

Justice is under threat in the risk society', is barbara hudson right to argue th...

[Society](#)



'Justice is under threat in the risk society', is Barbara Hudson right to argue this? In the UK the state advised what it expects of us and in response to this gives us laws that we are not legitimate to disobey. We currently live in a de facto and de jure state where no one else can take part in violence apart from the state when needed, and the laws are seen as just. From the seventeenth century to the late twentieth century there has been a change in society creating a modernist era which saw the ending of feudalism and the devotement of capitalism. Hudson, 2003: 3) This period saw changes in the way individuals lived their lives and viewed the world; there were political changes and systems of punishment. The changes stirred 'political, moral and legal philosophy- the fields at whose intersection we find justice.

'(Hudson, 2003: 3) This essay will highlight the reasons why Barbara Hudson is right to argue that justice is under threat in the risk society. It will first outline Kant's and Rawls's theory of justice and it will then look at what risk society is.

Finally it will compare if justice and the risk society are compatible using DSPD as a case study. Immanuel Kant was an enlightenment philosopher in utilitarian liberalism. He had many theories what justice is and what this means and theories on how this affected punishment. He used the devolvement of enlightenment to search for the measure of justice, whereby humans are seen as rational and capable of analysis and decision making. (Hudson, 2003: 5) Previously issues for justice for liberal democracies had been about the distribution of material and social goods. Hudson, 2003: 6) However, for Kant his theory of justice revolved around the idea of individual freedom and equal freedom for all. He believes as we are all rational and

capable of making are own decisions that we can all abide by the moral law. Kant's moral philosophy is based on what he calls the categorical imperative, where he says ' Always act in such a way that you can also will that the maxim of your action should become a universal law' (Kant, 1987: 2) Meaning that you should treat people as you would want to be treated, and not to an end to a means, if we do not treat people as equal then there is no justice.

Rawls was a contemporary liberalist who was a student of Kant's who looked to an alternative to utilitarianism in his theory of justice. (Kymlicka, 2002: 53) His approach was intuitionism theory which he said had two features, that they consist of plurality of first principles and that they include no explicit methods and we are simply to strike a balance by intuition to what seems right. (Kymlicka, 2002: 54) Rawls had two principles of justice; the first was that ' each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. (Kymlicka, 2002: 56) He states when making decisions we should mentally put ourselves behind a veil of ignorance for all members of society to agree, as this would lead everyone in society to be treated more fairly as they would not know where in society they would be placed therefore limiting their risk. This way you could distribute goods completely fair without discriminating against anyone and by doing so you would end up with a system in which you would make sure the worst off are as well of as possible as we would not know which group we were going to be in; the rich or the poor group of society. Baggini, 2005: 29) Rawl's second principle of justice are that social and economic inequalities are to be arranged so that ,

they are to be the greatest benefit to the least advantaged members of the society and offices and positions must be open to everyone under conditions of fair equality of opportunity. Therefore since there will be always discrepancies, members of society would agree to take part as again they would not know which group of society they fall into and by removing all inequalities to which disadvantage someone thus creating a more just society.

Thus for Rawls, justice equals fairness and fairness equals proportionality. Risk Society theory was developed to claim why and how society is changing. Becks and Giddens contended they have seen changes in how society works and suggest that we are now living in a society of risk. Risk society is not suggesting that we live in a world with more risk but that our perception of risk has become a key factor in our organising principle. Cited in Hudson, Ericson and Carriere say ' We now live in a risk society; there is a drift in the public agenda away from economic inequality to the distribution and control of risks. (Hudson, 2003: 43) There are seven key concepts to the risk society; Modernity, Late Modernity, Reflexive modernisation, Manufactured uncertainty, Actuarialism, Risk distribution and Individualism. Late Modernity is the term used in the contemporary era showing the transformations in societies whereby there has been shift towards capitalist economies and globalisation rather than welfare approach. With late modernity you are able to look back at what had been done and use this to help you predict how to change in the future to limit your risk. Denny, 2005: 28) Reflexive modernisation and manufactured uncertainty was a concept developed by Becks and Giddens who are key risk society theorists. They explain that with

development of technology, this has created new and different risk and the technology we have makes us more aware of the potential risk, as the media is no longer just in the form of newspapers and television, we have access on computers and even mobile phones therefore we are able to see and hear potential risks 24 hours a day. Adam et al, 2000: 168) However, because we have made this risk with the development of technology then we are able to understand it better and assume we can measure them. They apply the concept of Actuarialism that categorise populations according to risk, with this concept we can measure the risk and the likelihood of them happening and by doing this we can take steps in reducing and avoiding these risks. A fundamental concept in the risk society is that to avoid risk we can distribute the risk which is part of neo-liberalism.

This can be seen to be used in everyday life with car insurance companies who charge an individual more money in according to the risk they pose whilst driving . Risk has become a fundamentally commodity in a capitalist society. Risk society means that risk thinking has become normalised for individuals in everyday life, every decision we make we think about the risk connected to it. The rise of individualism has seen that individuals will purchase the best risk protection they can without thinking about the weaker person in society.

Hudson states that we now fear crime from one another and because of this we want people who threaten us to be removed from our environment to eliminate the risk, this has been a contributing factor to why society has become more punitive. (Hudson, 2003: 45) In the risk society governance is directed at the provision of security and experience of security usually rests

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on a balance of trust and acceptable risk in the form of guarantees and predictability. These risks become objectified negative images of utopias where people are no longer concerned with obtaining the good but rather, preventing the worst.

A key question for liberal theorists is how much liberty should be traded for the level of security. In today's society the state controls and governs the way in which we live our lives. Society has handed over the power to the state through a social contract whereby we give up some of our liberty in the hope the government are able to protect us from potential risks. One of the effects of this is that we let the government control how they punish offenders.

Bentham and Kant, two utilitarians held different views on Punishment, For Bentham he said it is inherently bad, Bentham, a utilitarian and theorist for punishment stated, cited in Ashworth ' that moral actions are those that produce the greatest happiness of the greatest number of people. '(Ashworth, 2010: 79) ' Therefore to justify punishment we must do so by showing its utility. However Kant thought that punishment was good and there was a duty that the offender got their just deserts through his principle of equality. (Duff and Garland, 1994; 141) The reason for punishing must serve as a justification for that punishment.

The just dessert model means that you should get the punishment you deserve by receiving a sentence that it is proportionate to the offence you have committed. (Scott, 2008, 199) Indeterminate sentencing which is associated with utilitarianism is linked to the risk society and justice, as because they believe we can measure risk they think we can make
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predictions for future crimes. However, by punishing someone for a crime they have done this in turn will help reduce crime in the belief that fear will stop others from committing the same crime. Honderich, 2006: 26-27) However, it is immoral and there is no justice to give someone a harsher sentence and make an example of them in the hope of helping to deter others from the same crime. Hirsch's study found that harsher sentences do not deter others and reduce crime rate. (Hirsch, 1999: 3) Indeterminate sentences transgress the reason and justification for punishment, by admitting guilt for the initial offence they assume they are guilty of reoffending therefore are given longer prison sentences for the good of society this cannot be just..

A problem for justice when punishing an offender is the need to address justice for whom; the offender or victim, what constitutes justice for the victim will not mean justice for the offender there will always be a problem balancing the two. Risk management is linked to the decision making and minimising harm, it seeks to predict the outcome and the potential for harm. (Denny,: 119) With this acutalarisms approach to risk assessment disappears and gives rise to false positives.

False positives are when an individual is wrongly predicted as being likely to reoffend; these people would not have offended if they were free. (Scott, 2008: 24) Since society has become more aware of risks there is more pressure for the Criminal Justice System and Government to limit these risks. This can be seen in Dangerous and Severe Personality Disorder Act. DSPD is a disease that the government made up to so they could incarcerate people who had this illness as they believe they pose a risk to society The <https://assignbuster.com/justice-is-under-threat-in-the-risk-society-is-barbara-hudson-right-to-argue-this/>

emergence of psychosocial diagnoses reflected the prevalence of medicalization. by saying it's a medical problem they are saying there is something wrong with the individual rather than society. When an individual is diagnosed with DSPD they are not sent to a mental hospital, they are placed in units in high security prisons even if they have not committed an offence. (Corbett and Westwood, 2005: 122) There is mandatory incarceration, and you are asked to volunteer for cognitive skills programmes to treat the disorder, however if you don't volunteer then you will not be released although even if you do volunteer you may never be released.

However, many clinicians believe that it cannot be treated and that they are more likely to be a danger to themselves than to others. (Scott, 2008: 117). DSPD cause a great deal of controversy as it has no legal or medical base many say this disorder does not exist and the government have only put it in place as they think these individuals pose a risk to society, this demonises sections of the population. (Hirsch et al, 2009: 155) DSPD manifests Becks analysis of the risk society and the approaches to understanding the notion of risk.

Any person diagnosed with this the ' risk society' may constitute them as unmanageable, ' such that increasingly complex systems of rational control are required to ensure future public safety. '(Corbett and Westwood, 2005: 125) DSPD highlights one of the reasons why justice is not compatible in the risk society, it is not just to incarcerate someone because they have an illness, and it goes against Rawls and Kant's principle of justice. As we now live in a risk society it is more difficult have justice for all.

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There is a belief that we can assess how dangerous a person is, not only on past events but even if they have a medical illness as society thinks they can measure and predict risk. As society demands more security from risks, the government has had to undermine justice as there is more demand for those who threaten our security to be brought to justice. Hudson states that ' liberal theories leave unanswered the question how much liberty maybe curtailed to prevent how much harm. '(Hudson, 2003: 205) If society demands more security from risk they would have less liberty.

If society was to use Rawls principle of the veil of ignorance then they would be less likely to ask for more security as they would not now what position they would be in. The demand for justice and security conflicts with each other , the discourse of risk requires indeterminate sentencing and stands in the way of justice and the government need to appear to make the world less dangerous and the fairness and rights of the offender is put aside, as the elimination of risk is deemed to be more important.

The equal balance of justice and risk cannot happen as by having justice for one person maybe creating a risk for another and vice versa and in today's society there is more emphasis on control of risk. The risk society is fundamentally taking away the values of liberal society by using people as a means to an end, by the elimination fairness and proportionality. The explosion of risk-focused technologies has been a contributing factor to the risk society as we are now more aware of risks and as we have developed them we believe we can measure them and predict them although this not always correct which means that there is no justice for all.

Justice is thus a state of relationships which brings about equilibrium in the free exercise of will but this does not happen in a risk society as it threatens the definition of justice. To legitimise the state and governments actions they create more risk as a state in fear is an easier one to control. Hudson has highlight that towards the end of the 20th Century they was a move from risk management to risk control and it is now embedded in our society. Hudson, 2003: 60) As we can see from the issues highlighted it is inevitable that Barbara Hudson is correct to say that justice is under threat in the risk society. Bibliography Denney. D (2005) Risk and Society, London, Sage Scott. D (2008) Penology, London, Sage Duff. A, Garland. D (1994) A reader on Punishment, Oxford, Oxford University Press Von Hirsch. A, Ashworth. A, Roberts. J (2009) Principled Sentencing readings on theory and practice, North America, Hart Publishing Kymlicka. W (2002) Contemporary Political Philosophy, Oxford, Oxford University Press O'Neill.

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