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## Article 11: Bureaucratised Risk: Ethical and Moral Blindness in Contemporary Penal Practice (ACJ20-A011)

## BUREAUCRATISED RISK: ETHICAL AND MORAL BLINDNESS IN CONTEMPORARY PENAL PRACTICE

**Jason Warr, University of Nottingham, UK**

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### Abstract

This paper explores how risk bureaucracies that have come to dominate in contemporary penal practice can result in diverse forms of Ethical and Moral Blindness. These issues arise when the deployment of penal institutional aims related to risk, and administrative risk technologies, results in practices that are either blind to the impacts for individuals in prison (ethical) or in blindness to the very humans central to that risk work (moral). Here I explore three forms of risk practice that are foremost in the contemporary prisons of England and Wales to think through the implications of these issues for broader penal policy: 1. Forensic Psychology; 2. Prison Security; 3. the National Research Committee that oversees applications by external parties to conduct research in prisons. I will argue that for each of these bureaucratised risk processes there are resulting harmful, unethical, and immoral practices that arise out of institutional and system level risk obsessions.

**Keywords:** Prison, Psychology, Risk, Security

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## Introduction

Prisons are constructed from complex matrices of overt and covert forms of power (Sim, 2009). These forms of power are designed to fulfil and maintain the prison's functions and disciplinary 'change' agenda, whilst simultaneously protecting the institution and those who act in the furtherance of its aims. Physical force and coercion will always operate within prisons; however, much of the day-to-day power of the institution is diffused into more covert, bureaucratic modes of operation (Crewe, 2009; Mathiesen, 1990, 1965; Warr, 2021). These scriptural forms of dominion manifest through varying 'expert' discourses (i.e., security, medicine, education, etc, – Foucault, 1979). They become powerful because as operative systems of control they generate, gather, record, control, and strategically disseminate personal data/intelligence that is central to the aims of the institution (Habermas, 1981).

Risk and its control have become the defining concern of the contemporary prison. The scriptural knowledge technologies in carceral institutions are at their most powerful when concerned with the assessment, management, and mitigation of risk. Here I discuss three such risk-centric discourses from the context of England and Wales (forensic psychology, security, and the National Research Committee). I have chosen these as good illustrative examples of the array of powerful forms of expertise (see Foucault, 1994) that are central to both the good order and functioning of the prison. It is important to note that each produces distinct forms of both ethical and moral blindness. These are not always the focus of academic or policy enquiry, nor that of National Preventative Mechanisms, despite the harms that they produce. This article, is based on nearly 20 years of research conducted in prisons, Young Offender Institutions, Secure Training Centres, secure Forensic Mental Health institutions, and with various criminal justice practitioners and professionals.

## Context

Prisons exist in an increasingly anomie social context. Required to operate as a place of security and 'safety' in the face of rapidly changing legal orders, shifting population dynamics, technological advance, fraught political contexts, and a perceived breakdown of norms and traditions, they have become inherently bound to the State's desire to control both the present and future risks (see Beck, 1992). Adams (1995: p.10) argues that theoretically risk is defined by those who seek to measure it as the '*product and utility of some future even.*' In this strict sense, 'risk' is a neutral term and can refer to both positive and negative outcomes (Renn, 1992). However, within penal risk discourse this term neutrality has been suppressed under a more securitised view; one which perceives the 'risks' posed by prisoners (and 'dangerous' others) as negatives that need to be measured, predicted, and prevented and/or controlled (Lupton, 1999).

A characteristic of the modern risk society is the prevalence and pre-eminence of industries who both promote risk detection tools and sell risk reducing products. Prisons have a statutory duty to manage and mitigate the risk(s) that prisoners (and perceived 'dangerous' others) are thought to represent. In response to that duty, there is the development and entrenchment of both security and treatment industries in the contemporary prison landscape. These are the 'experts' who provide the discursive models that allow the risk assessment/assuagement work to be seen to be done. These models operate bureaucratically. Their symbolic language flows through administrative processes and shapes, controls, and constrains the action alternatives of those targeted by them. The more a discourse constrains the targeted individuals/groups, and thus serves the disciplinary and institutional interests of the prison, the more power they secure, and the more central to everyday

practice they become (Warr, 2021).

### **Ethical and Moral Blindness**

Once expert discourses are disseminated throughout an institution they do not dissipate. They become an embedded, yet diffused and hidden, aspect of the cognitive lifeworld which informs the perceptual reality of prison staff. This amplifies the potency of these forms of power (Crewe, 2009; Lukes, 1974) as they become the primary, yet unconsidered, factor informing daily operations. This shifts staff's attention away from the individuals (prisoners or staff) who occupy the prison, to the securitised and disciplinary ends of the institution. However, this overt focus often renders those staff both:

***Morally Blind*** – where the deployment of expert technologies/models of knowing within the prison render the powerful insensitive to the humans at the heart of their practice (Bauman & Donskis, 2013).

and

***Ethically Blind*** – where the frame of attention on securitised and disciplinary ends prevents prison staff from fully understanding the implications of their practice on those humans that are subject to their interventions (Trotter & Ward, 2013).

In prisons, where the disparities of power are both extreme and hard set, these forms of blindness can (and do) create a range of interpersonal and social harms. These harms are manifold and are too extensive to cover in any comprehensive way in this article. However, here I set out three illustrative examples that demonstrate how both ethical and moral blindness can occur in risk work.

### **Forensic Psychology**

Forensic Psychology has a great deal of disciplinary capital within prisons in England and Wales (see Crewe, 2009; Warr, 2021). As a discourse it both serves the interests of the prison in terms of its public protection and disciplinary goals. It does this by providing both risk assessment and assuagement functions. However, it also informs, and is heavily weighted by, external judicial bodies (i.e., Parole Board) in relation to their official functions. Forensic psychology is an internally constraining form of risk expertise as it categorises, labels, and pathologizes prisoners via the symbolic medicalised language (signifiers) of their discourse. Yet it is also an externally influential form of expertise that can shape the life-course of a prisoner both within and without the prison by affecting decision making in the wider criminal justice system.

The major form of blindness that occurs with forensic psychology relates to what is known as the 'dual-relationship issue' (Trotter & Ward, 2013). This is when medicalised interventions serve both a care and a control function. With forensic psychologists working in prisons this dual-relationship issue involves two interlinked factors: 1) the institutional logics of public protection that govern their employment; and 2) the adoption of the Risk Needs Responsivity model which coerces engagement, prioritises risk, and transposes disciplinary concerns into therapeutic concerns. As these two psychologists, working in opposite ends of the security landscape of the system, noted:

*Society – public protection is the prime, the public if you like. So that is kind of where the focus is, it is always about protection, risk and managing that. But obviously in balance there is duty of care to the individuals that we work with. But the end point is the public (Trotter & Ward, 2013).*

*I do lots of different things ... assessments, programme delivery, safer custody ... lots of different things but they're always centred around public protection*

Prisoners were not the primary stakeholders of forensic psychological practice - it was the public, the courts, the prison, and the criminal justice system. This was the source of both the *Moral* and *Ethical Blindness* as the work was being done to, and not with, prisoners. Though there is no direct *animus nocendi*, this diverted gaze resulted in a number of harms: from not confronting the experiential reality of prisoners subject to these risk technologies, to being in denial about the consequences of their interventions by prioritising the tools and programmes they delivered in service of the prison. Likewise, conflating disciplinary concerns with therapeutic rhetoric meant prisoners subject to this psychological 'gaze' often had their actual needs unrecognised and unmet as they were not really the target of (risk assuaging) intervention.

## Security

*If security say no, that's it, it aint happening. Don't matter how good it is for the lads, the prison, for us, its just ... no!*

Security has the most material power in the prison. It infuses every element of the institution, its regime, and its daily operations. The above quote was given by a senior manager after their security department had blocked an arts-based group from coming to the prison as part of the establishment's Violence Reduction Strategy. The security department is tasked with intelligence gathering activities within, and operational disruption of threats to, the prison (O'Mara, 2024). Security is a constraining/restraining form of power because its 'gaze' both categorises, labels, surveils, and forms deep actioned intelligence on prisoners (and staff) via the symbolic threat management language (signifiers) of their discourse. Unlike Forensic Psychology, whose power is prisoner focused, invasive, and extramural, the power of security falls upon all who step beyond the wall and as such is both intramural and procedural in nature.

Prioritising these securitised processes and risk-based governance, over that of humanistic concerns, is where one finds the most blatant examples of morally and ethically blind behaviour. I have argued elsewhere (Warr, 2023) that such blindness exists around searching practices. Searches are imposed on people within the institution as a matter of securitised routine. This enforced touching can evoke direct harms for those who are Neuro-Divergent, have histories of victimisation, or other forms of trauma and who suffer with touch sensitivities/defensiveness. However, a more subtle example was highlighted to me by a number of forensic psychologists who noted that security officers would regularly, *ultra vires*, breach their professional ethical practices/boundaries by either covertly accessing, or overtly demanding access to, 'intelligence' kept in confidential files/notes (see Warr, 2021: p.145-146). One psychologist, when asked how they navigated the professional ethics of this, replied:

*What could I do? It's security ... everyone did what they said. In the end, I just carried on and tried to ignore it. I just became more careful what I would put in my notes. I still feel uncomfortable about it though.*

Another noted that that they had been told by their line manager to give 'Security' whatever they wanted, even though it presented an ethical conundrum. They contrasted this with other psychological professionals:

*We work in an entirely different setting [than health or education], some of the BPS/HCPC stuff does not apply as simply to us. It clearly applies to us but you have to think ... it is great chatting to forensic and clinical chums in health and they just kind of roll their eyes, but I say we get told to do that and you can't not, and people say "well, just say no." No, you don't understand because three men in uniform will just come in and just take the file.*

Here, there is an ethical blindness by security staff to the impacts that such work/behaviour has for the standing and practice of fellow staff. No thought is given to the professional, or personal, harms that may arise from these breaches of confidentiality. There is also a moral blindness to the very humans, the prisoners, that this 'intelligence' relates to. There is an implicit denial of the status and condition dignity of the people who are incarcerated here as they are used as a means to a risk end, rather than end in and of themselves. Where the priority of security, and the maintenance of its integrity, trumps all other concerns within the prison the harms of its practice, not only go unconsidered, they are actively suppressed.

#### National Research Committee (NRC)

The NRC represents a different form of the same problem. The NRC exists as a bureaucratic gate-keeping entity that is designed to assess the 'risks' of research applications to His Majesty's Prison and Probation Service and the Ministry of Justice. Made up of designated individuals dispersed throughout the estate, they are tasked with ensuring that research applications are of suitable (and industry level) standard, adhere to the Areas of Research Interest set out by the Ministry, protect resources and operational delivery, and that data protection, security, and (relevant) ethical standards<sup>2</sup> are considered/maintained. It does this through the advent of a specific form and application process that is both somewhat opaque and rigid. The body has become something of a controversial entity in that it is seen, and often accused, of only permitting research that serves the interests of the authorities, whilst maintaining the closed, deliberately hidden, reality of the prison from academic scrutiny.

The most egregious, and public example of this (of course most examples are not made public) was in relation to a study on sex in prisons in England and Wales (see Stevens, 2020). The project was a collaboration between the Howard League for Penal Reform, a commission they set up to investigate the issue, a university-based researcher, and a number of other stakeholders. The design was to survey and interview prisoners from multiple prisons, in varying security classifications, across the estate. The project gained some media attention in its early stages and the in-coming Secretary of State at the time, Chris Grayling, objected to the project. As a direct result of that objection the

<sup>1</sup> BPS – British Psychological Society; HCPC – Health and Care Professionals Council.

<sup>2</sup> This is despite the NRC ceasing to be an explicit ethics committee in 2015.

NRC put a block on the project on the grounds of methodological and ethical concerns. After rounds of negotiation the project was never realised within prisons in England and Wales, but was later conducted with a much smaller sample of former prisoners who were willing to speak on the issue.

This is an extension of the risk-based scriptural economy of the prison shifting from internal concerns to a symbolic external boundary, and the threat of outside others. The power here is one in which the symbolic and communicative functions of science are effectively being coopted to complement other risk-centric discourses to both constrain the investigative gaze of social science, and to silence the voices of the vulnerable, via bureaucratic processes. It does this whilst simultaneously pretending to act in their interests by transposing the strategic aims of HMPPS with ethical concerns related to vulnerable prisoners. To some degree this can be thought of as an extreme form of 'ethics creep' (Haggerty, 2004) where risk governance is not focused on the potential harms of social inquiry to vulnerable individuals, but rather using these concepts to constrain academic research, and the revelations (challenges) that may emerge. This is a form of what Davis (2018) refers to as '*epistemic appropriation*' - not only are (potential) modes and benefits of research with and for marginalised prisoners being detached from their actual being, but also misdirected towards the interests of the institution/system. By utilising the institutional concerns to create a form of testimonial suppression, the NRC become effectively blind to the effects they have on prisoners, prison staff, researchers, and our knowledge eco-system. However, by also constructing and reifying the 'prisoner' population to an idealised bureaucratic entity of vulnerability, it promotes the denial of their agency (compounding the deprivations of autonomy and identity they are subject to) in service of protecting the prison from a carefully constructed ideation of external risk.

### Conclusions

I have argued here that risk-based discourses in the contemporary prison system create distinct, and wide ranging, forms of moral and ethical blindness. Where institutional aims are prioritised, and where systems of 'knowing' are deployed in such ways that the humans at which they are targeted are secondary, then it is easy for procedures to overtake humanistic concerns. This creates a range of disparate harms experienced by different populations that are either overlooked or actively ignored. This goes beyond the normal issues of institutional thoughtlessness, to more pervasive issues of how symbolic power both operates, and obfuscates the impacts of its operations. There are concerns here not just for human rights as they relate to status and condition dignity, but also in terms of the damage that can be done to those held in custody by the state. In prisons where power imbalances are so severe, and the harms so profound, it behoves us as researchers, practitioners, and professionals to expose, explicate, and eradicate such harms.

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## About the Author

Associate Professor in Criminology, University of Nottingham with research interests in penology, sociology of power, narrative and sensory criminology, racism and coloniality, and the philosophy of science. His most recent book is concerned with how power operates in the contemporary prison and focuses on forensic psychologists employed within the prisons of England and Wales: *Forensic Psychologists: Prisons, Power, and Vulnerability*.

