

References

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Against prediction: Profiling, policing, and punishing in an actuarial age, Bernard E. Harcourt. Chicago: University of Chicago Press, 2007. 336pp (including appendices, notes, bibliography and index), \$25.00 (pbk). ISBN 13: 978–0–226–31614–7.

It is the method rather than the thesis which makes this book a notable contribution to the critical literature of risk. Bernard Harcourt takes his three-pronged campaign against the prevailing use of actuarial techniques in policing and punishment deep into the enemy's territory, embracing econometrics to make his points. Harcourt argues first that relying on predictions of future criminality actually undermines the law enforcement goals such techniques were intended to achieve. Second, the use of actuarial techniques at successive stages of criminal justice – from arrest, through the court process, to punishment and probation or parole – allows for fine-grained but fundamental problems of statistical bias present during each of these moments to become compounded with the result that members of minority racial groups are and will continue to be disturbingly over-represented among those arrested, imprisoned and otherwise placed under state penal control. He calls this the 'ratchet effect'. Finally, Harcourt urges on us the concern that 'the proliferation [and our embrace] of actuarial methods has begun to bias our conception of just punishment' (p. 3).

It is not only his willingness, indeed his obvious enthusiasm, to deploy the elegant symbols and sweeping graph lines of microeconomics and statistics, that makes this work a refreshing presence at the table of debate. Harcourt embeds this into a larger narrative that connects the policy history of parole prediction, the faith in science of progressive reformers, and the erosion of classical theories of punishment's justification. He reminds us that sentencing guidelines, racial profiling in drug enforcement practices, and risk assessment tools that have allowed for lengthy post-sentence civil confinement are the product of reform movements led by progressive humanists. The story of actuarialism's rise is a story of hope undone by its own workings. This theme reverberates beyond the book: Harcourt is so fully conversant in the language of rational choice actors, cost benefit analysis and elasticities that he risks winning us, and himself, over to these domineering, pure concepts. The danger of this occurring is that it can lead us into the kinds of spurious assumptions about crime, class and race that Harcourt is anxious to challenge.

Part One of the book takes us on a guided tour of the historical emergence of probabilistic reasoning in parole decisions and then surveys various instruments in use, mainly in American jurisdictions. These will be useful to audiences that are reasonably new to the debates over risk and penalty, for example by introducing the LSI-R (Level of Service Inventory-Revised, one of the most commonly used tools internationally) and giving a good flavor of the combination of actuarial, clinical and criminal justice practitioner influences on the variables selected for such metrics.

The third and final part of the book – which has the task of developing the critique into a way forward for criminal justice – sits least compliantly with the order imposed by the table of contents. Chapter 7 essentially amounts to a highly technical and descriptive discussion of aspects of racial profiling by law enforcement, which feels like a continuation of points raised earlier. Chapter 8 moves from the primary interest in racial profiling to discuss briefly the (beneficial) use of actuarial techniques in bail decision making (at least as it worked in one place). There is also a short ‘coda’ on racial profiling as it is playing out in counterterrorism efforts. The book’s last chapter introduces Harcourt’s particular notion of ‘randomization’ as an antidote to actuarialism. It is much too small a space to resolve entirely the problems so thoroughly raised in Part Two, but this does not really matter because the importance of this work will and should rest on the assessment of the critique raised in Chapters 4–6. It is here that Harcourt fleshes out his three critiques and displays the originality of his effort.

In Chapters 4 and 5 he makes two important claims. Racial profiling that leads to targeting of minority group members in police stops may produce the opposite of the desired result. This directly contradicts the claim that racial profiling is an efficient way of allocating scarce police resources. Harcourt argues using the logic of the rational choice model of crime, that if racial minorities are more likely to commit crime, they therefore are likely to be less elastic (less responsive to deterrent pressures) to the law enforcement response, or at least it cannot be assumed that elasticity of high offending groups (whether or not these are predominated by racial minority members) will be the same as low offending groups. ‘The bottom line, then, is that there is every reason to believe that nonspurious racial profiling would actually increase crime in society’ (p. 123).

This leads on to his claim that there is a ‘ratcheting effect’ at work: the more offenders pulled from samples that disproportionately draw on one group compared to another, the more intensively this targeted group will be policed and punished. Harcourt presents his case first in terms sensible to a lay person but backs it up with a quantitative analysis. Without competence in microeconomics, I cannot assess whether the technical case is sound, essential to the argument or shifts the critical debate about actuarialism onto fundamentally new ground.¹ All the opinions of this review must be filtered through this caveat. However, it certainly does not take any special mathematics to convince that racial profiling is counterproductive or that the ratcheting effect is a real phenomenon. While Harcourt’s work radiates the influence of Chicago, home to so many important schools in criminology and law (with law and economics particularly salient here), this work also brings to mind the concept of self-fulfilling prophecy. The connection of Harcourt to Merton is intended as praise, connecting an earlier spirit of pioneering thinking to a contemporary one.

However, I conclude with a note of concern raised earlier about the beguiling influence of microeconomics even as we attempt to dissect it. Harcourt conveys a genuine

distress at the tendency among professionals and the public to visualize criminals as poor black or Hispanic men. When he writes that 'different offending rates are due to different socio-economic backgrounds, to different histories, cultures, or education' (p. 24), he misses an early and straightforward opportunity to consider that offending may in fact have much more to do with the cultural, historical and social reasons that some groups are more policed, and therefore more likely to show up as offenders, than other groups. And the frequent juxtaposition of his concepts of 'high offending/low offending' groups alongside black/white racial groups risks reproducing through scholarship the same mistakes carried out by so many American law enforcement practices.

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Note

1 A forthcoming issue of *Law and Social Inquiry* (2008) includes three review essays on the book. The author's reply, is titled a 'Reader's companion to against prediction' and provides some assistance navigating the symbols and figures. The review essay by Yoram Margalioth focuses specifically on the technical microeconomic argument.

Theorizing surveillance: The panopticon and beyond, D. Lyon (ed.). Cullompton, UK: Willan Publishing, 2006. 351pp. (including index). £26/\$45 (pbk). ISBN 10: 184392191X, ISBN 13: 978-1843921912.

Surveillance studies is a rapidly growing field especially in the post-9/11 world. This volume of 15 chapters offers insightful theoretical discussions which are likely to make a lasting impact on our understanding and conceptions of global surveillance. The book is structured into five parts. The opening section, which is the introductory chapter, highlights what the editor describes as 'the conundrum within panoptic theory', and its implications for theorizing surveillance. This conundrum relates to the observation that the most stringent and rigorous panoptic schemes often elicit the most resistance while seemingly innocuous schemes tend to achieve an impressive degree of compliance. The editor also explores the possibilities for establishing a dialogue among the growing body of theories that seek to explain the growth of global surveillance practices. It is not a call to develop a 'general theory of surveillance' but rather for careful theorizing, if the study of surveillance is to involve more than descriptive and sometimes emotive accounts of these practices.

Part Two picks up this theme and explores the adequacy of the panopticon as a heuristic device in the study of contemporary surveillance. Both Haggerty and Bigo find it wanting and urge us to look beyond it for alternative models of thinking about surveillance practices. While Haggerty is reluctant in proposing a new terminology in post-panoptic theory because of profound complexities of issues of surveillance, Bigo is much more forthcoming, proposing the notion of the 'ban-opticon'. This section concludes with a discussion by Los of the unintended 'totalitarian potential' of contemporary risk management and surveillance. She argues that despite important differences, there are vital affinities between the 'file' as a totalitarian mechanism of