for a not insubstantial portion of division members (at least active and vocal ones) to act like the left has always acted -trashing those who do not share their particular "line" on theory, methodology, or politics - thereby eliminating any possibility of solidarity. 5) Weakness in leadership, I also wonder if there are some underlying structural weaknesses in the division that make it hard for well-intentioned leaders to be effective. Or perhaps we just need more effective leadership -which means, primarily, people in the division's leadership that other people will be willing to help succeed. If people hope that leaders will fail, then they will. In the end, though, I think it is the lack of a clear identity and focus that is the key underlying weakness. Both the women's division and the minority division have a clear political agenda that they can organize around - promoting the presence and interest of a clear identity group. Gender, race, and ethnicity, are powerful identity issues with naturally energized constituencies. Being "critical," while important to people, lacks the master status quality of gender or ethnicity, and so I suspect it does not elicit the same energy and commitment that those two divisions can. Anyway, those are just some thoughts."

We could assume that some aspects of these responses reflect the views of the 82% of non-responders. In any case on May 28 I received updated data from Sarah Hall that we had 9 renewals from non-members and 4 new subscriptions, which puts the membership total at 199.

Clearly, these results are somewhat disturbing and suggest several options. One of these is to turn the newsletter into a web-only service (with e-mail to members notifying them when a new issue is published) and to retain the \$5 fee to support the journal. Another possibility is to create a two tier fee structure, say \$5.00 for those who are also subscribing to ASC and \$10 for those who only want DCC membership. Of course none of this addresses the substantive ideological and political differences, though hopefully the results of this survey will provoke debate on the issue. We welcome your thoughts, however brief!

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their political appeal. Research shows that those states with career criminal laws continue to have crime rates comparable to those without such laws but have the fastest growing prison populations. These laws not only ensure a large number of long-term inmates who will add to the overcrowding problem but also guarantee a continued and expanded market for crime control related commodities.

The statistics on changes in prisoner demographics and numbers emphasize some of the consequences of the "get tough on crime" philosophy. The construction of criminality along racial and economic lines is a prime marketing strategy for corporations who profit from the corrections industry. Public policy ensures that these people are blamed for their position in society while fostering support for laws which reinforce existing stereotypes and discriminatory practices. Wideman (1995) argues that tough on crime policies are substituted for dealing with the social problems which are the root causes of crime. Private corporations must demand new criminality to increase profit and safeguard the market for their services, so there is inherent support for policies which use incarceration rather than policies promoting social change.

The issue of marginalization of an increasing number of people and corporate manipulation of this process to maximize profits is clarified by Barnett and Cavanaugh (1994). They examine the question of what happens to the people who are no longer needed to manufacture goods or provide services. Corporations downsize to increase profits and conserve resources. The production of a relative surplus population creates a population of people who are both threatening and vulnerable at the same time. Their marginal status lessens their commitment to maintaining the existing system, while their lack of power and status increases the likelihood they will come under official control. The resulting anger and resentment engenders actions by those in power to accommodate the displaced, not as producers or consumers (there are no jobs or purchasing power), but as commodities in the prison system. In effect, the corporations, through their role in marginalizing greater and greater numbers of people, ensure a market for crime control goods and services.

Tunnell explains the increase in the sale of crime related commodities and target hardening products during a time when crime rates have varied little as, "capitalism's ability to create commodities from both social problems and unfounded needs." (1992:293). Commodification is the process of producing and selling goods and services; it results in consumers defining certain products and services as 'necessary' for their social existence and lifestyles. The media play a major role in forming the public's perception of crime. The overemphasis on violent crime leads to people internalizing a false sense of danger which leads to the identification of crime-related commodities as life and

lifestyle sustaining necessities.

The idea of both crime and punishment as economic tools used to reinforce the status quo and further the gap between the haves and have nots is not a new concept. In capitalist societies, marginalized people are themselves commodities to be exploited and controlled -- either as laborers, consumers or property for the benefit of the powerful. Engels stated that the force behind the commodity exchange (the process of buying and selling) is compulsory competition. In applying this to the commodification of crime and its role in the corrections-commercial complex, it becomes clear that the media create the perception of more and new public needs for crime control related commodities. As the scope of perceived needs increases, the number of companies and level of competition increases also. Generation of profit is dependent on increasing the commodities for exchange, so consumers must be convinced that more commodities are necessities (versus wants) and the cycle continues.

Scope and Types of Services

When discussing the goods and services which private corporations produce and sell within the corrections industry, we most often think in terms of selling to government operated prisons and jails. "The cost of corrections is discussed primarily in terms of demand and only then in terms of tax dollars spent on correction employees and operation expenditures. These figures do not address the various private and corporate interests which comprise the supply or commercial side of punishment." (Lilly 1996:6). There are numerous privately provided criminal justice products which are not directly tied to jails or prisons but are part of the larger criminal justice industry.

Many of these companies do not consider the sale of goods and services to penal institutions to be their primary marketing interest, but they must also be considered when formulating a comprehensive picture of the industry component of this complex. For example, additional crime related commodities produced and sold by private corporations to private consumers include: guns, firing range registrations, 24 hour safe depositories, home and auto alarm systems, closed circuit TV security systems, security lighting and fencing, property marking tools, and self-help books (Tunnell 1992).

Private Security and Prison Management Corporations:

Although private correctional facilities represent only a small percentage of existing prison and jails, they continue to be a hot political issue. They garner political advantage for proponents through appealing not only to the public's growing fear of victimization but also as a quick fix for the huge economic responsibilities created by "get tough on crime" policies.

The provision of core management functions by private firms

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P rivate corporations must demand new criminality to increase profit and safeguard the market for their services, so there is inherent support for policies that use incarceration rather than promote social change

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is referred to as operational privatization. Wackenhut, founded by a former C.I.A. employee, was one of the first companies to become involved in the operational privatization of prison facilities. Wackenhut is an international corporation, supplying not only security but also food, healthcare, education, rehabilitation, facility management, architecture and design, construction, financing, staffing, screening and training of employees and personnel management services. George R. Wackenhut, CEO, and Richard Russell Wackenhut, President of Wackenhut Corporation, are also officers for 22 other corporations, the majority of which are part of Wackenhut's worldwide network of correctional facilities.

Wackenhut Corrections, founded in 1985, is majority owned by Wackenhut Corporation, a global enterprise, offering a wide range of services in fifty countries. Wackenhut Corrections produces revenues in excess of \$150 million yearly. In 1995, Wackenhut Corrections was among *Forbes Magazine's* "200 Best Small Companies" with ten years of at least 10 percent growth. *Standard and Poor's "Register of Corporations, Directors and Executives - 1995"*, reports sales of \$664.16 million, 46,000 employees and an international marketing territory for the parent Wackenhut Corporation. Its products and services include: security services (including guards, airport pre-departure screening and court and airport checkpoint screening), investigations, comprehensive operations and services for government or private facilities, management of educational and job training facilities, emergency medical and airport fire rescue services, armored cars and guards.

Based in Sarasota, Florida, Esmore Correctional Services, Inc. is the third largest publicly held operator of correctional and detention facilities with a 1996 compound average growth of 36 percent (*Company Report 1996*). Esmore is run by James Slattery, who was formerly with the hotel industry and thus understands the all important link between occupancy rates and profit. Slattery is one of the company's founders and the owner of approximately 20 percent of Esmore's common stock. Michael Garretson, the Chief Operating Officer, has several years of business experience including two years as Sr. Vice President - Business Development for Wackenhut Corrections, Director of Area Development for Infrastructure at EURODISNEY and has worked with several land developers. Ira Cotter, Executive Vice President - Finance, was a Vice President of Janney, Montgomery and Scott's investment banking department. Esmore is positioned to capitalize on any privatization trend. Through a focus on the high per diem/low fixed cost end of the market, Esmore has been able to maintain operating margins in excess of 35 percent.

The Corrections Corporation of America (CCA) is the oldest and the largest private sector United States correctional company. Their backers include the same investment firm that helped bankroll Kentucky Fried Chicken franchises. *Standard and Poor's Register* identifies CCA's primary business interest as the design, construction and management of detention and corrections facilities and reports 1995 sales of \$100.42 million. CCA had a record year in 1996 with the highest operating income in the company's history. Revenues increased by 41 percent and net profits increased 115 percent (*Prison Privatisation Report International 1997*).

On July 24, 1997, CCA announced second quarter and six

month net income growth of 66 percent and 86 percent respectively on revenue growth in excess of 50 percent. Revenues in the 1997 second quarter were \$107 million, up 59 percent from the second quarter of 1996. Net income for the first six months of 1997 was \$23.6 million, compared with \$12.7 million in the same period of 1996. (CCA: Letter to Shareholders 1997).

The exchange of government and industry personnel typically found in a subgovernment is evident in the Corrections Corporation of America. CCA has been linked to possible conflicts of interest due to its close relationships with state and local officials in its home state of Tennessee. Some of CCA's original shareholders were influential state and local politicians, including Governor Ned McWherter, Honey Alexander, the wife of former Governor Lamar Alexander, and John Neff, Alexander's insurance commissioner. Also, after Hamilton County Commissioner Bob Long voted to approve CCA's proposal for the Silverdale Work House, Long's pest control company was awarded a CCA contract. After he left his government post, Long was hired as a lobbyist for CCA.

Although Pinkerton's Incorporated is primarily associated with investigative and security services, *Standard and Poor (1995)* identify the following additional business interests: personal protection, ATM protection, background and workers' compensation investigations, consumer attitude and employee integrity testing, pre-employment selection services. Pinkerton's Inc. reported \$772 million in sales and 45,000 employees for 1995.

Estimating the Size

The number and type of companies involved in selling commodities and services to prisons and jails is one measure of the commercialization of punishment in this country. Lilly (1996) examined this question using the American Correctional Association (ACA) annual Buyers' Guide for 1991 as his source of information. He then used *Standard and Poor's Register of Corporations, Directors and Executives* to identify additional corporate interests of the companies who advertised in the Buyers' Guide. The findings identified the sales orientation of 87 percent of the companies as national or international versus local or regional. This substantiates the relevance of the American punishment industry for criminal justice in other countries.¹

Following Lilly's methodology, I used the 1995 Buyers' Guide to explore the number of companies and type of goods and services they produce for sale to prisons and jails. I then used *Standard and Poor's Register* to determine these companies' connections to other corporations through the sharing of key personnel.

There were 303 companies listed in the Buyers' Guide Company Index and 131 companies in its Index to Advertisers. Of the companies listed in the Index to Advertisers, 36 were also found in *Standard and Poor's Register*. Seventy-six additional companies were identified who had the same key personnel as those found in *Standard and Poor*. This came to a total of 112 companies.

Of the 36 core companies (those found in both the Buyers' Guide "Index to Advertisers" and *Standard and Poor*) 34 reported sales information and 36 reported employee information for 1995. The sales for these companies totaled \$37.234 billion and they employed 169,013 people. If Esmore, CCA, Wackenhut and Pinkerton's are included, these figures increase to \$38.880 billion in sales and 305,213 employees. The magnitude and diversity of

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the for-profit corporation component of the corrections-commercial complex is further illustrated by the ACA Buyers' Guide Product Category Index which lists a total of 180 different corrections related goods and services. This data illustrates the prominent role commercialization plays in the field of criminal justice and emphasizes the need for inclusion of the economic component in future research.

Conclusions

If the multitude of companies providing criminal justice related goods and services is merely a response to a true market need, further concern may not be necessary. Any decrease in demand would simply mean these companies would pursue other markets for their goods and services. What we see happening, however, is the expansion of the corrections industry although the need is more perceptual than real. This misperception is fueled by all forms of the media as well as political grandstanding focused on re-election and power rather than the public good. Existing social inequalities are exploited and reinforced to justify the continuation of ineffective policies and thereby guarantee a permanent and expanding market for the products of the corrections industry.

The politicizing of crime and punishment has turned a moral and social concern into an economic issue with a corresponding loss of focus on the social outcomes. Politics cater to those who have the power to re-elect and the political system which constructs corrections policy does so in response to the people, organizations and corporations who have that power. Therefore, policy does, and will continue to, reflect the interests of an influential few rather than the public at large.

Politicians focus on the crime problem as a diversion from larger social problems. They are not only supported but also joined in this tactic by the corporations who stand to benefit financially as a result of the existing social inequalities. As criminal justice strategies target marginalized populations they ignore the social conditions which contribute to crime. As more public dollars are diverted from social programs, the prison becomes the key strategy for managing expanding numbers of marginalized people. The combination of political rhetoric, media manipulation, tax dollars and corporate profit motives translates punishment into a business opportunity. When the focus of corrections becomes profit, crime and the existence of the criminal become economic necessities and will be created to the level needed to maximize corporate profit.

What are the moral and ethical concerns related to relinquishing the mechanisms of punishment and crime control to profit motivated corporations? There is a fundamental question of whether the public good and the welfare of private corporations are compatible. By definition, private corporations were not established for serving the public good; they were established to generate profit for corporate owners and shareholders. The bottom line is that a corporation is an entity without moral motivation or conscience, and they are increasingly dominating the areas of justice and punishment.

Durham (1989) also examined the issue of possible consequences of the loss of enthusiasm for the benefits of reform and the current focus on economic concerns relative to institutional overcrowding. She suggests that by focusing on the private sector and economic concerns, policymakers are able to ignore the need to develop alternative methods of responding to the issue of crime. She also argues that, if history repeats itself, a state which adopts private initiatives to address immediate penal conditions may become dependent on the private sector resulting in the continuation of commercial involvement even when the need diminishes. This corresponds to one of the key characteristics of subgovernment politics -- the quality of permanence in the relationship between government and private industry.

The commercialization of criminal justice goods and services exploits the symptom (crime) while ignoring the cause (inequality of opportunity). The birth place inequalities which deny a large segment of society equal access to the means of attaining the "American dream" are the same conditions which are likely to produce crime. The existence of a corrections subgovernment which advocates policies that reinforce these inequalities may be considered a form of cultural violence.

Lilly (1996) suggests that the size and nature of the corrections industry should, in itself, signal the need for caution and that parallels can be drawn with the defense industry and commercialization in general. Also, a simple review of the history of privatization of correction services in America brings to light a history of conflicts of interest, influence peddling, inmate abuse and political entrenchment. Although we should learn from past experience, the continued use and expansion of ineffective crime control strategies would indicate we have not learned — and that we can expect the same problems to reoccur.

There should be little argument relative to the existence of a corrections-commercial complex. The close working relationship of participants, the sharing of high level personnel, industry connections to major financial institutions, the overlap of societal interests and the government policy making apparatus, and the development of permanence in these relationships all point to the existence of a corrections subgovernment. That this has occurred with very limited public awareness or scrutiny further affirms the existence of a self-perpetuating, stable and insulated relationship that responds to the interest of its participants rather than the public at large.

The magnitude of the corrections industry, including its international aspects, highlights the need for focus on the economic components of criminal justice in future research. To date there appears to be a lack of research that examines all of the contexts in which criminal justice operates (political, economic, social and moral) and then integrates those aspects with the goal of developing policies which are more responsive to true societal needs.

Notes

1. Some of the products and services found in the international punishment market include: new communication technologies, cross border prison and jail construction and management, food

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Just In....

As this newsletter is going into production, the editors came across the following information.

A Youngstown, Ohio, facility run by the Corrections Corporation of America refused to admit members of the Ohio Institution Inspection Committee. The inspection team included a State Senator and Representative along with two members of the union representing state-employed prison guards. "Here we were holding copy of the Ohio code and they were talking about their corporate policy was more important than the law," Representative Mallory said.

PALM BEACH GARDENS, Fla., May 5 /PRNewswire/ -- Atlantic Shores Healthcare, Inc., a wholly owned subsidiary of Wackenhut Corrections (NYSE: WHC - news), has been selected by the Florida Department of Children and Families as the vendor with whom the Department will seek to contract to assume operation of the 350-bed South Florida State Psychiatric Hospital in Pembroke Pines beginning October 1, 1998. If successfully negotiated, the contract will also include the design, finance, construction and management of a new facility to be completed on or about July, 2000. This represents the first comprehensive privatization of a state psychiatric hospital in the country.

The information above came from *Private Prison Watch*, an e-mail newsletter collecting articles on the problems of prisons that have been privatized, are run by corporations for profit, and analyzes this practice as a trend in western society. By special permission, it reproduces the Prison Privatisation Report International, which is published ten times a year by the Prison Reform Trust (PRT), a UK charity. contact: ppwatch@hotmail.com

Also of interest: *Beyond the Prison Industrial Complex: A National Conference and Strategy Session*. September 24-27, 1998, University of California at Berkeley. Contact: Critical Resistance, P.O. Box 339, Berkeley, CA 94701. (510) 643 2094. critresist@aol.com www.igc.org/justice/critical

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and medical services, increased use of internationally linked data networks (Lilly 1996). The British media has also reported plans for some U.S. firms to do international electronic monitoring of offenders in their English homes from the United States.

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THE CRITICAL CRIMINOLOGIST BACK ISSUES

Cost: \$4.00 per issue domestic; \$5.00 per issue foreign. Checks should be payable in US\$ to CJED (CC a/c). Please send remittance, your address and the volume/issue number to:

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Fear and Policing in the Age of HIV/AIDS

Jeanne Flavin

Fordham University

To date no police officers have become infected with HIV as the result of workplace exposure, according to the Centers for Disease Control and Prevention (CDC).¹ Unlike health care workers, police officers' exposure to HIV is intermittent rather than routine. A Denver study found the rate of officers' exposure to blood was quite small, ranging from .09 to 1.52 per 10,000 person-days – about one exposure every 40 years (Hoffman et al., 1994). Further, the most common types of occupational exposure present a very low risk of infection. Police officers may come into contact with blood or other body fluids at a crime scene, or be injured by a needlestick during a search. According to the CDC, 99.7 percent of needlestick/cut exposures and 99.9 percent of eye, nose, or mouth exposures do *not* lead to infection. The risk of infection from exposure of the skin to HIV infected blood is estimated to be less than 0.1 percent. HIV transmission has not been shown to occur from a small amount of blood being exposed to intact skin or exposure to sweat, tears, saliva, or airborne droplets (as in a sneeze) (CDC, 1997; Richman and Rickman, 1993).

Given that officers face a low likelihood of occupationally transmitted HIV infection, what accounts for some police officers' extreme reactions to people known or perceived to have HIV? Hopefully, many (if not most) police officers recognize the rights of people with HIV/AIDS, but there is no shortage of examples illustrating how officers have responded to HIV with prejudice and fear rather than professionalism. Consider the following:

- A police officer reports, "Quite a few [fellow police officers] have told me that they wouldn't [administer first aid] to *anyone* who looks like a junkie or a fag, no matter who they were" (emphasis in original, qtd. in Leinen, 1993:60).
- Security guards at the White House do not routinely wear gloves. Yet in 1995, Secret Service security guards donned blue rubber gloves to usher in 40 gay and lesbian elected officials for a briefing by the Clinton administration. When asked, the guards told the gay officials that the gloves were "for protection" implying they were concerned about becoming infected with HIV (No author, 1995).
- A.L.A. was arrested by for passing a bad check at a retail store. During a search incident to the arrest, Officer Johnson discovered a piece of paper in A.L.A.'s wallet indicating he was HIV positive. Later, Johnson told A.L.A.'s sister and his two housemates, at least one witness at the store, and the jailer that ALA was HIV+, even though A.L.A. had not engaged in any conduct that would have placed any of these people at risk. Because of Johnson's disclosures, A.L.A.'s friends and family

shunned him, and fellow prisoners and the guards harassed him. While in jail A.L.A. underwent further testing that revealed that he was not currently nor had ever been infected with HIV (*A.L.A. vs. West Valley City*, 1994).

- Last year, a detective with HIV sued the New York Police Department for \$20 million, claiming he was falsely accused of mental instability and beaten by six police officers because of his condition (Guart, 1997).

The existing literature focuses on how officers *should* respond to people with HIV (in order to avoid HIV infection or a lawsuit), and generally does not acknowledge that a problem exists. This essay considers a few of the myriad factors that may influence police treatment of people with HIV/AIDS, such as the uncertain and unpredictable nature of police work, the use of the criminal law to prosecute attempts at transmitting HIV, poor police-citizen relations, and shortcomings in HIV/AIDS education.²

Risk, Perception & Mistrust

According to the concept of the Universal Precautions, all human blood and certain body fluids should be treated as if they contain HIV, HBV, or other bloodborne pathogens, and personal protective equipment such as gloves or a mask should be used. This works fine in theory, but in reality police officers may find themselves in unanticipated situations which do not provide sufficient time to take prescribed precautions. For example, a 1989-1991 study of Denver police officers documented 42 exposures to blood. Two-thirds of the exposures occurred in circumstances in which the officer was restraining or being assaulted by a suspect and did not have time to put on protective gloves and clothing, or gloves would not have been protective because of penetration by needles (Hoffman et al., 1994).

In other words, while precautionary routines and procedures

Training and policy are insufficient because they focus primarily on protecting officers against infection and avoiding lawsuits rather than promoting the humane treatment of people with

are helpful, they cannot address the full range of situations an officer may encounter. This, in turn, may contribute to officers' fear and subsequent overreaction to the threat of HIV exposure. But many cases of officer overreaction or mistreatment occur in instances that do *not* call for Universal Precautions. This suggests other factors are at work which undermine officers' ability to accept that HIV is not spread by casual contact, and not all body fluids present a risk of HIV infection.

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One such factor might be the use of the criminal law to charge people for attempting to transmit HIV and the media's coverage of these cases. If the risk of getting HIV through saliva is so minimal, an officer may wonder, then why did a court uphold a felonious assault with a deadly weapon conviction in a case where a man spat on a police officer (UPI 1998)?.

The use of the criminal law contributes to an inflated perception of the risk associated with certain behaviors in at least two ways: First, people with HIV have been criminally convicted for various behaviors, not all of which have been scientifically found to pose a significant risk of transmission (Gostin 1996). These convictions reflect in part that the issue of intent is more salient to the courts than is the issue of transmission likelihood. For example, in *People v. Caine* (1995), the court held that saying "I'll give you AIDS" while sticking someone with a syringe was sufficient to convict for attempted second-degree murder, regardless of whether or not the syringe actually contained HIV.

Second, many judicial opinions do not differentiate between significant and remote risks of transmission. While "courts enunciate a 'deference' to scientific opinion, they also may grant 'expert' status to testimony that is loosely grounded in solid science" (Gostin, 1996:24-25). For example, in *Burk v. State* (1996), the court upheld the felony reckless endangerment conviction of an HIV+ individual who attempted to bite a police officer. The court relied, in part, on the misleading testimony of Burk's treating physician who asserted that it was

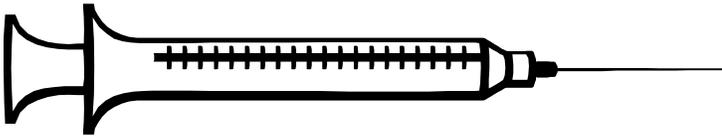
"very strongly probable that someone could get the HIV virus if bitten by an infected person. [The physician] further testified that although he was not aware of any known reports of anyone contracting AIDS through the transmission of saliva, the HIV virus had been found in saliva and he did not see why it could not be transmitted that way" (at p. 531, emphases added).

These cases are often reported under headlines such as "HIV Spitter's Conviction is Upheld" and "Alleged AIDS Victim Faces Murder Count in Spitting." These headlines emphasize the sensationalized "newsworthy" aspects of the incident rather than the very low probability of transmission, and undermine important educational messages.

In addition to the problematic application of the criminal law, the incidents themselves exacerbate existing tensions and distrust between police and citizens. A few years ago, a woman allegedly jabbed a Boston police officer with a hypodermic needle filled with blood and then shouted "I'll stab any police officer I want with needles and I'll make sure they have blood in them so you'll get AIDS!" (Buote 1994:17). A man claiming to have AIDS allegedly spat at a police officer and then announced he hoped they could die together (No author 1997). Another woman reportedly bit two police officers, bled on three others, and then told the

officers she had AIDS. She later claimed her story was a lie, and has subsequently tested negative for HIV (Chacon 1995). A Wisconsin man was charged with biting a police officer and warning officers "I have AIDS and you are all going to die" (Shuit 1993). Whether inspired by mental imbalance, anger, desperation, or revenge, these incidents feed into police officers' fear of HIV.

Further, law enforcement taboos against homosexuality and drug use also have made HIV a particularly sensitive issue among police officers. Police attitudes toward marginalized groups, including gays and lesbians, and injection drug users has historically been poor and the advent of HIV has compounded the tension and mutual distrust. Although the existence of organizations such as the Gay Officer's Action League demonstrates these groups' memberships are not mutually exclusive, gay police officers have reported a reluctance to disclose that they are gay for fear that fellow officers will not help them if they are injured (Leinen 1993). A Miami police officer assumed to be HIV+ was assigned to front desk



Are police reactions to HIV/AIDS understandable given the fear, ignorance, and prejudice which surrounds HIV? Yes Are they acceptable? No

duty when administrators became afraid for his safety. Three weeks later he was "tear gassed" in a restricted area of the police station. He eventually resigned from the police department and charged the Miami Beach Police Department with discrimination (Buhrke 1996).

Fear, Education & Humane Treatment

Officers' fears and prejudices have resulted in the failure to administer first aid, people being forced to undergo unwanted and unwarranted antibody testing, and legally precarious dispatch policies whereby officers are notified that a suspect is known to be HIV+.³ Are these reactions to HIV/AIDS understandable given the fear, ignorance, and prejudice which surrounds HIV? Yes. Are these reactions acceptable? No.

Educational programs and departmental policies are frequently heralded as the best means of addressing the problem. But offering training or having a policy on the books is insufficient, given that these programs and policies are focused primarily on protecting officers against infection rather than promoting the humane treatment of people with HIV. If policies and educational efforts are to address the problem, then the content of these should reflect it.

Most agencies with educational programs and policies initiated these efforts because of legal requirements (e.g., mandates from OSHA) and a desire to protect personnel (Edwards and Tewksbury 1996). Only 10 percent of agencies, for example, cited a desire to treat citizens with HIV/AIDS fairly as a reason for developing an HIV/AIDS-related policy. Similarly, while 29 agencies have policies addressing how to handle a person with HIV, only nine of these policies address the employment of people with HIV.

The neglect of humane treatment notwithstanding, even the

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emphasis on officer's safety raises concerns. For one, the quality and quantity of education varies widely with course materials ranging from a short handwritten outline to elaborate training materials and professionally produced videotapes (Edwards and Tewksbury 1996). Also, the basis upon which these programs assess how "knowledgeable" and "informed" police officers are about HIV transmission lends itself to criticism. Most knowledge assessments ask questions along the lines of: What is the likelihood of getting HIV from living near a hospital or home for AIDS patients? Eating in a restaurant where the cook has HIV? Kissing (with exchange of saliva) a person who has HIV? Sharing plates, forks, or glasses with someone who has HIV? Using public toilets? Working near someone who has HIV? Mosquitos or other insects?

Most officers have an accurate sense of the low risk associated with these situations. However, having factually accurate knowledge is of limited value if this knowledge is not reflected in officers' attitudes and behaviors. Answers to the aforementioned questions are widely "known" but whether they are believed, trusted or acted upon is another matter. The issue is not so much, for example, whether officers intellectually know they cannot get HIV just by working with someone, but how they would feel about working someone with HIV. In a New York City study, only around 10 percent of the officers thought it likely that HIV would be transmitted by working near someone with HIV. Yet over one-third of the officers reported being afraid of contracting HIV by working with someone who has AIDS (Barr and Warshaw, 1994). Also, while an officer may intellectually "know" that HIV is not transmitted by a particular behavior, he or she may still suspect that infection is transmitted in this way. As one officer explained, "My partner, he's got the idea that even if a person looks at you, you can get AIDS from him. I've tried to talk to him time and time again, but there's no telling him. He knows what he knows" (qtd. in Leinen, 1993:58-59). Factual information may be overridden by irrational fears.

A second major concern is the extent to which course content focuses on situations officers could expect to encounter on the job. Officers are not expected to engage in deep kissing or other sexual activity on the job, so educational messages about the relative risk associated with sexual activity is of limited utility in minimizing the risk of occupational HIV transmission. The risk associated with administering CPR, however, is another matter. Imagine how different responses to the aforementioned questions might look if officers were asked about the transmission likelihood associated with being spat upon by someone infected with HIV, coming into contact with the vomit of someone who has HIV, being stuck by a syringe, being bitten by someone with HIV where the bite does not break the skin, having blood splash into one's eyes, etc. If we want training programs to be effective in shaping job-related attitudes and behaviors, then we need to make sure the content is relevant to the job.

In sum, the likelihood of a police officer mistreating someone perceived to be HIV+ is far greater than the possibility that a police officer will become infected with HIV on the job. Yet it is the latter concern which dominates research, policy, training, and the police psyche. We need to broaden the focus of existing research and educational efforts to confront the larger problem of how police officers respond to people perceived to have HIV. Toward

this end, we need to document the scope of the problem and the forms it takes. Efforts also should be made to identify and address police officers' concerns about becoming infected with HIV with greater specificity. We need a better sense of what police officers know and what attitudes they hold. Pressure should be exerted upon the medical and/or law enforcement communities to standardize the content of HIV/AIDS-related training.

Just as rape and domestic violence historically have been defined as "women's problems," so too has police mistreatment of people with HIV/AIDS been viewed as the problem of people with HIV/AIDS. The humane and compassionate response to people with HIV should not be solely the concern for those infected with HIV, but also for those who are affected by HIV; that is to say, for all of us.

NOTE: Individuals with similar concerns or information on police and agencies' responses to people with HIV are encouraged to contact me at jflavin@murray.fordham.edu or Fordham University, Dept. of Sociology, 441 E. Fordham Rd., Bronx, NY 10458.

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Notes

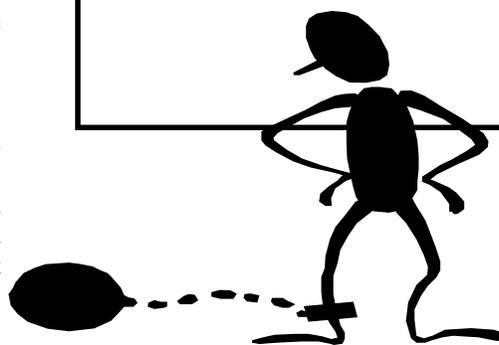
1. An FBI survey of all law enforcement agencies in the United States encountered seven cases of HIV infection which agencies deemed to have occurred via occupational transmission between 1981 and 1991 (Bigbee, 1993). The CDC, however, did not find sufficient evidence that any of these officers contracted the diseases while on the job. CDC Surveillance should not be confused with an accepted claim from a state Workman's Compensation Board. Many states have workman's compensation laws that automatically assume an illness such as tuberculosis was contracted on the job. Some states require proof via reporting and testing. There also have been cases where individuals have claimed to have contracted HIV in a "socially acceptable"/less stigmatizing means (i.e., via occupational transmission or a blood transfusion) in order to not upset their family, etc.

2. Admittedly, there are features of HIV that generate some level of fear in everyone. For example, the source of harm is an invisible microbe for which there is no cure or vaccine available. This essay focuses on factors that are particularly salient for police officers.

3. Presumably, this policy exists to protect the officer. In reality, such practices may actually *reduce* the safety of police officers by providing them with a false sense of security. Police dispatchers will not know the HIV status of most of the individuals with whom the officers will come into contact. Therefore, it cannot be assumed that because no warning is given that the suspect is not infected with HIV.

(Continued from page 11) *BACK ISSUES*

"Justice in Fragments: The Political Logic of Mediation in 'New Times'" George Pavlich



A CALL FOR PAPERS

MULTICULTURAL APPROACHES TO DOMESTIC VIOLENCE

There is a tremendous void in the literature on the causes, consequences, descriptions and recommendations of battered women from a wide variety of racial, ethnic, cultural, religious and sexual orientation communities. If you know of scholars, activists, practitioners, service providers, survivors, community groups, supportive services who are working and writing about domestic violence from a multicultural perspective, please get in touch with me. Any references to such publications would also be greatly appreciated. If you are doing work or have published in this area, I would also appreciate talking to you.

For the past 25 years I have taught in the Sociology Department at John Jay College of Criminal Justice, City University of New York. My research and teaching has been primarily in the areas of (1) women, victimization, crime and justice and (2) women and work. I always use a race/class/gender perspective in my teaching and research. As I always use a race/class/gender perspective in my teaching and research. As a teacher it has become all too clear that we need a more multicultural approach to issues of domestic violence and survival. Any help in identifying research and theory (either already published or in the early phases of writing) would be greatly appreciated.

Contact: Dr. Natalie Sokoloff, Dept of Sociology, John Jay College of Criminal Justice, 445 West 59th St, New York, NY 10019. 212/237-8671. nsokolof@faculty.jjay.cuny.edu

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Critical Reflections on Social Theory, Actuarialism and 'Risk Society'*

George S. Rigakos

Saint Mary's University

There has recently been much talk about 'risk' in criminology. And for very good reason. Perhaps in no other area of study has the effect of predictive theory been more privileged. The pre-eminent position of perspectives that seek to use aggregate statistics to foresee crime rates or construct administrative templates for the funneling of offenders is easily confirmed by flipping through the pages of most mainstream Criminology journals. Routine Activities Theory, Lifestyle Exposure Theory, and even popular 'Self-Control' Theories hope to provide the formulas for calculating the riskiness of environments, cityscapes, offenders, and 'situations.' The epistemology of instrumentalism is at the forefront of current administrative criminological explanations. Causality is out, prediction is in. Positivism is still the poison, but it has been watered down with the (architec)tonics of risk management. It is with wisdom, therefore, that astute social theorists – both within and outside criminology – take aim at 'new' rationales that seek to fix social relations into pre-ordered regimens.

With this backdrop in mind, I wish to comment on some of the latest inquiries by academics in this 'emerging' (if not, hegemonic) approach to risk 'governance.' My argument is that while sociologists have correctly identified the organizing logics and institutional rationales of risk systems, they have failed to offer perceptive critiques of these schemas. Instead, they have uncritically adopted these productions of knowledge as the actual organizers of society rather than revealing their legitimating functions within late modern capitalist economy. These processes are thus reified, as if the corporate-managerial epistemes that fuelled them are self-evident, transparent, and in no further need of inquiry beyond their representational facades. Often, this propensity is masked within the (misused) Foucauldian project of the archaeology of knowledge (or the history of the present) which supposedly sheds its critical incubus by making such political positionings extraneous to its project – that is, "it seeks to maintain the neutral gaze of an analyst rather than the hostile glare of a rival with competing truth claims" (Garland 1997:186). This, of course, is a long-established impossibility for critical criminologists (Becker 1967). Critical thinkers must begin to more closely engage these discourses lest all analysis be forfeited to such politically limiting orientations. In what is to follow, I offer a brief overview and simultaneous critique of key aspects of 'risk society' literatures.

Techniques of power through discipline not only regard individuals as objects but as instruments of its exercise – operating at the mundane level of procedure through the processes of hierarchical observation, normalized judgement, and perpetual

examination (Foucault 1977). Thus, risk templates (within an instrumentalist regime) seek to 'know' populations by coding them according to categorical constructions of dangerousness: physical (through violence) and monetary (litigiousness). Institutions use these tools as vetting techniques for organizing population flows and knowledge.

THE FALLACY OF EQUALITY

The most well-known thesis on these risk techniques is offered by Ulrich Beck (1992) whose book *Risk Society: Towards a New Modernity*, sold over 100,000 copies in its first printing. He posits a series of assertions – obiter dicta (Leiss 1994) – displaying the often caricatured German compulsion of not being able to make the smallest social observation without first erecting a universal cosmology in which to fit it (Mayo 1960:56). Everything and everyone is profiled, endlessly coded, categorized and positioned within a new risk hierarchy. Social inequality has therefore become individualized: everyone is tasked with erecting and maintaining their risk codings within multiple institutions, and across multiple categories. For Beck (1992), class divisions have been transformed by risk society's 'boomerang effect.' In other words, new social risk positions replace traditional classes because the effects of modernization inevitably effect all persons. Beck argues that environmental contamination, ecological disaster, and

A serious problem arises when institutional risk profiling mechanisms are uncritically accepted as 'constitutors' of identity rather than 'classifiers.'

atomic fallout reach even the rich and powerful. No one can escape. While Beck acknowledges that 'old' class divisions are 'sometimes' amplified rather than transformed by the dispersal of risks, he nonetheless maintains his dogmatic stance that "poverty is hierarchic, smog is democratic" (Beck 1992:36). Against the impending criticism he anticipates for proffering such a controversial dictum, he argues – on flimsy grounds – that "*objectively... risks display and equalizing effect within their scope and among those affected by them*" [italics in original].

Of course, this simply is not true: the affluent *can* and *do* escape the fallout of risks, whatever their manifestation, by simply moving to safer neighbourhoods or purchasing technology, health care, insurance, and security. Elsewhere, Beck argues that 'new international inequalities' have emerged based upon the proliferation of unsafe factories into nations with lax environmental

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standards. How dubious to reconstruct impoverished nations as merely more 'risk prone' within a 'new' global constellation of inequality. There is, of course, nothing new about imperialism and corporate exploitation – these modes are well entrenched throughout the history of industrial capital. The redefinition of these practices as new international risk categories only obfuscates their obvious race, gender, and class implications.

A POLITICAL ECONOMY OF THE SELF DOES NOT EXIST

With a few notable exceptions (e.g. Simon 1994), risk society theorists contend that traditional class divisions are superseded by emerging regimes of actuarial governance that radically transform social groupings. This means that the multiple modes of 'knowing' populations by categorizing them according to their credit, medical, and insurance ratings disaggregates collectives and re-organizes them within a depoliticizing social ether. By employing the multiple regression techniques of aggregate statistics, institutional dossiers – at the individual level – can rank the 'riskiness' of persons according to the logics and needs of the organization producing that knowledge. Both individuals and organizations are thus tasked with identifying and responding to a wide-ranging constellation of threats that may include organizational or personal identities, health, and economics. For Beck (1992), the "difference in how people are affected by class and risk positions is essential. To put it more bluntly, in class positions [,] being determines consciousness, while in risk positions, conversely *consciousness (knowledge) determines being.*" [italics in original] (53).

Following from Beck's thesis, Ericson and Haggerty (1997) have more recently applied 'risk society' discourse to Criminology. In their articulate and broad consideration of the instruments and logics of policing late modern risks, they proffer a perspective which relies heavily upon a conception of both societal processes and the identities manufactured by them as fragmented and multifarious. The policing of risks is then only best understood by compartmentalising these disciplinary techniques into territories, securities, commercial regulation, financial instruments, insurance, credentials, health, and finally identities such as age, race, and ethnicity. This is all well and good, but a serious problem arises when institutional risk profiling mechanisms are uncritically accepted as 'constitutors' of identity rather than 'classifiers.' The distinction is centrally important because an indirect reification has taken place: the probabilities, themselves, are seen to be constructing classes rather than vice versa. To engage the argot of actuarialism, therefore, the compartmentalising of risk identities is actually a spuriously correlated constellation of traits that, in reality, hinge upon the *actual predictors* of socioeconomic status, ethnicity, gender, and age.

In other words, contrary to Ericson and Haggerty's (1997:7) 'political economy of the self,' one's position in society dictates one's credit rating, health benefits, and the amount of attention one is afforded by policing institutions. The banking and insurance practice of 'red-lining' geographic districts populated by low income residents in the U.S. is merely a cold, instrumental decision designed to minimise economic risk, but it is simultaneously a politically heated resolution that serves to ghettoise blacks. Similar statistically-based 'policing' decisions are made daily about dangerous populations that, as it turns out, tend to target 'suitable

enemies' (Christie 1986) that are low income, ethnic minorities. We must pay careful attention not to misread risk systems as operating on a separate or detached logic from 'unscientific' impulses such as racism, heterosexism, classism, etc.

THE TRAP OF AUTOMATISM AND OTHER ORGANIZATIONAL FICTIONS

Most 'risk society' theorists are also post-structuralists, and it is not surprising to find their analyses strongly tethered to the evolving Foucauldian conception of governance. There seems to be an inherent tension in conducting Foucauldian analyses of institutional schemas or programmes while doing Sociology. That is to say, while Foucault (1977) provides ground-breaking insights into the organisation of Benthamite prison design or military and scholastic hierarchies, he cares very little about how this 'paper reality' translates into the lived experiences of those who inhabit such systems. In response to a question regarding how his perspective might account for the everyday lives of the panoptically surveilled prisoner, Foucault replied that his scholarship "has nothing to do with the project – an admirable one in itself – of grasping a 'whole society' in its 'living reality'" (1991:181). In other words, understanding the actual social existence of those who are ostensibly imagined as falling within schemas is secondary to analyses of the logics behind the programmes themselves. This is different from the common sociological enterprise of examining rule through "what actually happened" (O'Malley, Weir and Shearing 1997:502).

You might well ask, "what does this have to do with risk society?" Well, the impetus of post-modern studies of social control, quite logically, therefore centres upon the 'paper realities' erected by a history of administrators. As post-modern theorists thus immerse themselves within the actuarial, risk models of late modern institutions, their first compulsion is to imagine those players ensnared by the system as mere automatons. Take, for example, Castel's (1991) consideration of the profession of medicine. Flows of population (patients), the absence of face-to-face interaction, the emergence of specialists, and the increasing administrative need to reduce risks results in the physician being recast as "subordinate" and merely an "executant" (Castel 1991:281). Police officers are also mere data collectors as auditing systems, report formats, and the hierarchy of communications becomes privileged. Street officers are thus no longer considered tied to occupational ethics or 'recipe rules' (Ericson 1982) but rather are thought de-skilled and possessing a limited range of decision-making capability (Ericson and Haggerty 1997). But even within Ericson and Haggerty's analysis of policing risk systems, there are ample examples of resistance, including bootleg report forms, the misuse of information technology, and the refusal to work with computers. Furthermore, the assertion that procedural dictates are adhered to by police officers would come as a surprise to many battered women, whose rights to protection often go unheeded despite overwhelming organisational, legal, and political entreaties (e.g. Rigakos 1998).

The extreme manifestation of this 'trap of automatism' can be found in the often ingenious work of William Bogard (1996) who meshes Baudrillard (1983) with Foucault (1977) in his *Simulation of Surveillance*. In his social science *fiction* he offers "a picture... of an 'observation machine' that fashions its own images for its

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own consumption" (24) so that nothing is left to chance and everything has been accounted for from the very beginning. In Bogard's model of telematicism (reducing the time for information to travel to zero), cyborgwork (labour) is allowed leisure time only because this will ultimately fuel the totalising system of production. 'Loafing' is thus pre-calculated to elicit further profit as every action and reaction has been actuarially predicted. Resistance, therefore, is pointless since it only reinforces the production system. Instead, workers are left with simple games (perruque) to relieve the monotony of labour.

It would seem that immersion within the regimes of risk management has placed administrative schemas at the centre of these analyses. This has resulted in the construction of rather passive, predictable, automatic persons who cannot escape or resist the system. As O'Malley (1993) notes: "[s]ocial theorists here, as elsewhere, fall into the trap of constituting ordinary people as 'cultural dupes,'... if the dangerous classes could come to recognise themselves under disciplinary regimes, so too may those grouped under the actuarial categories of risk" (164). Absent an appreciation for the actors under its purview, the privileging of the paper-reality of an institution through policy and procedure (or the operational logics of management) often results in the construction of those within the system as automatons.

REVIVING HEGEL: THE AMPLIFYING SPIRAL OF RISK

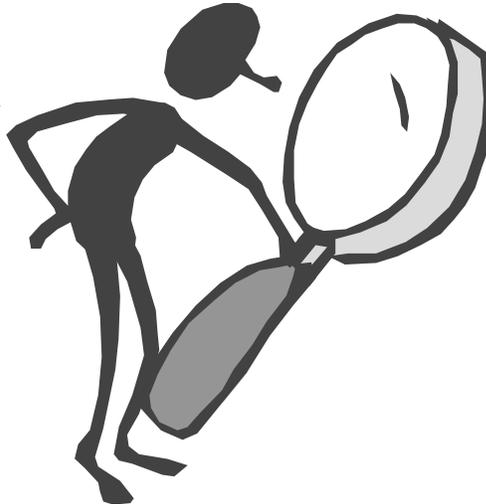
Central to risk society theory is its perpetually escalating character. Beck (1992:56) argues that for every advance in production technology, a new and unforeseen risk to the environment ensues, creating the drive for the increased scientisation of production. Since risks are 'a bottomless barrel of demands,' this process regenerates in continuously. This is what Beck (1992:56) names a "system immanent normal form of the revolutionising of needs." Characteristic of this process is a referential but self-sustaining interplay between risk and economy. In other words, fear and its satiations are merely symbolic and "independent of [their] context of satisfying human needs." (ibid.: 56).

Risk society's amplifying spiral of technology and risk (Ericson and Haggerty 1997) is thus idealistic, in the sense that it does not necessarily reflect the material reality of economic production. It is reminiscent of Hegelian dialectics wherein thesis and antithesis produce synthesis, and synthesis, in turn, becomes thesis as the process is repeated. The dubious logic of this metaphysical process has been long discredited, so it is interesting to find it resurfacing in the works of late 20th century writing. The dialectical materialism of risk, therefore, requires us – in an *a priori* fashion – to seek out the risks of production and their modes of amelioration. Next, we are to sit back and wait for the resultant presence of new risks which will force the process to re-commence. The theory is not only self referential, but can scantily predict the nature of new risks since the possibilities are, in reality, limitless. Like Hegelianism, the antithesis can never be known until a new synthesis has purportedly been developed. We are thus confronted

with the overarching metaphysical nature of portions of Beck's work: 'risk is always out there, look for it, and assign it a place in the dialectal zig-zag... *post facto*.' Commenting on similar tendencies in social theory in 1853, Marx noted "we discover that German idealism here, as in most other instances, has but given transcendental sanction to the rules of existing society" (56).

Now, I have been rather critical of these emerging risk discourses but, to be fair, it cannot be said that within these works, the nature of actuarial logics are not uncovered, that the dynamics of their implementation are ignored, or that the fantasies of instrumental epistemes and communications are not catalogued. In this regard, the risk society discourse often borders on the ingenious. But we need more critical research here and unlike others, I am not content to simply map the infrastructures of risk. As Garland notes, "alongside this knowledge of the authorities' knowledge, I *also* want to be able to propose a different reading... that may be at odds with that of the governing authorities" (Garland 1997). And, of course, this is a pivotal task for critical criminology.

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*Based on the paper "The Politics of Crime Control in a Risk Society." Presented at the 47th Society for the Study of Social Problems Conference (August 9, 1997).

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Tobacco: The Greatest Crime in World History?

Matt Robinson

Appalachian State University

According to the Centers for Disease Control and Prevention (CDC), there were 48 million smokers over the age of 18 years in 1994, accounting for approximately 26% of the U.S. population, plus an additional 3 million smokers under the age of 18 years of age (Centers for Disease Control and Prevention 1996a). Since one-third of smokers will die of smoking-related illnesses, we can expect 16 million smoking-related deaths among current smokers over the age of 18 years of age (Centers for Disease Control and Prevention 1996a). Another 5 million young people currently under the age 18 will die from smoking (Centers for Disease Control and Prevention 1996b). Through numerous forms of cancer, heart disease, stroke, and so forth, smoking kills approximately 418,000 people per year, plus it leads to tens of thousands of miscarriages (Centers for Disease Control and Prevention 1993).

In order to maintain demand for their product, generate profit and fulfill their obligation to shareholders, the industry must replace those who constantly die off from continued use of their product. The best source of new recruits is those too young to fully understand the dangers, who (wrongly) believe they are immune from these harms and who (wrongly) believe they can quit at any time. In 1991, about 82% of smokers began smoking under the age of 18 years, before the age of legal accountability (Centers for Disease Control and Prevention 1994c). The tobacco industry exploits this market through advertising and merchandise offers, so 3,000 new young people start smoking everyday — over 1 million new smokers per year (Pierce et al. 1989). Given the clever and directed marketing efforts, children choose the three most heavily advertised brands more than twice as much as adults (Centers for Disease Control and Prevention 1994c).

Smoking kills about 16 times as many people per year as murder; currently three million people die world-wide from tobacco each year, and if present consumption patterns are maintained, 250 million of the 1.25 billion people now living will suffer a similar fate. Smoking also costs \$50 billion in direct health care costs per year (Centers for Disease Control and Prevention 1996a). This is more than all street crimes combined. Despite all the government produced information about the harms from smoking, the manufacture and use of cigarettes is still not criminal even though the link between cigarettes and cancer has been known since 1964, the same year that the American Medical Association (AMA) officially called smoking "a serious health hazard" (Centers for Disease Control and Prevention 1996c). Evidence from internal documents from the tobacco industry show that tobacco companies knew this even before the federal government revealed it (Glantz et al. 1996). Undoubtedly much more awaits our discovery when the

millions of pages of tobacco industry documents become accessible via court orders.

Labels indicating the health hazards of cigarettes appeared in 1966. In 1970, the World Health Organization (WHO) took a public position against cigarette smoking. The risk of second-hand smoke was officially recognized by the Surgeon General as a health risk in 1972, but it was not until 1993 that the Environmental Protection Agency (EPA) designated second-hand smoke a Group A Carcinogen. Cigarettes in rations to U.S. soldiers and sailors were not discontinued until 1975. In 1981, the Surgeon General said no consumption of cigarettes was safe. In the 1990's the Food and Drug Administration (FDA) called cigarettes a delivery system for an addictive drug, similar to heroin, cocaine, and alcohol (Centers for Disease Control and Prevention 1994c; Anthony et al. 1994).

The thousands of pages of internal documents from tobacco companies which have already been leaked and published in five articles in the *Journal of the American Medical Association* (JAMA 1995) and in a book entitled *The Cigarette Papers* (Glantz et al. 1996), show that tobacco companies have known of the addictive nature of the drug nicotine and the harmful effects of smoking for at least 35 years, despite the fact that they continue to deny it

Rather than using our "intellectual freedom" to proactively expose the hypocrisy of our definitions of criminal harm, many use their criminological expertise to reinforce myths about crime

publicly (even under oath in front of Congress). The editors of *JAMA*, the usually conservative mouthpiece of the medical profession, stated:

In summary, the evidence is unequivocal that the US public has been duped by the tobacco industry. No right-thinking individual can ignore the evidence. We should all be outraged, and we should force the removal of this scourge from our nation and by so doing set an example for the world. We recognize the serious consequences of this ambition, but the health of our nation is more important than the profits of any single industry (1995: 258)

One relatively small company recently admitted that cigarettes are addictive and harmful, and now labels its cigarette packets to indicate that smoking is addictive; this was one factor which caused the "big boys" to also admit that smoking meets some definitions of addiction. It is now known that cigarettes contain 43 carcinogens (Centers for Disease Control and Prevention 1996a), and smoking may serve as a gateway drug to alcohol, marijuana, and cocaine (Centers for Disease Control and

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Prevention 1994c).

Certainly if tobacco were invented now, it would quickly be declared illegal and become a part of the war on drugs. But even in light of all this evidence, neither the production of cigarettes nor their usage is considered criminal. Instead, Partnership for a Drug-Free America accepts large contributions from the tobacco industry and no one will be arrested or convicted just for smoking (except for minors and only in some places). Additionally, no cigarette company executives will be held criminally accountable despite their actions, which include heavily advertising a deadly product, marketing to children and other specific populations such as minorities and women with cartoon characters, flavored cigarettes and slim cigarettes, hiding the truth about cigarettes from society, and even purposefully producing inaccurate results from inadequate or biased scientific studies (see Glantz et al. 1996), including funding diversionary studies via the Tobacco Institute to raise questions about the independently authored scientific evidence.

In 1994, cigarettes companies spent \$5 billion per year on advertising, over \$13 million per day (Federal Trade Commission 1996). This makes them the second-most advertised product behind automobiles. All this advertising is directed at creating a demand for products few tobacco executives use themselves. When former Winston Man David Goerlitz asked an RJ Reynolds executive if he smoked, the response was: "Are you kidding? We reserve that right for the poor, the young, the black and the stupid" (in Herbert 1993, 11).

The liability of cigarette companies is being debated now in numerous civil lawsuits and in Congress. At the very least, cigarette companies have knowledge of the harms done by their products and the lies used to cover up the truth. Theoretically, this would seem to make their behavior consistent with criminal behavior committed knowledgeably, and at the very least as a result of "culpable negligence". Yet, the behavior of cigarette manufacturers appears to be perfectly legal in criminal terms. Now Congress is considering settling with the tobacco industry, by forcing them to pay fines of up to \$500 billion over the next 25 years. We generally do not settle with other drug dealers, yet because it is a legal industry, very few people seem concerned about such proposed settlements with nicotine dealers.

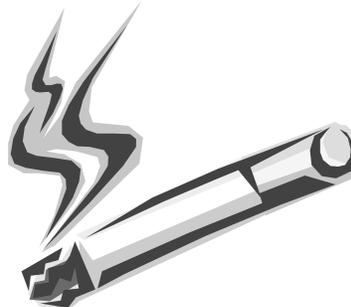
Should Criminology Study Such "Non-Crimes"?

Despite the legal status of smoking, should the manufacture and smoking of cigarettes be worthy of criminological inquiry, given the industry's knowledge of the harmful effects produced by cigarette smoking? Since criminology is dominated by legal definitions of crime, issues related to cigarette smoking --their production or usage --have only recently begun to be widely



studied by criminologists. Yet, I would argue that they should be studied by criminologists because of the extreme harm they do to society, which outweigh the harms caused by all behaviors that are currently considered "serious" crimes (a tiny portion of behaviors that cause actual harms to society).

Rather than wait for legislatures to criminalize the acts so that we can study them criminologists should strive to demonstrate not only the harmfulness and "criminality" of the acts, but also the deception with regard to advertising alone that for years presented this faulty product as safe. Criminology's expansion into non-criminal, yet harmful behaviors, which has certainly proliferated since the mid-1970s (prior to which only 1% of all criminological writing and research was devoted to the study of corporate crime) is still moving far too slowly and is being participated in by far too few, and these mainly critical criminologists (see for example Frank and Lynch 1992; Friedrichs 1996; Reiman 1996; Rosoff et al 1998; Simon and Eitzen 1993). This should not be an issue just for critical criminologists. It should be an issue for all criminologists. Today, as in the past, scholarly studies of crime, explanations of criminal behavior, and



textbooks in the discipline, continue to be heavily focused on street crime. Rather than using our "intellectual freedom" to proactively expose the hypocrisy of our definitions of criminal harm, many use their criminological expertise to reinforce myths about crime (Berry 1997; Kappeler et al 1996; Robinson 1994) that are "played out in the media everyday" (Chesney-Lind 1997). Mainstream criminologists still seem more worried about rape, robbery, and murder, than about widespread financial, physical, social and moral harms committed by corporations (DeKeseredy and Schwartz, 1996). In part this is because people, including mainstream criminologists, are seduced by the ideology of "freedom to choose," which masks the systematic dangers of corporate America's production of dangerous products that pose even greater threats to our safety. The cost of such manipulation can be counted in the diseased and lost lives of our citizens. As criminologists, we have a unique opportunity to do something about this. The question is, how to take such a concern beyond the confines of critical criminology and into mainstream of criminology.

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