Risk Management in Private and Public Prisons

Presented at the Risk Research Symposium: Varieties of Risk Research: Exploring and Expanding Boundaries within Academia and Beyond – King’s College London, 5th June 2009

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Draft – Do not cite without the permission of the author
Abstract:

This paper – part of an ongoing research project – tries to explore how risk management practices, which are a significant part of current trends in governance, shape and change the treatment of risk in prisons. This poses a relevant question insofar as differences in profit-orientation, governance and accountability between public and private prisons influence the scope for quasi-judicial actions (Andrew, 2007) of these institutions. The administration of punishment is inseparable from prisoners’ experiences of their sentence – an interconnection, which can be termed prisons’ quasi-judicial powers. They have a direct affect on the goals and raison d’être of prisons – both in an ethical and an economic dimension.

Risks lie at the very heart of the challenge penal institutions derive their social value from. Therefore Risk Management is the most prominent contemporary accounting (and governance) practice which shapes the self-perception and behaviour of these institutions and its members. While Risk Management in prisons used to be confined to the likelihood of breakouts and riots, new managerialist approaches in governance have created the need for accountability for all kinds of risks – from reputation to staff development issues. This paper conceptually compares developments towards the privatization of prisons in the UK with more recent changes in Germany and is also informed by data from the level of policies. In a next step these trends are addressed from a generic social science perspective which links them to the organizational and societal consequences of risk management in public and private prisons, building on the works of Power (2007) and Beck (1992).
1. Introduction

20 or 30 years ago the risks prisons faced were quite clear: Can the prisoners escape? Will there be riots? The list is not complete, but could easily fit in a few lines. These days prisons must take care of and manage financial, legal, contractual, reputational and many other risks as well. It is not even clear anymore who bears these risks on an institutional level. These developments are signs for changes in the role of risks for prisons and many other parts of our society.

In this paper the importance of the concept of risk and its management in the specific sector of prisons in the UK and Germany is compared. In both cases the starting point is the movement to privatize prisons. This is insofar a decisive point in the ongoing development and changes in the jurisdictional sector as the need for control over the private provision of services fosters the legitimation of new ways of risk management.

It is argued that prisons have always been confronted with the task of risk management as one of their core challenges. However, new trends in governance and the structure of the provision of services opened the door for a “managerial turn” in prisons’ risk management. This then reflects on the goals and their provision which form the raison d’être of prisons.

The comparison of the early signs of these changes in the UK and Germany in this paper is used to contribute to a better understanding of larger trends in governance. A combination of Beck’s thesis of the individualization of risks (1992) is combined with Power’s thesis of the implosion of risk (2007) in order to explain the differences and similarities in the countries’ policies.

The rise of risk management, discussed in the next section, set the scene for recent changes in the administration of prisons. Following this, alterations in public risk perception and new trends in governance will be discussed in the sections three and four. Then, sections five and six will deal with experiences from the UK and Germany respectively, before the final section will bring these developments in a theoretical context informed by the works of Beck and Power.
2. The Rise of Risk Management

Risks and risk management have changed significantly in recent years. Or, put more conservatively, the social treatment of risk and along with this its management have changed (Power, 2007). Whether the actual amount of risk in our world has changed in the past years may be a question too hard to answer. Yet, the social attitude towards risk has certainly changed – both in science and public media. Mairal (2008) offers a way to link these two discourses together via the concept of narratives. He traces how risks (mathematical, probabilistic notions) changed into narratives, which shape the public perception of risky events. He tracks an early narrative of risk back to a text from 1920 (46). The concept of risks as narratives is useful for understanding some of the changes and challenges we perceive today. For instance, as McGoun (1995) shows, even the basic idea that risk is a mathematical probabilistic notion is not tenable and can be regarded as a narrative itself. A consensus of risk as a probabilistic element dates to the start of the 20th century and has been contested by various scholars. “The acceptance of a probabilistic measure of risk was an act of faith.” (530) This leap of faith had been necessary as “[w]ithout the assumption of a relative frequency theory of probability, a ‘scientific’ theory of choice under uncertainty is not possible.” (528). These contributions lead us to the conclusion Power (2007) has drawn: risk is a social constructed concept and has no “true” scientific essence.

It is then hardly surprising that risk has been subject to the tides of societal attention. Two notable shifts in the treatment of risk have become evident in the past years. First, ever since Beck’s seminal work on the thesis of the risk society (1992) academic discussions of risk have focussed on the perception of risk on a societal level. Beck shows how risks have been redistributed within society, especially towards individuals. Second, and probably constituting a different form of risk redistribution, governance has begun to emphasise risk management. In Britain risk management has become equivalent with good governance in public institutions (cf. Hood et al., 2001). But also Germany has not been immune to this discussion and has put a stronger emphasis on risk reporting in traditional financial reports (Dobler, 2005).
3. The Risks of Prisons

As mentioned at the start of the paper the prison sector has been far from immune to the general trends outlined above. Risk has always been one of a core challenge to prisons; such a view can be traced back to e.g. Bentham (1995, first 1787). The reduction of threats to society is one of the main targets of prisons. Sometimes even the humanitarian aspects of imprisonment, such as convicts’ social rehabilitation, are referred to in terms of risks: Risk reduction of re-offending (for example in plenary discussions in Hessen’s state parliament).

The way risk management is executed has significantly changed in the vein of the rise of risk management as a mode of governance along with its importance. Although Hood (1986, 196f) states that often managerial trends are talked up to be a new paradigm for the sake of public relations, his interest into the connection between risk and governance shows that at least the managerial public’s attention has had significant influence on research. If we believe the treatment risk to be worthy of scrutiny a “managerialist turn” has seen the introduction of financial audits and other performance measurement elements. When following the thesis that risks are socially constructed (Power, 2007; Ewald, 1991) these developments have led to the creation of new risks. Albeit uncertainty around an institution’s performance had always existed, now that performance gets agreed upon and measured it needs to be actively managed. Here “managed” does not mean just a random interference into everyday business, but systematic oversight, reporting and subsequent forms of organization. This rise of managerialist practices cannot be without effects on a prison’s goals.

Andrew (2007) points out that prisons play an active role in jurisdiction through their quasi-judicial powers. The administration of punishment is inseparable from prisoners’ experiences of their sentence – an interconnection which can be termed prisons’ quasi-judicial powers. This circumstance should remind us that new managerialist forms of organizing prisons do not exclusively influence economic dimensions, but also ethically sensitive matters such as the treatment of prisoners and their reintegration into society. Prisons have a huge responsibility to society, as the removal of freedom in the name of justice and security is possibly the strongest interference into human rights western societies make (only second to capital punishment in some countries).
4. Prison Privatization Movements

From an analytical point of view the question is then how to trace these changes in risk management practices. As with the change of the quality of the term “risk” outlined above, we are also in an interesting period of time with regards to the institutional settings of prisons. In the UK private prisons roughly take care of nine per cent of Britain’s prisons (Cooper & Taylor, 2005). In Germany the only prominent example is the public private partnership in the prison in Hünfeld, which was constructed by a private contractor. About 40% of employees come from the British company Serco.

As will be discussed in the following sections, prison privatization has been on the rise for the past years. As privatization is the carrier of this change movement, this gives us the opportunity to look at the changes in the role of risk management from a policy level. To some extent the growth in the private prison sector is also due to the alteration in the relation between the individual and the public perception of risk (Beck, 1992 or Gruev-Vintila & Rouquette, 2007). Additionally, the reform of public institutions is then again influencing and fostering a difference in public risk perception. Especially the German case shows how the overall political climate has provided the basis for the movement of privatization. By comparing these two countries we can see similarities and differences which reflect the overall evolution of risk management. First, however, we will look at the situation in the UK and Germany conceptually as well as on the level of policies.

5. The UK Case: Calculative Practices and Institutionalization

In the UK the influence of the private sector on the public one has been manifold. Many different public organizations – from higher education (Huber, 2009) to the health sector have been subject to new institutional forms and new regimes of risk management (Hood et al., 2001). Institutional arrangements vary from public private partnerships to a fully privatized provision of services. Comparatively, in Germany no prison is operated fully by private contractors. In order to compare the German and the British efforts on a level playing field, also in the UK the sector of public private partnerships (PPP) is of relevance here. This is not only some form of “privatization light” but
a tightly regulated and financially important phenomenon – especially since the introduction of the private finance initiative (PFI) in 1992. (Broadbent & Laughlin, 2003)

When looking for the role of risks and risk management in the literature on PPP (e.g. Broadbent & Laughlin, 1999; Froud, 2003; Edwards & Shaoul, 2003; Pollock et al., 2002) one dimension stands out: the idea of risk transfers. In cases in which the public chooses a private contractor to provide the services, some risks are said to be borne by the private partner instead of the public agency. This risk transfer is quantified, calculated and included in the decision making structure. As Pollock et al. (2002, 1208) show, the derived sum, which is declared as risk transfer has been the crucial difference between public and private provision in several cases in the NHS – always marginally in favour of the private option. This reasoning is sometimes doubted. Some risks may be transferred to private contractors (such as construction risks) while others necessarily rest in the public domain (such as the risk of contract misspecification). Yet in these calculations there is no incorporation of risks which arise through the PFI itself (again contract misspecification will have a different magnitude depending whether a private company is involved or not).

The body of literature on risks and risk management in prisons in the UK is rather slim. Some (Cooper & Taylor, 2003; Andrew, 2007) discuss the effects of the PFI on the ethical and economical justifications of prisons. Additionally, James (2004) discusses the British prison oversight system from a culture-theoretical perspective (cf. Tansey, 2004). On the one hand control over prisons is exerted through a complex system of public and semi-independent administrative bodies. On the other hand five-day visits are carried out, combined with reports from the National Audit Office and unannounced visits. Notably, media attention has always been strong and has led to a high media profile of the most important oversight agency: the prisons inspectorate.

The rise of private-public competition has also led to a number of changes in the risk control structures. On the one hand additional measures like a local prison service controller, monitor compliance and the control of contractual obligations have been introduced. On the other hand performance standards had to be specified much clearer. This had in return a direct effect on public
prisons as well, as they had to fulfil these new standards in the same way as the newly founded private ones.

6. The German Case: Political Influences in a Pilot Project

Lodge (2004) reports a much less consistent system of risk control and management in German prisons. The constitution as a federal state has put much power on the level of Länder (counties). In more detail Lodge presents three levels of oversight. The first and most rudimentary one concerns federal legislation. The federal ministry of justice has, however, not a great amount of influence on individual institutions. The second level deals with the intergovernmental exchanges between the Länder. The possibility of standardization and informal coordination is given, yet again not exercised to a large extent. Finally, and most significantly, oversight (i.e. managerial control) is carried out on the level of the Länder’s ministries of justice, and in recent years to a larger extent by individual prisons. Initiatives tend to be incremental due to the focus on legalistic administration. As in the UK the prison sector is closely monitored by the media. Politicians sometimes respond to reports of incidents by strong interference in ministry policies. The links between public risk perceptions (cf. Zwick, 2005) and policies are direct here.

When now turning towards privatization movements in Germany, again, the approach is less consistent. More notably, however, is the lack of experience in this sector. Legally, prisons cannot be fully run by private companies. Only one significant PPP in the prison sector is currently operating: the prison in Hünfeld, in Hessen. After an elaborate legal expertise it was agreed that a prison may be constructed and all services except for the direct surveillance of prisoners (which total 40-45% of all employees) may be provided by a private corporation. In Hünfeld the British company Serco was hired to fulfil these tasks. The execution of this pilot project matches Lodge's (2004) accounts. Most oversight is done on the level of the ministry of justice. State officials stated in interviews that they do not treat the prison in Hünfeld any different to any of the 16 public prisons in Hessen. However, on the level of the individual institutions monthly reports on the provision of the contractually agreed services enhance the usual quarterly performance report to the ministry.
The neo-liberal and neo-conservative emphasis on security (O’Malley, 1999) has played a decisive part in the decision to privatize prisons. Hessen was dominated from the Second World War until 1999 by social democrats. When a Christian-Democratic government was instituted the topic of security and risks to society became increasingly important. Combined with the fiasco in the construction of the last public prison in Weiterstadt (construction had taken twelve years after a bombing by the Red Armee Fraction) and the overfilling of existing prisons the new government quickly placed a new prison, that was privately run, at the top of their agenda.

Conversely, in the UK the PPP had been started by the conservatives, but only gained real momentum when the Labour party assumed control in 1997 (Broadbent & Laughlin, 2003, 335). One notably similarity between UK and Hessen is that the inclusion of private corporations has led to a clearer specification of performance standards, which have spilled over into the public institutions.

7. Discussion and Conclusion

In summary, variations on a common theme can be perceived across two of Europe’s most influential countries. Privatizations – or PPP – in the prison sector are seen as a sensible strategy by governments. This consensus is a political one; not at all free of macro and micro variables. Examples for the macro level include changes in societal and political perceptions, while the micro one includes concrete responses to incidents by governmental agencies. In the following discussion different theories will be employed to interpret what is called macro and micro phenomena. In a second step these two concepts will be brought together in order to account for a larger spectrum of the developments in the UK and Germany. The paramount question is in both cases how ethical and economical raisons d’être are affected by current trends.

On the macro level the quality of risk perception on the level of the society has changed as Beck (1992) has observed. In the new modernity, which Beck calls a reflexive modernity or risk society destruction could have unlimited scope while its calculation escapes traditional estimations of likelihood. As Matten (2004) has pointed out, this thesis and its scientific discussion has become so prominent it actually influenced managerial practices heavily – especially in environmental
management. A multiple, reflexive and hard to manage modernity had emerged in many sectors, but had left its marks also on more traditional, yet ethically sensitive matters such as prisons. Its influence on the prison sector has not been as clear-cut, but it still showed in a number of developments. Newly elected governments used the notion of security to society heavily in their rhetoric, both in the UK and Germany. Risks were perceived differently, and one answer to this change in the quality of risks was prison privatization. In reflexive modernity prisoners are always a risk (namely for re-offending) instead of a successful escape being the risk. One answer to this was the stronger reliance on imprisonment which resulted in the need to build new prisons which then again opened the door for private contractors. It would have been legally hard to outsource existing public prisons. The multitude of perceived risks also led to other developments as ankle monitoring etc. However, Beck's (1992) thesis does not cover the whole of the new narratives of risks and risk management in prisons.

While the macro level of politics has been important for the development of change concerning the management of prisons in the UK and Germany, there still is a different level which constitutes some other part of the overall phenomena of changes in prison systems. A more micro level perspective could deal with the responses to societal changes of risk perception in single institutions or governmental agencies controlling a set of institutions via small and medium scale policies. Power’s (2007) thesis of risk implosion may be a fruitful way to theorize these effects. He sees the logic of risk management as the dominant mode of self-perception for organizations. This then leads to risk management, enacted through internal control measures, being seen as the only valid response to all kinds of uncertainty. This in return erodes other values such as trust and results in defensive reactions to uncertainty which Power (2007) calls paralysis.

When now transferring Power’s thesis to prisons at least two aspects seem to be of high importance. First, prisons are destined to act defensively to any kind of uncertainty. As the prime risk to prisons has always been the escape of prisoners, measures of internal control were always employed to reduce it. When risk management is seen as the definite answer to any challenge a prison faces – as Power suggests – this would foster a very coherent way of institutional self
perception. A prison’s goals will, however, not remain unchanged by this shift in self awareness. Whether a prisoner is seen as being a threat to a society’s security or as a potential for social rehabilitation will have an influence on prisoners treatment through the quasi-judicial powers of these institutions. Risk management practices can therefore not remain ethically neutral. Second, on the level of the governance of penal institutions through the state the risk implosion thesis links to the changes perceived by Hood et al. (2001). When risk management is equalled with good governance and governmental agencies restrict themselves to second order control.

This last dimension of governmental policies is, however, not fully appreciated by Power. Ericson & Leslie (2008, 622) note that “there is little place in Power’s account for the state as an actor”. However, it is surprising how in Beck (1992) and Power (2007) two (to some extent epistemological, to a larger extent in their focus and approach to empirical material) draw familiar lines on two inseparable, yet not congruent levels (which in this paper were termed micro and macro). Both theses taken together can help us understand how changes in the perception of public security link to recent developments in British and German prisons. Yet not everything is similar in these two countries and local modulations in public opinion, it’s filtering through mass media and traditions in governance have a significant influence. German policies are likely to stay more legalistic than their UK counterparts. However, privatization has been a major motor for similar developments in said countries.

One final point needs to be addressed which links the countries and is likely to form the basis for the generalizability of this discussion to many other countries on all five continents: the interference of managerialistic practices with organization’s goals and raisons d’être. Risks have been both at the level of the society and individual organizations become the dominant mode of thinking. Prisons have always been among the most ethically sensitive matters of society. Additionally, prisons have always been predestined to be very aware of risks. What is new, however, is that other dimensions than the confinement of prisoners have become subject to risk analysis and management. This preoccupation with risks has multiple influences on the other major target of a prison: the social reintegration of its occupants. Both state and institutions change their focus
through this shift in risk perception (reflexivity). The state sees imprisonment as the more secure option to society than open prisons. Therefore, proponents of social rehabilitation may argue this to be a short-sighted view as imprisonment can foster re-offending. Public agencies as well as individual institutions are likely to turn to second order control (of institutions or private contractors respectively) and may thereby soften the traditional focus on the control of human rights through direct observation in favour of performance indicators. In sum, prison privatization will not be the end of on-side control mechanisms, social rehabilitation and human rights, but it will have an influence on the perception of these targets of prisons through the wider and narrower changes in the treatment of risk outlined in this paper.
References