

Understanding Risk, Insight, and Responsibility in Justice Decision-Making



Contemporary justice systems are increasingly organised around the management of risk. Decisions relating to sentencing, parole, recall, and public protection are framed through actuarial tools, procedural compliance, and formalised assessments designed to demonstrate accountability and minimise institutional exposure to blame (Garland, 1996). While such frameworks serve important administrative and political functions, they are frequently treated as substitutes for professional judgement rather than supports for it. This shift has profound implications for legitimacy, responsibility, and harm within justice decision-making.

Risk, however, is not a neutral or technical concept. It is a governing logic that shapes how individuals are categorised, how authority is exercised, and how responsibility is displaced. As Foucault (1976; 1982) argued, modern systems of power increasingly operate through dispersed mechanisms of classification, surveillance, and regulation rather than overt coercion. Risk assessment functions as one such mechanism: appearing objective while structuring whose uncertainty is tolerated and whose lives remain subject to indefinite control.

Risk Versus Insight

Risk assessment tools are often presented as evidence-based instruments capable of predicting future behaviour. In practice, they operate as administrative technologies that translate complex human lives into simplified categories that are legible to bureaucratic systems (Fletcher, 2024b). The problem is not the existence of such tools, but their elevation within institutional cultures characterised by political vulnerability, media scrutiny, and risk aversion (Annison, 2015).

Research on the lived experience of punishment demonstrates that risk is not merely managed by institutions but actively experienced by those subject to it. Crewe's work on the depth of imprisonment shows that contemporary punishment operates through uncertainty, indeterminacy, and the internalisation of power rather than physical coercion alone (Crewe, 2025). Individuals subject to prolonged risk-based decision-making report heightened anxiety, erosion of identity, and a profound sense of decision-making opacity — effects that are rarely captured within formal assessment frameworks but which directly shape trust, compliance, and legitimacy.

Insight, by contrast, requires interpretation rather than calculation. It involves understanding how institutional practices are perceived, how power is experienced, and how decision-making is lived by those subject to it. When risk scores displace reflective assessment, decision-making becomes defensive rather than responsible, prioritising institutional protection over meaningful public safety (Garland, 1996; Annison, 2015).

Responsibility, Power, and the Displacement of Accountability



One of the most significant consequences of risk-dominated governance is the displacement of responsibility. Decisions appear to be made by tools, thresholds, and procedures rather than by people. This creates an illusion of objectivity while obscuring the human choices embedded within institutional practice. As Foucault (1982) observed, power is most effective when it becomes anonymous and self-justifying.

In justice contexts, this dynamic produces predictable outcomes. Release decisions are delayed, recalls are normalised, and indeterminate forms of control are maintained under the banner of public protection. The Indeterminate Sentence for Public Protection (IPP) represents an extreme manifestation of this logic. Official data show that over 2,800 individuals remain imprisoned on IPP licences, with the majority having served well beyond their original tariff (Ministry of Justice / HMPPS, 2025). Rates of self-harm among IPP prisoners are almost double those of the general prison population, while delays in access to rehabilitative programmes continue to obstruct progression (HM Inspectorate of Prisons, 2023).

From a social harm perspective, these outcomes cannot be dismissed as unintended side-effects. Zemiological scholarship reframes harm beyond criminality, directing attention to injuries produced by lawful, bureaucratically sanctioned practices (Hillyard and Tombs, 2007; Copson, 2024c). Prolonged indeterminacy, denied progression, and institutional neglect constitute serious social and psychological harms regardless of formal legality. Risk frameworks may protect institutions from blame, but they do so by transferring harm onto individuals, families, and communities (Grimshaw, 2022).

Lived Experience as Epistemic Knowledge

Lived experience has become an increasingly visible concept in justice policy, yet it is often misunderstood. Too frequently, it is treated as personal testimony or emotive narrative rather than as a form of situated knowledge. This limits its epistemic value and invites tokenistic inclusion. When properly governed, lived experience offers insight into how power operates in practice, how risk regimes are felt, and where systems consistently fail (Copson, 2016).

Those subject to long-term risk management frequently report heightened anxiety, loss of agency, and persistent uncertainty regarding their future (HM Inspectorate of Prisons, 2023). These experiences align closely with Crewe's analysis of depth and with official evidence documenting the psychic harms of indeterminate punishment (Crewe, 2025; Grimshaw, 2022). Recognising lived experience as knowledge rather than narrative enables decision-makers to identify blind spots within formal assessments and to recalibrate judgement accordingly.

Implications for Policy and Practice

If justice decision-making is to move beyond defensive risk management, structural change is required. First, the IPP sentence must be abolished with retrospective effect. Emergency legislation should convert all remaining IPP cases into fixed-term determinate sentences overseen by specialist community-based courts. These panels should include judicial expertise, victim representation, and former IPP prisoner-advisors whose sentences have been terminated. Such a model would restore legitimacy, acknowledge harm, and re-centre responsibility within accountable decision-making structures (Ministry of Justice / HMPPS, 2025; Prison Reform Trust, 2025).

Second, public funds should be redirected away from prison expansion and toward community investment in housing, healthcare, education, and employment. Evidence consistently demonstrates that these social foundations are more effective at reducing harm and supporting desistance than containment-focused strategies (Connell et al., 2023; Mathlin et al., 2022). A Justice Reinvestment Act, co-designed and overseen by victims and people with lived experience of imprisonment, would represent a decisive shift from penal symbolism toward substantive public safety. Third, a National Lived Experience and Victims' Justice Council should be established with statutory authority to review penal policy, sentencing reform, and parole frameworks. Embedding both perspectives at the national level would rebalance justice from being state-defined to co-created, strengthening democratic legitimacy while maintaining accountability (Padfield, 2018). Fourth, the transformation of penal and political media representation is essential. Penal populism distorts risk perception and entrenches punitive responses. Research on platform governance demonstrates how communication infrastructures shape legitimacy and participation, with recent evidence showing reduced academic engagement following changes to moderation regimes on X/Twitter (Arun et al., 2024; Bisbee and Munger, 2024). Investment in lived experience- and victim-led justice media spaces is therefore critical to rebuilding informed public discourse.

Finally, criminological research itself must be transformed. A National Transformative Justice Research Fund and Fellowship Scheme should prioritise projects grounded in social harm and the transformative paradigm, with mandatory participation from victims and people with lived experience of imprisonment (Mertens, 2017; Gergen, 2015). Knowledge production must inform political leadership rather than reproduce state power.

Closing Reflection

Risk is unavoidable in justice decision-making, but harm is not. Systems that prioritise institutional protection over human dignity ultimately undermine the legitimacy they seek to preserve. Insight, responsibility, and professional judgement cannot be replaced by actuarial certainty. They must be cultivated, supported, and held accountable. These proposals are not about being “soft” on crime. They are about being honest about what justice requires. Rehabilitation cannot occur within structures built on indeterminacy, marginalisation, and economic utility. Justice that works is justice that recognises power, values lived experience and takes responsibility for the harms it produces.



References

Crewe, B. (2025) The depth of imprisonment revisited. *Incarceration*, 6, pp. 1–13.

Foucault, M. (1982) 'The Subject and Power', *Critical Inquiry*, 8(4), pp. 777–795.

Hillyard, P. and Tombs, S. (2007) 'From "crime" to social harm?', *Crime, Law and Social Change*, 48(1–2), pp. 9–25.

Grimshaw, R. (2022) *Imprisonment for Public Protection: Psychic Pain Redoubled*. London: CCJS.

Ministry of Justice / HMPPS (2025) *Annual Report on the IPP Sentence 2024–25*. London.

United Nations Human Rights Council (2024) *Report of the Special Rapporteur on torture, A/HRC/55/52*.