

Pre-crime, regulation, and counter-terrorism: interrogating anticipatory risk

Gabe Mythen and Sandra Walklate explore the extent to which risk is being utilised more intensively in the development of crime control policies.

In common parlance 'risk' refers us to both the probability of being exposed to harm and the possibility of an unpleasant event occurring. Risk, therefore, is distinguished by futurity. The problem of risk is not that it *will* happen – nor indeed that it *might* happen – simply that it *might*. This makes what constitutes a risk, for whom and why, infinitely contestable. As Ulrich Beck (2009) remarks: 'the category of risk exhibits an expansive logic. It embraces everything'. Taking a historical view, it is difficult to disagree. Risk has become a popular way of speaking about the world and conceptualising human experience. In the context of crime control and criminal justice, risk assessments inform a range of policies and practices, from the sentencing of child sex offenders to counter-terrorism strategies and drug minimisation programmes.

While risk has been a longstanding factor in crime regulation (O'Malley, 2009), in recent years the anticipatory dimensions of risk appear to have been accentuated (Mythen and Walklate, 2008). Where risk assessments traditionally relied on past events to gauge probabilities, the contemporary calculus of risk appears to have accelerated beyond reflecting on the past or counting the present and veered off instead to focus on predicting the future. Since the events of 9/11 the logic of anticipatory risk has acted as

ideological support for an assortment of pre-crime interventions.

The term 'pre-crime' is the name given to a specialised police unit in Phillip K Dick's (1956) science fiction short story *Minority Report*. It is the primary duty of pre-crime officers to track down and arrest perpetrators before crime happens. Interventions are made on the basis of information about future crimes given by three 'pre-cogs' – beings who are able to visualise impending criminal incidents. Many of the dilemmas posed in *Minority Report* have resonance in the contemporary context. The reliability of horizon scanning, the perils of pre-emptive intervention, the capture and utilisation of personal data, the

evidential standard of proof, and the difficulty of establishing innocence in a febrile environment are key themes in the book. In reflecting on the resonance of such themes in the contemporary world, the regulation of counter-terrorism serves as an apt touchstone. There can be no doubt that focal incidents such as 9/11 and 7/7 have substantially altered processes of securitisation around terrorism, both domestically and internationally. Accompanying the raft of legislative changes that have emerged, dominant political discourses have become progressively more projective and tilted toward the 'What if?' question. Prior to announcing plans to extend the period of detention without charge in the 2008 Terrorism Bill, Security Minister Tony McNulty prompted the British public to 'imagine two or three 9/11s. Imagine two 7/7s' (Roberts, 2008). Such invitations are symptomatic of a trend to draw upon the cultural imaginary to develop a revised calculus of risk which hyper-extends the anticipatory dimensions (see Amoore and de Goede, 2008).

What is interesting and disquieting is the extent to which pre-crime measures depend upon both future predictions derived from risk assessment procedures and speculative imaginings. Richard Grusin (2004) has aptly dubbed the tendency to relay hypothetical futures in the present as 'pre-



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mediation'. As the erroneous predictions of the 'pre-cogs' illustrates, pre-mediation is an uncertain, creative occupation as much as a neutral science. Within media culture, popular television programmes such as *24* and *Spooks* construct a world in which the catastrophic threat of terrorism requires pre-emptive action in the present in order to maintain global geo-political stability.

Post-modern thinkers such as Baudrillard (1988) propose that mediated signs, symbols, and messages are productive of 'hyper-reality', a state in which fantasy and reality become indistinguishable. In this context, the key question is whether the assemblage of pre-mediations that have emerged around terrorism has stretched public sensitivities to the point where fear of hypothetical attacks has come to direct contemporary policies of securitisation. Where hyper-reality describes the simulation of the real, the danger with the construction of terroristic futures is that they result in a condition of 'hyper-riskality', where creative visions of risk influence meanings to the extent that the probability of threat is eclipsed by (imagined) fear of harm. In a climate of 'hyper-riskality' it is cultural representations and political narratives of risk that mould material decisions about crime and security regulation as much as firm evidence of tangible threats. What is required then at the level of cultural representation, political discourse, and regulation is a balanced response. While certain terrorist groups do present a threat to public safety, we need to keep sight of the fact that just 52 people have been victims of terrorism in the UK in the last decade. If we compare this with the numbers killed each year in road traffic accidents, in the course of working duties, falling down the stairs, or simply slipping over in the bath, then we have to ask whether the degree of intervention, surveillance, and regulation is broadly proportionate with the risk of harm.

The assorted modes of pre-crime introduced in law over the last decade have been based around the

principle that terrorism is a 'unique' case. Under the penumbra of catastrophic attack the ubiquitous defence for the introduction of extraordinary measures is that the rights of the few have to be sacrificed to protect the lives of the many. Yet attempts to reduce the terrorist risk by pre-emptively restricting the freedom of suspects, monitoring the behaviour of populations and inciting watchfulness in 'risky' communities engender threats to both liberty and security. The introduction of Control Orders in the 2005 Prevention of Terrorism Act is illustrative in this regard. Control Orders impose strict limits on the freedom of those suspected of planning terrorist attacks, including measures such as home curfews for up to 16 hours per day, travel and meeting restrictions, monitoring of phone calls, and denial of internet use. Putting questions of efficacy aside, such drastic measures have been controversial since their inception and have been judged by the House of Lords to contravene the European Convention on Human Rights. Other attempts to pre-emptively intervene on the basis of anticipatory risk include Section 44 of the Terrorism Act 2000 by which the police are granted powers to stop and search individuals without grounds for suspicion. The use of Section 44 powers escalated dramatically from 33,177 instances in 2004 to 117,200 in 2008. The disproportionate number of Black and Asian people stopped under Section 44 – four times the rate of the White population – suggests that risk profiling is being used to unjustly discriminate against ethnic minority groups (Travis, 2010). In our own research with young British Muslims we found that Section 44 was commonly cited as a source of frustration for young men such as Saif and one which caused tension between Muslim communities and the police (Mythen, Walklate, and Khan, 2009).

I've been stopped three or four times for questioning ... and I realise, yes, they've stopped me because of how I look, because they think I look a bit suspicious.

Each time they've checked who I am, tried to see if I have a criminal record. I don't mind being stopped if I was doing something that looked suspicious, but all I've been doing is walking down the street or waiting for a bus, things like that. You can't help feeling they're just picking on you for some reason. So it's really embarrassing being questioned like that. It makes you feel like you have done something.

What is striking in this narrative is not simply the iniquitous nature of the procedure, but also the humiliation, guilt, and shame caused to those that it targets. Like Control Orders, Section 44 powers have been declared illegal by European courts. There is no evidence to suggest that such measures serve either as an effective deterrent to terrorism or increase the chance of apprehending would-be terrorists. Up to press, Section 44 powers have not led to a single conviction for terrorist offences. These are but tangible examples of the pitfalls of pre-crime, whereby not only evidence but projection, suspicion and speculation fall into the mix as legitimate drivers of sanctions. Considering the prescience of other social problems, we might wonder why pre-crime is so readily deployed in counter-terrorism and so absent in the regulation of environmental crime or corporate crime. Given that the 2008 economic bubble exploded as a result of reckless lending, irresponsible investment, and dubious financial practices, might security agencies productively roll out a systematic pre-crime regime to monitor and intervene in the practices of bankers, stock-brokers, investment companies, and mortgage lenders?

Connecting to the evolution of pre-crime, the wider process of gathering information, data, and images to inform judgments about a person's relative safety/risk is problematic. The heady mix of public and private endeavours in delivering such security only serves to add to the concern (Zedner, 2009). The prevalence of data-mining practices

that classify according to discrete socio-biological factors – such as ethnicity, religion, gender, age, and consumption – is disquieting. Such modes of social sorting and monitoring do not so much produce suspect individuals as risky populations whose movements, actions, and practices are perpetually subject to scrutiny. It would seem that evidence-based decision making has been compromised by fears of a dangerous future, leading to a pre-emptive delirium in which risky others are indelicately identified, branded, and discriminated against. What is unique about the present situation is the pervasive deployment and the temporal extension of risk in these processes. In *Minority Report* (1956) the endemic flaws in the pre-crime system are exposed and the unit is disbanded. In the clamour to pre-emptively counter terrorism, the lessons of the book are not being

heeded. Moreover, the embedding of pre-crime strategies in the regulation of terrorism is proving to be divisive in the quest to secure a safe future. ■

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