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# **Regulating civility, governing security and policing (dis)order under conditions of uncertainty**

Adam Crawford

‘Can we know the risks we face, now or in the future? No, we cannot: but yes, we must act as if we do.’ (Douglas and Wildavsky 1982: 1)

As historians correctly remind us, we live in what are undoubtedly the most secure, orderly and civil times in the history of humanity, in Europe in particular. The dangers threatening our lives and our person are fewer and further between than in the past. We live longer and generally are more prosperous. Ironically, however, as Bauman (2006: 130) notes, it is here and at this time, ‘that the addiction to fear and the securitarian obsession have made the most spectacular careers in the recent years. Contrary to the objective evidence, it is the people who live in the greatest comfort on record, more cosseted and pampered than any other people in history, who feel more threatened, insecure and frightened, more inclined to panic, and more passionate about everything related to security and safety than people in most other societies, past and present’. It is against this paradoxical backdrop, in which the scope of personal freedom and individual autonomy have apparently expanded, that the obsessive quest on the part of governments and citizenry alike for security, order and civility increasingly inform and infuse diverse aspects of everyday life and its contemporary governance. Despite the relative safety to body and possessions and the declining aggregate crime rates experienced across many western jurisdictions in recent decades (at least since the mid-1990s), governing threats to personal safety and local social order have become major governmental preoccupations. They have become a focal point for attention, activities and actions. Consequently, the fears born and fed by subjective and existential insecurities have become very real in their consequences. They have become self-stimulating and aggrandizing. In that they prompt defensive actions and breathe life into institutional quests for (unattainable total) security, they tend to scatter tangible reminders of our vulnerabilities and anxieties, and, in so doing, give credibility and immediacy to the threats from which fears over safety are deemed to emanate. Bauman once more notes: ‘It is our response to anxiety that recasts somber premonition as daily reality, giving a flesh-and-blood body to a spectre’ (*ibid.*: 133).

The aim of this paper is deliberately wide-ranging as it attempts to draw connections and linkages between some of the specific themes engaged with in this collection of

essays. I intend to illustrate the manner in which regulatory ideas and practices have: (i) challenged criminal law responses to crime and disorder; (ii) blurred traditional distinctions between crime/incivility, criminal/civil law and formal/informal responses; and (iii) been appropriated in an assault on principles of criminal justice - notably proportionality, due process and protections for young people. Furthermore, I hope to demonstrate how under conditions of uncertainty, novel regulatory ideas have fostered precaution, prevention and pre-emption that prompt more intensive, more extensive and earlier interventions. In presenting these arguments, I will draw primarily on examples from the UK, but with the implication or inference that the themes to which I refer have resonance and salience beyond the UK in other parts of Europe, notably in the Netherlands, albeit that these are likely to take specific forms, influenced by differing constitutional arrangements, local cultures and political traditions.

In this paper, I highlight the convergence of four inter-related thematic trends that collectively influence and go some way to help explain the scope and nature of contemporary security governance and the politics of urban safety. The first of these has been described as the 'individualisation of risk' (Beck *et al.* 1994; Beck and Beck-Gernsheim 2001; Bauman 2001a), a conceptualisation that foregrounds the manner in which human identity is progressively transformed from a fixed 'given' to a malleable 'task', whereby individuals are charged with responsibility for choosing and performing that task and for the consequences or their performance. Second, and allied to this, is the 'politics of behaviour' (Field 2003), whereby governments have increasingly re-focused their energies on governing individual behaviour, incivilities and local social disorder. The third trend has seen a shift in modes of governance from law to 'regulation' (Braithwaite 2008); from traditional 'command and control' style government to forms of governance 'at a distance' through 'regulated self-regulation'. The final trend concerns the manner in which 'risk' and 'risk assessment' as organising narratives of governance have been augmented and supplanted by conditions of 'uncertainty' which have placed an emphasis on precaution as an organised response. In conclusion, I draw these strands together to suggest that in the search for security, civility and order and in a context of uncertainty, a precautionary logic has increasingly come to the fore. As a result, the threshold for intervention and the grounds for pre-emptive action have become dramatically refigured and lowered such that mere suspicion, the subjective perceptions of others and fears about what might occur - infused by worst-case scenarios - come to constitute sufficient grounds for governmental actions. Moreover, these interventions have significant implications in that they infringe liberties and restrict freedoms of those deemed 'dangerous', 'awkward' or 'different' as much for what they might do as for what they have done.

### **The 'Individualisation of Risk'**

Ulrich Beck's 'Risk Society' thesis has influenced and informed much recent thinking in the social sciences. In essence, he argues that the 'risk society' constitutes a new stage of modernity, which has seen the production of new risks that lie beyond the control of nation states with potential impact that transcends national territories. Global warming is the archetypical example of such risk. In the process, it is argued, managing hazards has become a central preoccupation of contemporary societies. As 'risk' thinking has spread and risk assessment technologies have proliferated, so individuals and institutions have become heavily dependent on expert advisors; to provide guidance as to what is healthy and what is safe. However, in response to such questions, scientific experts frequently provide conflicting information, facts and opinions. Science in this light is shown to be fallible. Beck notes: 'Science becomes indispensable, and at the same time devoid of its original validity claims' (1992: 165). This fallibility of scientific advice engenders uncertainty and anxiety among a wary public. Moreover, in the subsequent public debate, risk professionals no longer monopolise risk-talk nor do they exclusively influence policy-formation. This both democratises debate – in that the radio chat shows' conclusions and the views of ordinary members of the public may be as valid as those of the 'experts' - and simultaneously renders policy debate more volatile.

This argument has obvious implications for governments' limited capacity to manage and assert sovereign control over contemporary risks, notably in the face of global forces – as illustrated by the recent financial crisis. So too, it has implications for individuals. The break-up of the welfare state and the onset of neo-liberal reforms have served to proliferate and disperse risks once deemed the responsibility of the nation-state. Where previously contained through social insurance – public welfare provisions - risks have increasingly become individualised. In this light, a defining feature of contemporary living is the institutionalised need, on behalf of individuals, to construct and invent one's own 'self' and actively shape one's future in the face of contemporary risks. According to Bauman: 'Modernity replaces determination of social standing with compulsive and obligatory self-determination' (2001b: xv); individuals' life trajectories become 'elective'. Here 'choice' becomes not only a meta-narrative and defining condition, but also a requirement. How one lives becomes a 'biographical solution to systemic contradictions' (Beck 1992). Whilst, risks continue to be socially produced, it is the responsibility and the necessity of coping with them that have become increasingly individualised. Failure, too, is internalised as the product of one's own doings. Social problems are thereby recast as personal faults and individual deficiencies. Public issues are redefined as private and personal troubles:

‘Living your own life therefore entails taking responsibility for personal misfortunes and unanticipated events. Typically, this is not only an individual perception, but a culturally binding mode of attribution. It corresponds to an image of society in which individuals are not passive reflections of circumstances but active shapers of their own lives, within varying degrees of limitation.’ (Beck and Beck-Gernsheim 2001: 24)

‘Individualisation’ exhibits both a positive face and a dark side. ‘Creating the self’ generates self-determination with democratic potential, whereby individuals can escape from fate and social conventions to play a greater part in public life, particularly evident in the increased range of apparent choices and wider public participation available to girls (Arnot 2008). However, the flip-side of this obligation to actively shape one’s future destiny is personal blame for failure: ‘Your own life – your own failure’ (Beck and Beck-Gernsheim 2001: 24). Consequently, causes are detached from wider structural or societal dynamics and become fastened to individual responsibility; bad outcomes are the result of bad choices as well as the incapacity of individuals to respond to opportunities and actively shape events. In this regard, binding traditions, social institutions and long-term commitments have been replaced by diverse forms of institutional guidance. This guidance focuses more evidently on influencing people’s choice rather than the circumstance in which choices are made or people’s capacities to realise their preferences. As a consequence, individualisation produces vastly different effects where there are institutional resources (welfare, education, health, human rights, etc.) which people can draw upon in coping with the contradictions of modern personal biographies.

Some time ago, Catherine Villeneuve-Gokalp (1981) noted that ‘when the age of choice arrives’ – *quand vient l’âge des choix* – it has particular ramifications for young people in transitions to adulthood. Young people are literally charged with making their own bed and lying in it! Yet, the overwhelming evidence, from Britain at least, is that despite the institutionalisation of individual choice, the scope for youth social mobility has narrowed over recent decades. A recent IPPR report - aptly entitled *Freedom’s Orphans* - that provides an overview of the evidence in relation to youth attainment concluded that: ‘Family background is becoming a more important determinant of outcomes across the board’ (Margo *et al.* 2006: 47). Furthermore, whilst the measures of youth attainment are improving for the majority of young people, for the most disadvantaged groups many indicators are getting worse. Social class remains the most powerful explanation of outcomes and behaviour. Consequently, ‘the current conception of what young people need in order to succeed in life (exercising their own “agency”) and the role of the state in supporting them is increasingly anachronistic’ (*ibid.*: vii). Not only are young people burdened with greater responsibility to construct their own ‘do-it-yourself’ biographies, but so too this apparent freedom (albeit trapped within the strictures of social and structural constraints) carries a latent anxiety-generating threat for on-

looking adult populations as they recoil at the perceived implications for traditional social mores and values. Moreover, under contemporary conditions, young people appear less reliant on adults for access to information, goods and services in a consumerist society, in which rapid developments in technology often serve to undermine paternalistic social relations and traditional practices as young people are more adept at adjusting to and exploiting technological innovations. These pressures on intergenerational relations present common dilemmas and questions about youth across Europe (Lagrée 2002). They express themselves in concerns about ‘the disappearance of childhood’ (Postman 1982), ‘toxic childhood’ (Palmer 2006) and a ‘crisis in child well-being’ (Layard and Dunn 2009) as well as in fears about young people as harbingers of social decline. Nowhere is this more evident than in the UK which was placed bottom of a league table of 21 rich countries on diverse indicators of child well-being (UNICEF 2007). The American *Time* magazine aptly captured the mood with its April 2008 cover story: ‘Unhappy, unloved and out of control: An epidemic of violence, crime and drunkenness has made Britain scared of its young’. Consequently, as Beck and Beck-Gernsheim assert: ‘the talk of a “decline of values” contains something else, namely the fear of freedom, including the fear of freedom’s children, who must struggle with new and different types of problems raised by **internalised** freedom’ (2001: 158, emphasis in original). In this context, the youth population is easily viewed as fear-inducing and incomprehensible to older generations in a way that is both novel but simultaneously reinforces longstanding and recurring themes regarding the manner in which one generation bemoans declining standards and projects concerns about moral decay on its youth (Pearson 1983).

### **The ‘Politics of Behaviour’**

It is this ‘fear of freedom’ and more specifically the ‘fear of freedom’s children’ which in large part animates the second trend to which I now turn. In his book *Neighbours from Hell: The Politics of Behaviour*, Frank Field (2003) – an influential member of Tony Blair’s first New Labour government in 1997 - argues that the foremost issue facing governments is the collapse in social virtues and common decencies. For Field, the ‘politics of behaviour’ has replaced the historic ‘politics of class’ that structured traditional political divisions and was instrumental in moulding respectability and decency in Britain during the nineteenth and twentieth centuries. This decline in standards of civility, according to Field, finds its most clear expression in the perceived rise in ‘anti-social behaviour’ (ASB). Crucial to Field’s analysis is the belief that the type of ASB that blights social relations is novel, hence, it demands new modes of response: ‘because it is new, effective means of dealing with it have generally still to be devised’ (*ibid.*: 44). For Field, the

distinguishing mark of ASB is that each incident, by itself, does not warrant legal response, but it is in its regularity and repetitiveness that ASB ‘wields its destructive force’ (*ibid.*: 45). Central also to Field’s analysis is the focus on ‘public space’. Politics, he argues, needs to reconnect with questions about ‘the kinds of people we want as citizens’. He is keen to stress that intervention should not encroach on the private sphere. However, once private opinions and the ‘values that determine conduct’ operate in the public domain ‘they cease to be a private concern only, and become part of the stuff of politics... If the new politics can be said to be about anything, it is on how best to challenge the private views and values which are impacting so adversely on public conduct’ (*ibid.*: 55).

Field’s analysis is pertinent for our purposes, not only because his diagnosis of contemporary problems of behaviour chimes with, and has informed, the resultant anti-social behaviour (and ‘Respect’) agenda which has been a prominent facet of British government policy in the last decade, but also because of the solutions that he proffers. He articulates the need for a politics that seeks to rebuild ‘a shared sense of common decencies’ through the construction of a new ‘social highway code’ (*ibid.*: 137) in which conditionality is a defining element:

‘the best way of doing this is to begin forging a series of contracts which cover the behaviour of all of us as we negotiate the public realm... These contracts need to cater for each key stage in our life, at birth, at school, in work, in drawing welfare and at retirement. If the tide is to be turned and anti-social behaviour put to flight, the task is nothing less than the forging of a series of public contracts on behaviour... to help shape behaviour these contracts have to be built up, taught and enforced.’ (*ibid.*: 82).

Ultimately, what Field is calling for is a fundamental reworking and re-writing of the (implicit) social contract in the shape of a multitude of formal micro-social contracts setting out social responsibilities, obligations, duties and commitments as well as rights and benefits. This is what Tony Blair’s government evocatively termed the ‘something for something society’ (Home Office 2003); whereby access to public services, resource and social insurance are conditional upon conduct and behaviour. Importantly, the form of the ‘contract’ (or rather quasi-legal contract) is identified, here, as the appropriate regulatory tool rather than the penal or criminal law (Crawford 2003; 2009b). Not only is the former the archetypical mode of neo-liberal control but it also accords well within a market-based regime of choice, in treating its prime agents as autonomous rational choice actors.

But it is in his diagnosis of the fundamental social malaise as lying in the degradation of local order (and insecurity) due to individual behaviour that Field’s analysis resonates so vibrantly with contemporary shifts in governance. Whilst what Field describes as the ‘politics of behaviour’ has taken different forms across

divergent jurisdictions - from 'zero tolerance policing' to concerns with 'quality of life' and 'community cohesion' - what they all reflect is a fundamental narrowing and re-sighting of the preoccupations of governing to focus on public displays of individual behaviour as the crucible in which the fortunes of governments are forged. Responding to, and assuaging, public perceptions via the regulation of uncivil behaviour has become an increasingly prominent governmental *raison d'être*. These concerns dovetail (albeit ambiguously) with the 'individualisation of risk' thesis. Whereas Field sees private values polluting the public domain as the source of contemporary social ills, by contrast Beck implies that public issues are redefined as private matters, to be resolved internally. It is the blurring and transgression of the boundary between private and public - between the individual and the social - and the legitimate role and expectations of the citizen and the state which have been rendered so problematic.

What both perspectives point to is the limited capacity of the state to effect change, in the face of uncontrollable flows of capital, goods, people and risks, and the renewed focus on the management of public displays of personal behaviour. The internal world of the individual is seen as the site where societal problems are raised and, consequently, where apparently they must be resolved. Hence, micro-management is gradually replacing the tasks of macro-government. The appropriate role of government has shifted to that of steering, persuading, monitoring and correcting people's life-style 'choices'. In this, aside from offering institutional guidance, increasingly, the role of the state is reduced to one of mopping up market failures and market excesses - from the social consequences of the meltdown in the banking system, via the alcohol-fuelled excesses of the night-time economy (so evident across most British towns and cities), to the socially marginalised 'flawed consumers' of a market economy (Crawford and Flint 2009).

The particular - and somewhat peculiar - governmental form that this has taken in the UK has been the 'anti-social behaviour' (and Respect) agenda, which has stimulated an unprecedented period of intensive hyper-activity and frenetic reform. ASB has come to comprise a distinctive, if capacious, policy field around which consecutive New Labour governments have introduced a plethora of hybrid tools that blur traditional distinctions between civil and criminal processes and challenge established assumptions about due process, proportionality and the threshold for intervention (Burney 2009). The broad definition of ASB extends to a wide range of activities, misdemeanours, incivilities and crimes. In legislation it is defined as behaviour that 'causes or is likely to cause harassment, alarm or distress' to others. This characterisation is both subjective and context-specific as it rests on public perceptions. Above all else, the ASB agenda is concerned with governing 'youth'

and it is in response to perceptions of youthful behaviour that much government energy has been targeted.<sup>1</sup>

The array of new hybrid powers includes, *inter alia*, acceptable behaviour contracts (ABCs), anti-social behaviour orders (ASBOs), parenting orders, parenting contracts, tenancy demotion orders, anti-social behaviour housing injunctions, 'crack-house' closure orders, designated public places orders, dispersal orders and penalty notices for disorder. Collectively and individually, many of these modes of control represent a shifting orientation towards forms of governance and behavioural regulation that focus less on knowing and accounting for past incidences than disrupting, reordering and steering possible futures. They seek to regulate crime and disorder through their consequences for, and interconnections with, wider notions of community well-being and public reassurance. Simultaneously, they reflect an individualisation of control, in which responses are tailored around personal and contextual characteristics. In the process, there has been a subtle shift from due process requirements and proportionality as defining ideals of justice to security and public perceptions as predominant overarching preoccupations (Crawford 2009a).

The most noteworthy of the new powers is the ASBO, a civil order which results in criminal sanctions if breached. This has generated significant concern that civil proceedings are being used as a way of evading higher standards of proof and evidentiary burdens associated with the criminal justice process. For instance, the manner in which civil proceedings allow forms of hearsay evidence, not admissible in the criminal court, has been central to securing successful ASBO applications. Furthermore, the ASBO - in the name of effectiveness (Home Office 2005) - permits publicity which in the case of young people has eroded the traditional right to anonymity in civil and criminal proceedings (Cobb 2007). In common with some other new powers - such as dispersal (Crawford 2008) and parenting orders - ASBOs constitute what Simester and von Hirsch (2006) term 'two-step prohibitions', whereby the possibility of criminal sanctions arise only in respect of future conduct, not in relation to the conduct that gave rise to the order in the first place. The conditions imposed at the first step create something tantamount to what the European Commissioner for Human Rights described as 'personalised penal codes, where noncriminal behaviour becomes criminal for individuals who have incurred the wrath of the community' (Gil-Robles 2005: 34). The conduct that

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<sup>1</sup> One of the key measurements of ASB incorporated into the British Crime Survey since 1992 has been the extent to which 'teenagers hanging around on the streets' are deemed to constitute a problem. In the decade between 1992 and 2002 the percentage of respondents who perceived this to be a 'big' problem increased by nearly two-thirds from 20% to 33%.

breaches the order, under all other circumstances, may constitute legal behaviour and there need be no direct relationship between the ultimate punishment and the original behaviour. Consequently, ASBOs criminalise conduct which otherwise might have been lawful – such as visiting certain places (from which the person is excluded), meeting certain people (from whom the person has been directed not to associate) or wearing certain items of clothes (which have been prohibited). The hybrid and civil preventive model introduced by the ASBO has been subsequently adapted and transplanted to the regulation of risks in other realms, such as the alcohol-related ‘drinking banning order’ (Violent Crime Reduction Act 2006), the terrorism-inspired ‘control order’ (Prevention of Terrorism Act 2005) and the organised crime-associated ‘serious crime prevention order’ (Serious Crime Act 2007) (see Macdonald 2007; Zedner 2007b).

The wide-ranging nature of the grounds that may trigger an ASBO, ABC, parenting or dispersal order affronts the ‘principle of maximum certainty’ and the requirements of ‘predictability’ and ‘fair warning’ (Ashworth 2006: 74), as it is not clear that the application of the law is knowable in advance. This undoubtedly offends the principles and spirit of Beccaria’s ‘dream’ of an effective and legitimate criminal law and weakens legal constraint on the operation of the state’s *ius puniendi*. Ramsay (2009: 135-6) notes how the lack of ‘fair warning’ evident in much ASB legislation may mean ‘it is ultimately impossible to be sure that you have acted cautiously enough in the face of the uncertainties involved and that the problem of insecurity is therefore created by the law rather than solved by it’. Furthermore, in the ‘two-step’ process, principles of proportionality are decoupled from structuring the relationship between past acts and future constraints. This use of ASB powers is evidence of what Ericson refers to as ‘counter-law’ whereby: ‘New laws are enacted and new uses of existing law are invented to erode or eliminate traditional principles, standards, and procedures of criminal law that get in the way of pre-empting imagined sources of harm’ (2007: 27). In this light, ‘the counter-law of security is designed to trump law that seeks to protect citizens from excesses of security’ (*ibid.*: 163).

## **Regulation**

The innovations intrinsic to many of the new powers and technologies spawned in recent years, accord with the third trend, namely an apparent shift from command-and-control style legal forms of control to hybrid modes of regulated ‘self-regulation’. According to some commentators, we now live in an age of ‘regulatory capitalism’ (Braithwaite 2008). A defining feature is the expansion in novel mechanisms of regulatory activity that seeks to control, direct or influence

behaviour and the flow of events. Increasingly, regulation operates through plural auspices straddling traditional distinctions between corporations, the state and civil society (Scott 2004). From this perspective, regulation not only highlights diverse strategies to foster compliance that lie between punishment and persuasion but also enlists wider actors including the subjects of regulation themselves. Consequently, as I have argued elsewhere (Crawford 2006), regulatory theories connect closely with arguments about 'networked' or 'nodal governance' (Johnston and Shearing 2003; Burris *et al.* 2005). The latter notions seek to provide a conceptual map of the unfolding terrain of governance understood as 'the property of networks rather than as the product of any single centre of action' (Johnston and Shearing 2003: 148), in which the state is accorded no particular conceptual priority in order to highlight the range of governmental nodes that exist and the relationships between them – notably the actual points where knowledge and capacity are mobilized for transmission across networks. Regulatory theories, by contrast, provide normative accounts of good governance through novel forms of regulation (Black 2001). Importantly, this perspective challenges us to think critically about the distinctiveness or uniqueness of state action within contemporary governance.

In contrast to traditional mechanisms that have been associated with sovereign state-centred rule, regulation is said to become 'responsive' where regulators recognise and respond to the conduct of those they seek to regulate in ways that are sensitive to the conditions in which regulation occurs and the capacity of the regulated for self-regulation (Braithwaite 2002: 29). Such responsiveness, it is argued, is likely to produce more legitimate and more effective regulatory outcomes. Implicit in models of regulation, therefore, are diverse assumptions about the motivations and competencies of regulated individuals and groups, as well as different theories of compliance that inform these. The vexed question with which regulatory theorists and practitioners must grapple is which regulatory tools to deploy under specific conditions; when to punish and when to persuade (Braithwaite 2008: 88).

In this vein, a hugely influential paper on *Personal Responsibility and Behaviour Change* written for the Prime Minister's Strategy Unit (Halpern *et al.* 2004) argued for ways in which government can act as a more effective 'persuader' in changing behaviour in a manner that enhances personal responsibility. It highlights the limits of top-down (command-and-control) regulatory strategies and illustrates how governments can 'help people to help themselves'. Consequently, ideas of 'regulatory justice' have increasingly come to inform British policy debates about reform of the sanctioning system and the role of criminal justice therein. As a result reforms have been designed to 'modernise sanctioning toolkits across the regulatory system, reflecting the risk-based approach to regulation and the broader regulatory reform agenda' (Macrory 2006a: 6). Importantly, the concern is with a wide-scale

canvas of public risk in which criminal prosecution is understood as a cluster of ‘sanctioning tools’ within a much larger framework of regulation.

From a regulatory perspective, in practice however, questions of effectiveness often come to trump normative principles of due process and proportionality. As such, the vernacular of regulation has been used frequently by politicians as a conceptual stick with which to attack the perceived failings of established criminal procedures. In many senses, an abiding legacy of the ASB agenda has been to deploy the language of regulation – particularly in its benevolently clothed terminology of ‘better’ and ‘responsive’ regulation – to legitimise forms of state interventionism and control that challenge and circumvent traditional principles and values of (criminal) justice. By fusing civil and criminal processes, hybrid prohibitions have fostered ‘new variations of liability’ designed specifically to evade established safeguards that themselves have been redefined as troublesome obstacles to effective regulation (Ashworth 2004: 265). This much was explicitly acknowledged by Tony Blair, whilst Prime Minister: ‘[T]he whole purpose of the antisocial behaviour legislation is to change the terms of trade if you like, change the rules of the game, make sure that when we need to act quickly, we are able to act quickly’.<sup>2</sup> Legal principles of due process and proportionality were too often seen as getting in the way of ‘action’ through effective social regulation (Ashworth and Zedner 2008).

In the ‘politics of behaviour’, the language of regulation is particularly attractive in that it not only provides a critique of hierarchical command-and-control style rule of law (and normative principles associated with it) but also because: it conforms with, and advances, an epochal argument that ‘new times’ demand new responses (in keeping with Field’s arguments); it fosters an ‘individualisation of control’ tailored to the demands of particular circumstances rather than in accord with universal principles; it permits an intensification of control through notions of ‘regulatory pluralism’ (Gunningham and Grabosky 1998) that advocate the deployment of a mixture of regulatory instruments; its preoccupation with the effectiveness tends to dominate over normative issues (or principles of ‘parsimony’ that commentators like Braithwaite emphasise); it predominantly treats the subjects of regulation as rational, motivated and capable subjects; and its primary focus is on ‘governing the future’ rather than normatively re-ordering the past (Crawford 2009a). An abiding concern with the appropriation of the language of regulation in the context of governing crime, disorder and incivility has been the latent capacity for ‘regulatory spirals’ to develop against a background of public anxieties about insecurity and a pervasive

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<sup>2</sup> Speech at the Meridian Community Centre in Watford, 2 September 2005. See: <<http://www.number10.gov.uk/Page8123>> (last accessed 4.6.2010).

risk-averse 'culture of fear' (Furedi 2002). The Better Regulation Commission astutely outlined the dangers of such an inadvertent regulatory response to perceived risks:

'The perception of a risk emerges... A public debate follows, often based around headlines and incomplete or biased information, resulting in a call for "something to be done", which is amplified by the media. Instinctively, the public looks to the Government to manage the risk. Responding to this public pressure, the government makes ambitious claims that it can solve the problem and steps in with a regulatory response, rarely considering the tradeoffs involved. As a result, the role of the Government as risk manager is reinforced. When the regulations are implemented, they inevitably fail to solve all the problems and also bring with them unintended consequences. With good implementation, some hazards are prevented, but this does not make news. Other hazards are not prevented and problems persist, leading to calls for more government action. As a result of more regulation, people complain that liberties and enterprise are diminished and criticise the "nanny state". Governments are blamed for interfering and acting unreasonably and, as a result, the national level of frustration shifts up a notch. (If we are not careful), governments may seek to address issues of frustration and disengagement through more regulation.' (2006: 7-9)

This narrative of 'regulatory creep' and interference with civil liberties aptly captures many of the key facets of the ASB agenda and the impact of regulatory ideas caught up in the complex 'politics of behaviour' over the past decade in which public (mis)perceptions play a vital role. Ironically, all the talk of 'better regulation' has not diminished the resort to the criminal law and criminalisation as central governmental tools for fostering social compliance. The last decade in Britain has seen the proliferation in the number and range of new criminal laws<sup>3</sup> and has seen the continued expansion in the numbers of people incarcerated within the prison system.<sup>4</sup> Thus, whilst the criminal legal process, one moment, is lambasted as a 'lost cause' (Ashworth 2000) for its incapacity to regulate behaviour, the next moment it is resurrected as a vital and expanding component of regulation. Despite assertions to the contrary, assumptions that 'regulatory justice' necessitates 'an extended toolkit' and a 'richer range of sanctioning tools' (Macrory 2006b: 8, 17) are likely to presage greater interventionism, reinforced communication of government as sovereign risk manager and an extend role of punishment.

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<sup>3</sup> It is estimated that between 1997 and mid-2006, some 3,200 new criminal offences were created, over 1,000 of which were introduced by primary legislation (Morris 2006). During the same period, the Home Office produced some 60 crime-related bills.

<sup>4</sup> Since the beginning of 1993 the prison population in England and Wales has more than doubled, rising from 41,600 to over 85,000 by June 2010.

## **Conditions of Uncertainty and Precaution**

This brings us to the final theme namely the allied notions of uncertainty and precaution that have come to the fore in policy debate and political initiatives. The contemporary focus on governing future risks has raised questions about the robustness and fallibility of risk assessments. To prevent, pre-empt and manage future risks and insecurities demands 'bringing the future into the present'. By necessity, it relies upon knowledge derived from the past. Risk-based (actuarial) thinking involves prediction based on past events and probabilities of the possible loss, injury or other adverse circumstances projected into the future. It treats the future as knowable, based on rational scientific knowledge. Whilst the science of 'prediction' has significantly influenced the world of governing crime and insecurity in the form of 'actuarial justice' (Feeley and Simon 1992); profiling and targeted policing (Harcourt 2007) as well as risk-focused prevention (Farrington 2007), the scientific-base for prevention and pre-emption remains highly indecisive and ambiguous. In governing the future, uncertainty prevails. Determining where risks arise from and who presents a risk test the limits of our ability to predict the future. The limitations of knowledge merely magnify uncertainty. Furthermore, they question the extent to which the individualisation of risk is realised in practice or alternatively, takes the form of 'categorisation' whereby, individuals 'are grasped not as coherent subjects, whether understood as moral, psychological or economic agents, but as members of particular subpopulations and the intersection of various categorical indicators' (Feeley and Simon 1994: 178). My own assessment of these debates (as I hope to demonstrate) is that in the context of security, criminal justice practices that infuse the language of risk still retain notions of individual need (O'Malley 2004), whilst the lack of robust and un-contentious scientific knowledge has weakened the claims of risk prevention through actuarial justice.

In the context of (internal) security threats, the attacks in the US on 11 September 2001 poignantly highlighted the problems of foresight, raised questions about established methodologies for generating actionable intelligence and challenged certain assumptions about the appropriate threshold for intervention. As such, 9/11 influenced much security debate regarding risk assessment, managing insecurities and how formal systems of control are enacted under conditions of uncertainty. In a European context, this was given further salience in the light of the subsequent bombings in Madrid in 2004 and London in 2005. In a much-quoted statement, the former US Secretary of Defence, Donald Rumsfeld speaking in early 2002, assessed the so-called 'new' terrorist threats in the light of the 9/11 attacks and the failure to predict or prevent them, in the following memorable turn of phrase:

‘Reports that say that something hasn’t happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns -- the ones we don’t know we don’t know.’<sup>5</sup>

Whilst his comments were much derided at the time, Rumsfeld intimated a deeper set of concerns and (by implication) challenges for governments in responding to perceptions of crime and insecurity (notably those associated with terrorist violence). He drew attention to the changing shape and source of contemporary threats to societies, highlighting the limits of expert knowledge about risks, underscoring the unknowability of the future and raising questions about how to govern under conditions of uncertainty. By implication, it is the ‘known unknowns’ and the ‘unknown unknowns’ – not simply the ‘known knowns’ that should be the focus of our concern and hence that we should fear.<sup>6</sup> Crucially, the challenge for governments is how to respond to these ‘unknowns’. What is inferred is the need for intervention and action before a threat or risk becomes a ‘known’. It is a clarion call for early intervention – for pre-emptive governance – even before risks have expressed themselves or become acknowledged. It proclaims the need to anticipate and forestall potential harms. Massumi notes,

‘rather than acting in the present to avoid an occurrence in the future, pre-emption brings the future into the present. It makes present the future consequences of an eventuality that may or may not occur, indifferent to its actual occurrence.’ (2005: 7–8)

Under conditions of uncertainty a pre-emptive and preventive logic implies a precautionary approach. The ‘precautionary principle’ has an established role in policy decisions concerning environmental protection and management. In some legal systems, such as in laws of the European Union, the precautionary principle is a general and compulsory legal principle (European Commission 2000). It imposes upon public bodies a duty to act to avert serious or irreversible damage (Sunstein 2005; Wiener *et al.* 2010). It implies a responsibility to intervene and protect the public from exposure to harm where scientific investigation is insufficient, inconclusive or uncertain but where there are indications of possible adverse effects or plausible risks. Protections should be relaxed only if further evidence emerges

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<sup>5</sup> US Department of Defense News Transcript, 12 February 2002:  
<<http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2636>>  
(last accessed 4.6.2010).

<sup>6</sup> Interestingly, Rumsfeld omitted to mention a fourth category of ‘unknown knowns’; the things we know but do not admit to knowing! This is the ‘silent evidence’ (Taleb 2007) that governments ignore, discard, shade from view or lock away. This reminds us of the political nature of knowledge claims and the uses of knowledge.

that supports an alternative explanation. It is applied in circumstances where there are reasonable grounds for concern that an activity is, or could, cause harm but where there is uncertainty about the probability of the risk and the degree of harm (Ewald 2002).

In the resultant ‘war on terror’, the precautionary principle took the form of the ‘one per cent doctrine’. Ex-vice President Dick Cheney articulated this as follows: ‘If there is a one per cent chance... we have to treat it as a certainty in terms of our response... It’s not about our analysis or finding a preponderance of evidence. It’s about our response’ (cited in Suskind 2006: 62). Importantly, this approach to precaution in the face of uncertainty saw the separation of evidence and analysis from action and response. The bar for intervention was to be reset at a radically lower level, and the basis for action was to be ‘as if’ it were a certainty. Interestingly, whilst the Bush administration eschewed the precautionary principle in relation to health and environmental regulation, it embraced it in the context of security.<sup>7</sup> Whereas placing the burden of proof on demonstrating safety was seen to be problematic in the context of the environment and health (such as GM food for example, see Levidow 2001) because it might stifle innovation and produce damaging effects of institutionalised fear, this was not deemed relevant in relation to security.

**Table 1: The lens of ‘risk’ and of ‘uncertainty’**

<b>Risk</b>	<b>Uncertainty</b>
<ul style="list-style-type: none"> <li>● Knowledge is reliable</li> <li>● Analysis based on evidence</li> <li>● Risk assessment</li> <li>● Evidence-based policy</li> <li>● Actuarial techniques/tools</li> <li>● ‘Science of prediction’</li> <li>● Categorisation of dangerous populations</li> <li>● Profiling, targeted policing and surveillance</li> </ul>	<ul style="list-style-type: none"> <li>● Knowledge is unreliable</li> <li>● Separation of evidence/analysis from action/response</li> <li>● ‘What if?’, Worst-case scenarios</li> <li>● Pre-emption, prevention</li> <li>● Early intervention</li> <li>● Suspicion – ‘actionable intelligence’</li> <li>● ‘Pre-crime’ – <i>incivilities, anti-social behavior, ‘radicalisation’</i></li> </ul>

<sup>7</sup> A White House official in charge of vetting regulations is quoted as having told the New York Times in 2003 that the Bush administration considered the precautionary principle ‘to be a mythical concept, perhaps like the unicorn’ (cited in Gardner 2008: 319). On the divergent and selective application of precaution to particular risks in Europe and the US see Wiener *et al.* (2010).

Anticipating and forestalling potential crime and behaviour-related harms, in a risk-averse 'culture of fear' where a 'politics of behaviour' prevails, will frequently imply erring on the side of caution. From this perspective, people are to be judged in terms of what they *might* do. Zedner notes, 'precaution places uncertainty – not knowledge – centre stage' (2009: 37). In contemporary quests for security, it is 'uncertainty' that comes to constitute an increasingly dominant 'justification for governmental action... It is now our not knowing, our inability to know, or unwillingness to prove what we think we know that provides the reason to act before that unknown threat makes itself known' (*ibid.*: 58). What Rumsfeld is highlighting is a subtle shift from 'risk' analysis to 'uncertainty' as the lens through which state's construct the social problems they seek to govern (see Table 1). Zedner notes:

'Whereas risk-thinking stimulated the development of profiling, targeted surveillance, categorisation of suspect populations and other actuarial techniques for managing high-risk populations, uncertainty promotes a different set of techniques geared at requiring public officials to act preemptively to avert potentially grave harms using undifferentiated measures that target everyone.' (2009: 45)

Whilst risk assessments seek to predict the future on the basis of knowledge about how people performed and events unfolded in the past, the logic of security decisions under uncertainty focuses on the questions 'what might be?' or 'what if?' (Walklate and Mythen 2008). This prompts the identification of 'worst-case scenarios' and potential catastrophic consequences without a clear understanding of the likelihood that such outcomes will occur (Sunstein 2007). Given the emotions and affective sentiments that crime, disorder and threats to security generate, such premonitions are liable to dampen public attention to questions of probability and proportionality of response. In this light, uncertainty and not knowing, rather than being constructed as a cause for fatalistic inertia, are invested with the urgent need for vital and potent pre-emptive measures, as well as a radical rethinking of the legitimate grounds for early interventions (Dershowitz 2006). Uncertainty privileges security and provokes preventive action before risks express themselves (O'Malley 2004).

Governing under conditions of uncertainty has significant implications for traditional principles of criminal justice, notably the presumption of innocence, due process protections and proportionality. Mythen and Walklate note: 'Once one assumes a projective 'What if?' position, presumption of innocence metamorphoses into presumption of guilt' (2008: 234). In defending the decision to go to war with Iraq, Tony Blair gave an illustrative summation of the logical perils of governing by posing the question 'what if?':

‘Here is the intelligence. Here is the advice. Do you ignore it? But, of course intelligence is precisely that: intelligence. It is not hard fact. It has its limitations... But in making that judgement, would you prefer us to act, even if it turns out to be wrong? Or not to act and hope it’s OK? And suppose we don’t act and the intelligence turns out to be right, how forgiving will people be?’<sup>8</sup>

The larger the scale of the risk and the more harmful its consequences might be, the more indefensible inaction becomes. In such circumstances, the question ‘what if?’ prompts action ‘just in case’. Uncertainty, by demanding precaution, invokes action even in situations where it is not possible to know the precise nature or extent of the potential threat that is posed. This is where decision-making about security is facilitated, ‘not in a context of certainty, nor even of available knowledge, but of doubt, premonition, foreboding, mistrust, fear and anxiety’ (Ewald 2002: 294).

Yet as Zedner (2009) notes, ‘uncertainty’ does not displace ‘risk’. Rather, they co-exist at the evident boundaries of knowledge. The contemporary governance of risk - in contrast to the assertions of some criminologist (Feeley and Simon 1994) - is not dominated by the logic of actuarialism (least of all in the field of crime and insecurity), and contrary to Knight’s (1921) distinction, risk and uncertainty are not different classes of object. Risk management, Power (2007) proposes, has taken the form of ‘organized uncertainty’. He traces the shift from risk analysis to risk governance and argues that much of what today we call risk management is in fact ‘uncertainty management’ – i.e. ‘efforts to manage “risk objects” for which probability and outcome data are, at a point in time, unavailable or defective’ (*ibid.*: 26). Yet ‘risk’ retains an important place, for risk unlike uncertainty, always demands action. It implies the need to make decisions about the future and the allied allocation of responsibility for decisions taken. It insinuates the decidability and management of danger and hence raises expectations about its governance. Power goes on to argue: ‘Uncertainty is therefore transformed into risk when it becomes an object of management, regardless of the extent of information about probability’ (2007: 6). Rumsfeld’s ‘unknown unknowns’ and Cheney’s ‘one per cent doctrine’ are both attempts to ‘organise uncertainty’ as if it was manageable. In so doing, the management of uncertainty creates expectations and distributes responsibilities. Most notably, the public are drawn into this web of expectations over future governance, especially in relation to risks over which they have some responsibility and which impact most acutely on their perceptions of security and safety. In the politics of risk management as in the politics of policing and insecurity, public

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<sup>8</sup> <<http://webarchive.nationalarchives.gov.uk/http://www.number10.gov.uk/Page5461>>  
(last accessed 4.6.2010)

perceptions matter. This enmeshing of the public in risk governance, however, generates its own dilemmas:

‘Public perceptions of risk are not simply a new factor in more intelligent risk analysis, they are a source of risk themselves. So, the shift from risk analysis to risk governance is in part a strategy to govern unruly perceptions and to maintain the production of legitimacy in the face of these perceptions’ (Power 2007: 21)

However, Wynne (1993) warns against any simplistic assumption that laypeople are essentially defensive, risk- and uncertainty-averse, and unreflexive whilst science, on the other hand, is assumed to be the epitome of reflexive self-criticism. Rather, he shows that laypeople display considerable reflexive negotiation of their identity in relationships to science and scientific institutions. Related claims in the context of crime and security ‘talk’ have recently been voiced by Loader and Sparks (2010).

Whilst not knowing can be a powerful justification for intervention, so too, risk assessments allow the narrowing of risk pools such that the inconveniences of universal precautions can be displaced onto certain (often marginal) groups alone. Hence, whilst uncertainty might license ‘undifferentiated measures that target everyone’, as Zedner (2009: 45) argues, and the targets of surveillance are increasingly arbitrary, there are strong political incentives and economic imperatives to reduce this burden to the most ‘risky’ groups in society. The pressures to target resources and minimize the burdens of security to the general public are likely to result in the sacrifice of ‘other people’s’ freedoms to make ‘us’ (the dominant majority) feel more secure. In legitimising and informing the process of targeting, knowledge (or at least certain knowledge claims) about risk remains vital. As Ericson astutely notes, ‘risk assessment is rarely based on perfect knowledge, and typically frays into uncertainty’ (2005: 659). Whilst we all might be inconvenienced at airports by the routine (post-9/11) security checks, these have not displaced more targeted forms of screening nor the quest for ‘fast-track’ procedures for less risky groups – for example, on the basis that they buy into schemes that require the provision of personal and biometric data (such as a fingerprint and/or an iris scan).<sup>9</sup> Rather than sidelining knowledge, responding to conditions of uncertainty prompts the search for and legitimises imperfect and less robust knowledge claims. Thus, subjective perceptions (rather than objective risks) become more important in informing reassurance strategies (Crawford 2007). The quest for novel sources of

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<sup>9</sup> For example, Frankfurt airport started a biometric scheme in February 2004 as part of the EU’s Border Check initiative and Heathrow announced the establishment of such a scheme in Terminal 3 in late 2006. America’s Transportation Security Administration – set up to improve security after 9/11 - launched its Registered Traveler Pilot Program at five airports in 2004 (Frary 2004).

information upon which strategies can be constructed prompts a host of precursory identifiers of ‘potential risk’ and categorisations of ‘suspect populations’ – or what Zedner (2007a) aptly terms ‘pre-crime’.<sup>10</sup> This highlights various forms of behaviour or activities which come to be seen as ‘troublesome’ and hence ‘criminalisable’ not in and of themselves (i.e. because they are directly harmful to others *per se*) but because of the way in which they are conceived - from a developmental and temporal perspective - as in some way precursors to criminal behaviour. This includes behaviour that is not-yet-criminal but which is deemed to be an indicator of likely or potential future criminal conduct. ‘Anti-social behaviour’ is an exemplary illustration of ‘pre-crime’; heralding earlier intervention. Likewise the contemporary focus on ‘failing’ families and ‘inadequate’ parenting in relation to youth crime has been justified by reference to the likely consequences of non-intervention. To this end, in 2006 Tony Blair announced targeting families and screening for risk of future criminality to prevent problems developing when children grow older. He justified this by articulating a classic precautionary approach: ‘If we are not prepared to predict and intervene far more early, children are going to grow up in families that we know perfectly well are completely dysfunctional’.<sup>11</sup>

In the context of terrorism, indicators of ‘radicalisation’ have become the ‘pre-crime’ equivalent. In the process, policy preoccupations with ‘radicalisation’ establish a significantly lower threshold for intervention, as set out both in the UK’s counter-terrorism ‘Prevent’ agenda (HM Government 2009) and the analogous European strategy (European Union 2005). Aradau and van Munster are therefore correct to assert that ‘the war on terror displays an insatiable quest for knowledge: profiling populations, surveillance, intelligence, knowledge about catastrophe management, prevention, etc.’ (2007: 91). Risk here is reconceptualised as

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<sup>10</sup> Pre-crime ‘shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so... The shift is not only temporal but also sectoral; spreading out from the State to embrace pre-emptive endeavours only remotely related to crime’ (Zedner 2007a: 262).

<sup>11</sup> Despite Blair’s apparent certainty and confidence in the predictive capacity of developmental criminology’s risk-focused prevention in relation to juvenile criminality, a government scientific report a few years earlier had arrived at a very different conclusion: ‘[A]ny notion that better screening can enable policy makers to identify young children destined to join the 5 per cent of offenders responsible for 50-60 per cent of crime is fanciful. Even if there were no ethical objections to putting “potential delinquent” labels round the necks of young children, there would continue to be statistical barriers... [Research] shows substantial flows out of as well as in to the pool of children who develop chronic conduct problems. As such [there are] dangers of assuming that anti-social five-year olds are the criminals or drug abusers of tomorrow...’ (Utting 2004: 99)

‘precautionary risk’, which ‘has given birth to new configurations of risk that require that the catastrophic prospects of the future be avoided at all costs’ (*ibid.*). Here, suspicion becomes actionable intelligence. Intelligence, after all, is simply information with value-added analysis (Walker 2007: 1455). It is ‘information that has been processed to provide foresight – a predictive capacity about how to act at some point in the future to achieve particular objectives given certain conditions’ (Innes 2006: 229). But the robustness of the predictive capacity may be weak or highly contingent.

What is evident is the manner in which counter-terrorism responses have come to inform, and be informed by, developments and trends in neighbourhood policing, border controls and community cohesion more generally. In the process the precautionary principle, traditionally associated with serious, irreversible damage and environmental catastrophe, has leaked into the regulation of low-level social disorder, incivilities and disruptions to quality of life. It is increasingly argued that the demands of contemporary policing in the context of uncertainty necessitate the better integration of community intelligence through neighbourhood policing with counter-terrorism activities: ‘Community intelligence applied to counter-terrorism is precisely the type of data that might help police to circumvent the intelligence gaps and blind spots that seemingly inhere in their established methods’ (Innes 2006: 230). Regardless of its merits in generating ‘actionable intelligence’, such a vision of policing presages both a pervasive extension of ‘the subtle indicators of suspicion’ (*ibid.*: 224) and an intertwining of ‘high’ and ‘low’ policing as well as a blurring of sources of insecurity and types of harm.

As such, uncertainty and precaution demand the voracious collection of diverse sources of information, to enable analysts to ‘join up the dots’. This has prompted greater investment in the use of data pools, the storing of DNA records and risk profiling. Information and personal data collection, searching and sifting are at the forefront of ‘organising uncertainty’ and ‘managing risk’. Personal data drawn from official and public records and from consumer activities are increasingly used by commercial interests and governments to differentiate and classify customers, citizens and aliens alike through algorithmic profiles. On the one hand, ‘categorical seduction’ informs the corporate wooing of prized consumers. On the other hand, ‘categorical suspicion’ attends to certain groups of potential offenders and ‘dangerous types’ (Lyon 2007: 103). Here, information provides the basis for social sorting. However partial the profiles generated, their capacity to respond to the demands for organising uncertainty, stimulate quests for additional sources of information upon which categories of suspicion might be constructed, despite the vast quantities of ‘false positives’ that such data trawling, by necessity, generates. Collectively, the increasing combination of disparate data pools allows for the

construction of a 'surveillance assemblage' (Haggerty and Ericson 2000) with added dimensions of social sorting potential, but also considerable scope for friction, failure and information overload.

### **Contested Expertise and Evidence**

The pathology of insecurity lies not only in the limitations of knowledge on which to construct predictive interventions but also in the manner in which knowledge and expertise are contested. Knowledge, as Ericson notes is both an 'object and instrument of suspicion' (2007: 204). Not only may there be deeply held distrust on the part of the public of expert judgements of risk but so too for politicians the language of risk may not sit well with requirement for action. This is particularly evident in relation to the sensitivities of crime and victimisation where demands for certainty abound. As Ewald notes, 'this does not mean that scientific expertise is useless, but that it will not release the politician from the sovereignty of his or her decision' (2000: 77). Managing uncertainty means that politicians are selective in their tolerance of potentially harmful activities.

Witness, for example, the furore in Britain in early 2009 when Professor David Nutt, the Chair of the Advisory Council on the Misuse of Drugs (ACMD), in an editorial in the *Journal of Psychopharmacology* suggested that the risk of death from the drug Ecstasy is lower than the risk of death from horse-riding - an addiction he tongue-in-cheek termed 'Equasy' (Nutt 2009a). He used the comparisons of risks to highlight the need for a 'more relevant harm assessment process' and concluded: 'The use of rational evidence for the assessment of the harms of drugs will be one step forward to the development of a credible drugs strategy' (*ibid.*: 5). In an enlightening response to such a 'scientific claim', the British Home Secretary at the time, Jacqui Smith, demanded that he apologise and told MPs: 'I felt his comments went beyond the scientific advice that I expect from him as chair of the ACMD... He apologised to me for his comments, and I have asked him to apologise to the families of the victims of ecstasy, too'.<sup>12</sup> This highlights the political and cultural salience of certain risks and harms as against others, as well as the manner in which public perceptions once enmeshed in risk governance generate their own dilemmas that can serve to undermine a rational harm assessment debate.

However, the matter did not rest there. In October 2009 Professor Nutt was sacked from his government advisory post by the subsequent Home Secretary, Alan

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<sup>12</sup> Hansard, House of Commons 9 Feb 2009: Column 1093.

Johnson. Professor Nutt's subsequent crime was to give a lecture (which was later published) on the relative risks of various drugs in which he argued that Jacqui Smith's use of the 'precautionary principle' in reversing a decision to downgrade the classification of cannabis, could do more harm than good. An extract that particularly wrangled with the government is worth quoting at length:

"To repeat what the former Home Secretary said, "We must err on the side of caution and protect the public." As this is protection from the known unknowns, at first sight it might seem the obvious decision – why wouldn't you take the precautionary principle? We know that drugs are harmful and that you can never evaluate a drug over the lifetime of a whole population, so we can never know whether, at some point in the future, a drug might lead to or cause more harm than it did early in its use. The precautionary principle... may end up doing more harm than one might assume... More important, I think, the precautionary principle misleads. It starts to distort the value of evidence and therefore I think it could, and probably does, devalue evidence. This leads us to a position where people really don't know what the evidence is. They see the classification, they hear about evidence and they get mixed messages. There's quite a lot of anecdotal evidence that public confidence in the scientific probity of government has been undermined in this kind of way... Making all drugs class A would be a logical conclusion of the precautionary principle, but would be a supreme mistake." (Nutt 2009b: 8, emphasis in original).

This incident highlighted not only the manner in which - under conditions of uncertainty - expert advice becomes contested, but also the way in which a precautionary logic diminishes the value of evidence and decouples it from directly conditioning the nature of the response. In its place, worst-case scenarios, 'what if?' questions and suspicion fill the void. Managing risk perceptions squeezes out and supplants rational risk analysis.

### **Concluding thoughts**

Contemporary security threats from terrorist violence, through 'ordinary' crime to acts of disorder and anti-social behaviour, undoubtedly present real and pressing challenges for governments, businesses and citizens alike. But there are evident dangers that in the way in which we both interpret risk and 'unknown dangers' and respond to them, we may be undermining some of the core values and principles of democratic societies, whilst eroding relations of social trust and mutual toleration. As a consequence, the balance between security and freedom has become possibly the most prominent contemporary challenge for European polities. The demand for security in societies where individuals have come to experience ever greater 'freedom' is a vexed one. The concern is that it frequently means sacrificing 'other people's' freedoms to make 'us' feel more secure. This has adverse implications for

marginal and marginalised groups within societies, those upon whom dominant groups project their fears and anxieties. Hence, the questions ‘whose fears?’, ‘whose security?’ and ‘whose freedoms?’ are particularly salient albeit often less evident in debates about threats of terrorism and political violence as well as other contemporary fears and responses to them. In the political confrontation between fear and liberty, where necessary, actions that infringe liberties are more evidently justifiable if those who support the actions are burdened by them and their impacts are not restricted to members of identifiable minority groups - whether implicitly or through differential implementation.

In governmental responses to perceptions of crime and insecurity, notably terrorism, precaution is becoming a key driver, in a way that licenses early interventions before our ‘unknown unknowns’ express themselves. In a context of uncertainty and in the search for (an unattainable absolute) security, mere suspicion, the perceptions of others, the appearance of potentially risky behaviour and worst-case scenarios may be sufficient grounds for pre-emptive action. There is a need to consider and challenge the evidence and assess the different courses of action available. As Sunstein asserts: ‘Democratic governments care about facts as well as fears... they take careful steps to ensure that laws and policies reduce, and do not replicate, the errors to which fearful people are prone’ (2005: 226). In ‘governance through precaution’, we may be in the process of discarding cherished civil liberties and legal principles in order to intervene at the earliest possible stage to stop our unknown demons surfacing. In so doing, we are in the process of widening our apparatuses of control and overloading these with information from diverse data-banks, in the hope that this will allow us to ‘join up the dots’ to identify potential risks and pre-empt the future. Whilst deliberate inaction in the face of evidence of possible serious and irreversible harm is understandably hazardous, so too over-reaction can at times present greater dangers, particularly where this generates unintended consequences and results in the consumption of resources that might have been deployed in more beneficial endeavours.

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Contents include: \*\*\* Part I - Beccaria's Dream under Reconstruction: Regulating Civility, Governing Security, and Policing: (Dis)order under Conditions This volume is the outcome of an international conference held in April 2010 on 'Governing Security Under the Rule of Law?'<sup>1</sup> Contents include: \*\*\* Part I - Beccaria's Dream under Reconstruction: Regulating Civility, Governing Security, and Policing: (Dis)order under Conditions of Uncertainty \* Beccaria's Dream on Criminal Law and Nodal Governance \* Legitimacy of Dutch Criminal Law in Increasingly Horizontal and Multi-Dimensional Relationships \* The Judicial Branch: A Partner in the Business of Governing Security? \* Torture as a Lesser Evil? The second contribution of this paper is theoretical. We present a model where agents learn from market signals and show that the release of more precise public information about future rates can perversely increase uncertainty and the sensitivity of bond prices to public information. The key ingredient for generating this effect is learning from market prices.