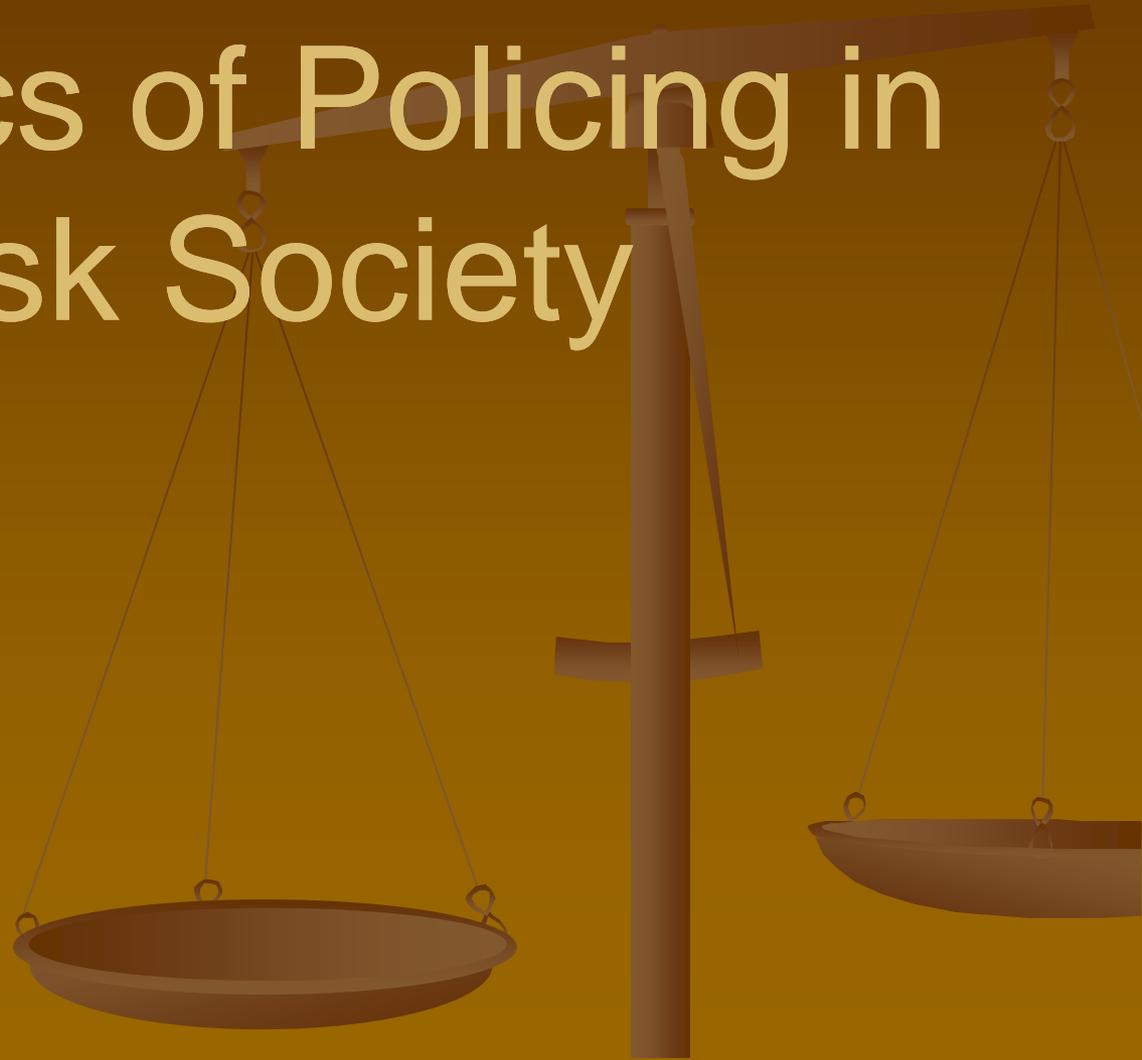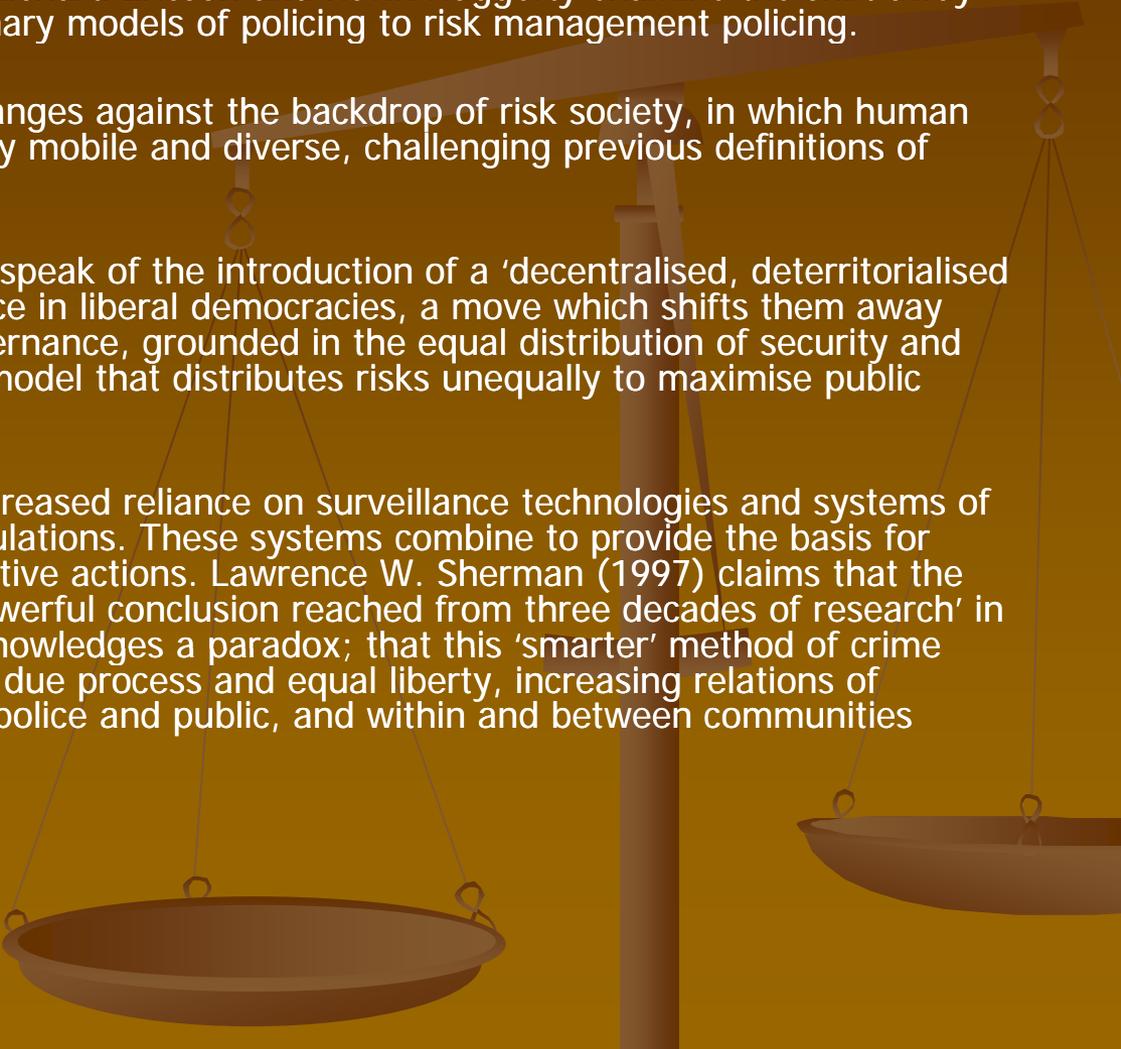# The Ethics of Policing in a Risk Society

Introduction

- In 'Policing the Risk Society' (1997) Richard Ericson and Kevin Haggerty examine the shift away from territorial, coercive and disciplinary models of policing to risk management policing.

- In particular, they examine these changes against the backdrop of risk society, in which human populations have become increasingly mobile and diverse, challenging previous definitions of state power.

- To address this problem the authors speak of the introduction of a 'decentralised, deterritorialised and distributive' system of governance in liberal democracies, a move which shifts them away from consensus based norms of governance, grounded in the equal distribution of security and freedom, to risk management, as a model that distributes risks unequally to maximise public security as a common 'good'.

- In policing, the risk paradigm has increased reliance on surveillance technologies and systems of knowledge to identify 'high-risk' populations. These systems combine to provide the basis for early intervention and other pre-emptive actions. Lawrence W. Sherman (1997) claims that the risk paradigm has been 'the most powerful conclusion reached from three decades of research' in police studies. However, he also acknowledges a paradox; that this 'smarter' method of crime control strips targets of their right to due process and equal liberty, increasing relations of mistrust and insecurity between the police and public, and within and between communities (Sherman, 1997:1.)

# The hazardous consequences of the Hazzard report.

Hazzard Report

- Following the Cronulla riots in December, 2005 and the reprisal attacks at The Rocks and Brighton-Le-Sands, a review was conducted of the police operational response to the riots.The report was controversial for a number of reasons, but chief among them was the recommendation:

1. That NSW police continue to use racial descriptors as a law enforcement tool and use the Cronulla riot as an example of how they can be of benefit to ethnic communities (Hazzard, 2006: 12.)

1. a review be conducted of recording practices in the computerised operational police system (COPS) as it applies to the racial descriptor of 'Mediterranean/Middle Eastern.' For accuracy, the descriptors require separation so that Middle Eastern stands as its own entity (12.)
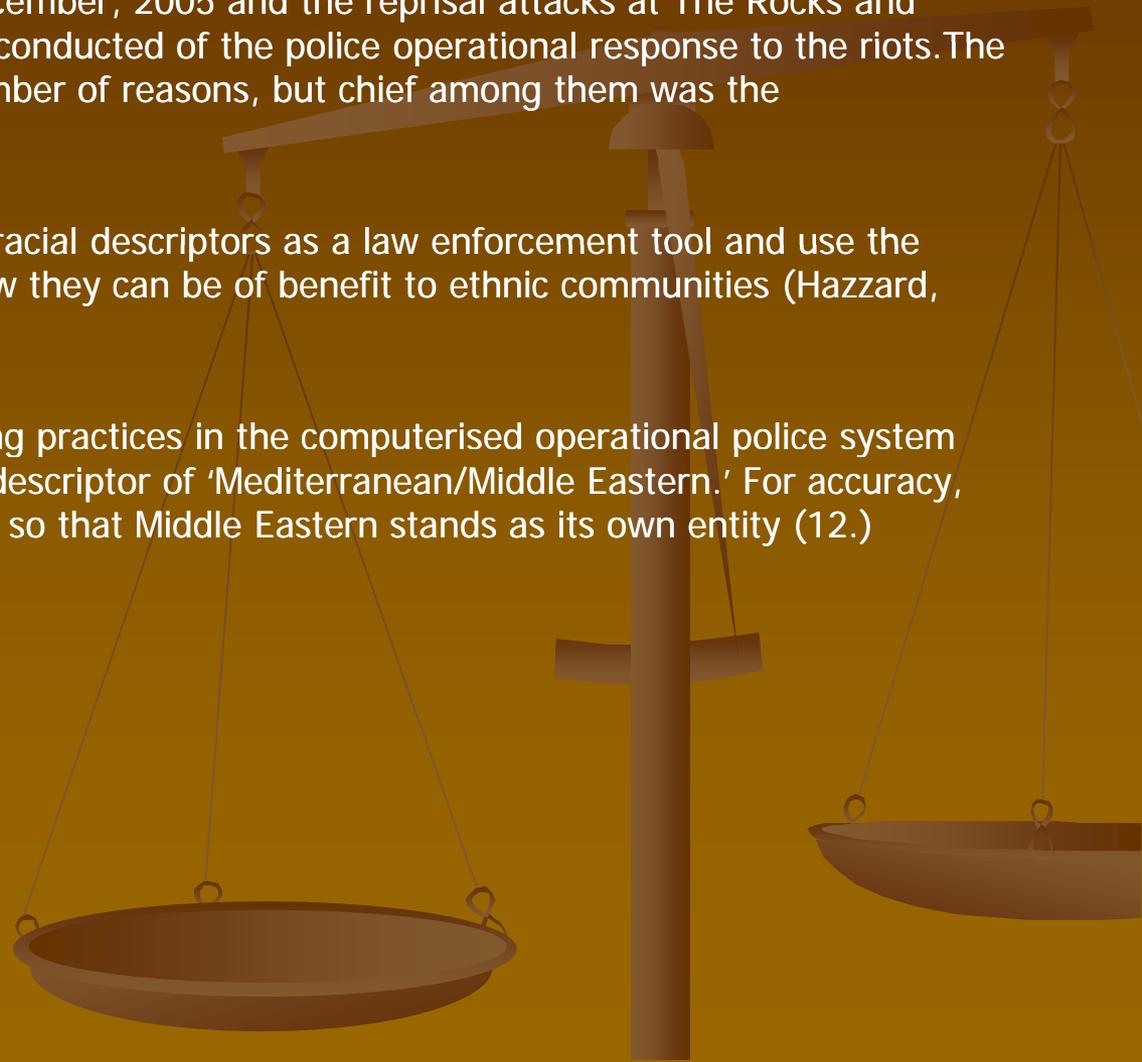
Legitimacy
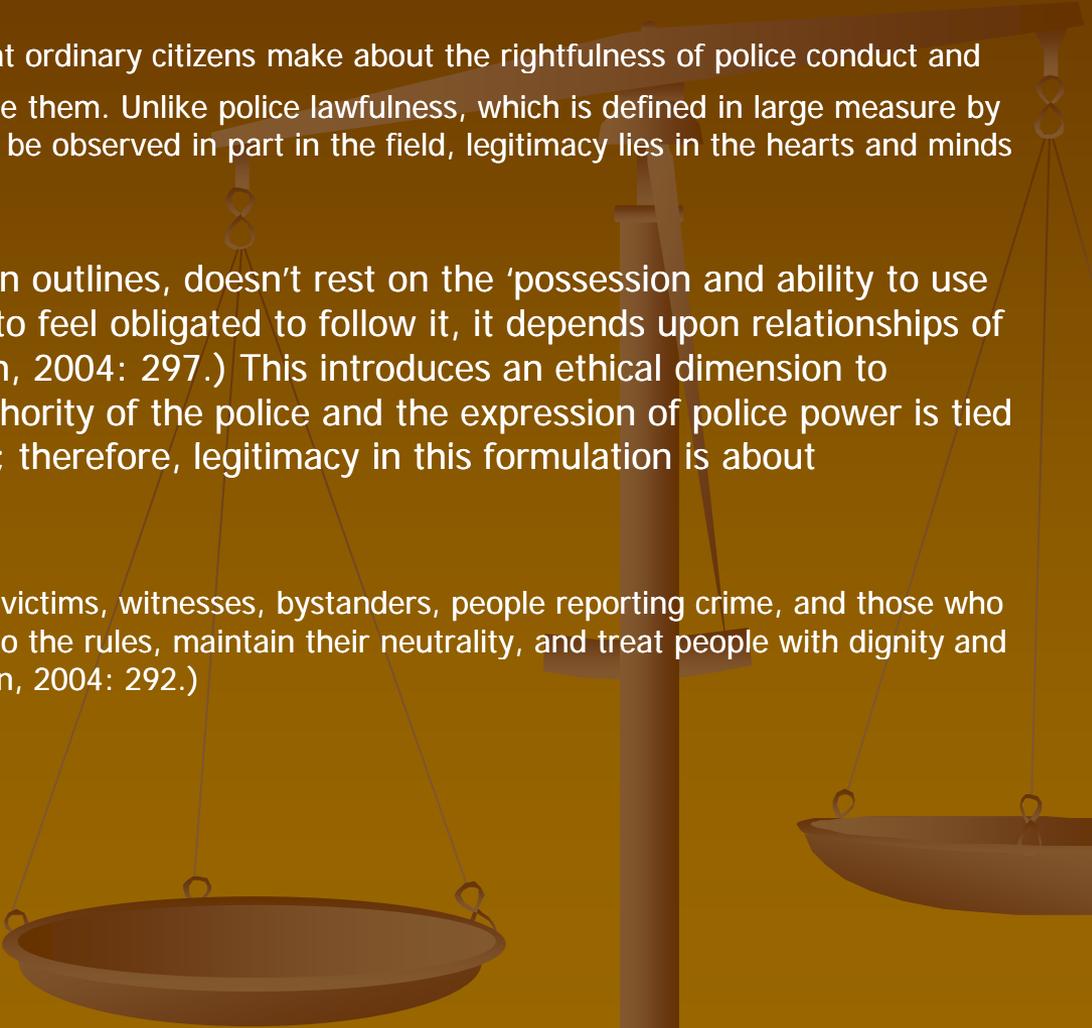
By legitimacy we mean the judgements that ordinary citizens make about the rightfulness of police conduct and the organisations that employ and supervise them. Unlike police lawfulness, which is defined in large measure by legal and administrative standards and can be observed in part in the field, legitimacy lies in the hearts and minds of the public (Skogan, 2004: 291.)

- Legitimate police authority, as Skogan outlines, doesn't rest on the 'possession and ability to use power' alone, but, as it leads others to feel obligated to follow it, it depends upon relationships of respect, reciprocity and trust (Skogan, 2004: 297.) This introduces an ethical dimension to policing, which identifies that the authority of the police and the expression of police power is tied up with a responsibility to the 'other'; therefore, legitimacy in this formulation is about relationships:

  (Legitimacy) grows out of how police treat victims, witnesses, bystanders, people reporting crime, and those who commit crime. When they (police) adhere to the rules, maintain their neutrality, and treat people with dignity and respect, police legitimacy increases (Skogan, 2004: 292.)

Perceptions of Police

- Legitimacy failure, on the other hand, occurs when police act on the basis of personal ideologies and stereotypes, which leads to claims of discrimination, abuse of power and even unlawful detainment and arrest (Skogan, 2004: 293)

- The continuing use of these practices, even in a post civil rights era, is supported by a large body of literature in the US, identifying that African-Americans continue to be more likely than whites to have 'experienced involuntary, uncivil, or adversarial contact with police; to be stopped, questioned, and/or searched without cause or due process; and to experience verbal or physical abuse personally' (Howell et al, 2004: 46, See also Browning et al, 1994; Flanagan & Vaughn, 1996; Weitzer & Tuch, 2005; Schaefer et al, 2003.)

- Australian research studies have reached the same conclusion in relation to police treatment of indigenous Australians (Cunneen & White, 1995; White & Alder, 1994) and ethnic minority youth (Collins et al, 2000; 2002; Guerra et al, 1999.)

State of Nature to Risk Society

- In analysing recent changes to the criminal justice system, Barbara Hudson (2003) uses the risk society thematic to refocus our understanding of the failure of police legitimacy.

- In particular, Hudson argues that the growing interdependency and 'risk' of the global political system has challenged the liberal goal of balancing security and freedom through the social contract, leading to novel forms of governmentality and social control.

- Globalisation has erased many of the boundaries of inclusion/exclusion that previously existed. Subsequently, the question of who is and isn't to be included in the community of rights and justice comes to 'articulate the limits' of liberalism's commitment to contractarianism (2003: 42.)

- Emerging from the global system change, *neoliberalism*, has reasserted the instrumental goals of security over the promise of equal freedom, adopting a 'zero-sum' approach to the coupling of rights and responsibilities in the social contract, ensuring that freedom and security are no longer rights to be distributed equally through the citizenry, but something to be earned:

  People who actively pose risks to others, on this view cannot expect to be protected from any correlative risks of surveillance, punishment or exclusion because their rights (to privacy, due process, freedom of movement etc.) have not been earned and are therefore forfeit (Hudson, 2003: 69-70)

'What Works'

- Inherent to neoliberal ideology is a retreat from approaching 'freedom' as the main goal of liberal government. In the new world order, 'risk' has become the dominant preoccupation, registering a negative logic with relation to governance, i.e. redistibuting 'bads' instead of 'goods' to minimise insecurity and dangerousness in an insecure world (Ericson & Haggerty, 1997:6.)

- This signals a 'retreat from approaching risk as something to be shared by all members of society' and dealt with through centralised government instruments (Hudson, 2003: 54.) Instead, risks are approached using distributive techniques. As Wendy Brown explains:

  the political sphere, along with every other dimension of contemporary existence, is submitted to an economic rationality…While this entails submitting every action and policy to considerations of profitability, equally important is the production of all human and institutional action as rational, entrepreneurial action, conducted according to a calculus of utility, benefit or satisfaction against a microeconomic grid of scarcity, supply and demand, and moral value-neutrality (Brown, 2003: 41-42.)

- This shift has reshaped criminal justice institutions, i.e. the dominance of the 'what works' agenda in policing (Sherman et al, 1997); But, as both Hudson and Ericson and Haggerty argue, these shifts toward actuarial justice and economic rationalism in the CJS, are heavily underscored by the logic of risk society, in which altered relationships of responsibility, reciprocity and 'trust' between the public and governing institutions are understood as a product of increased individualisation and reflexivity in postindustrial society.
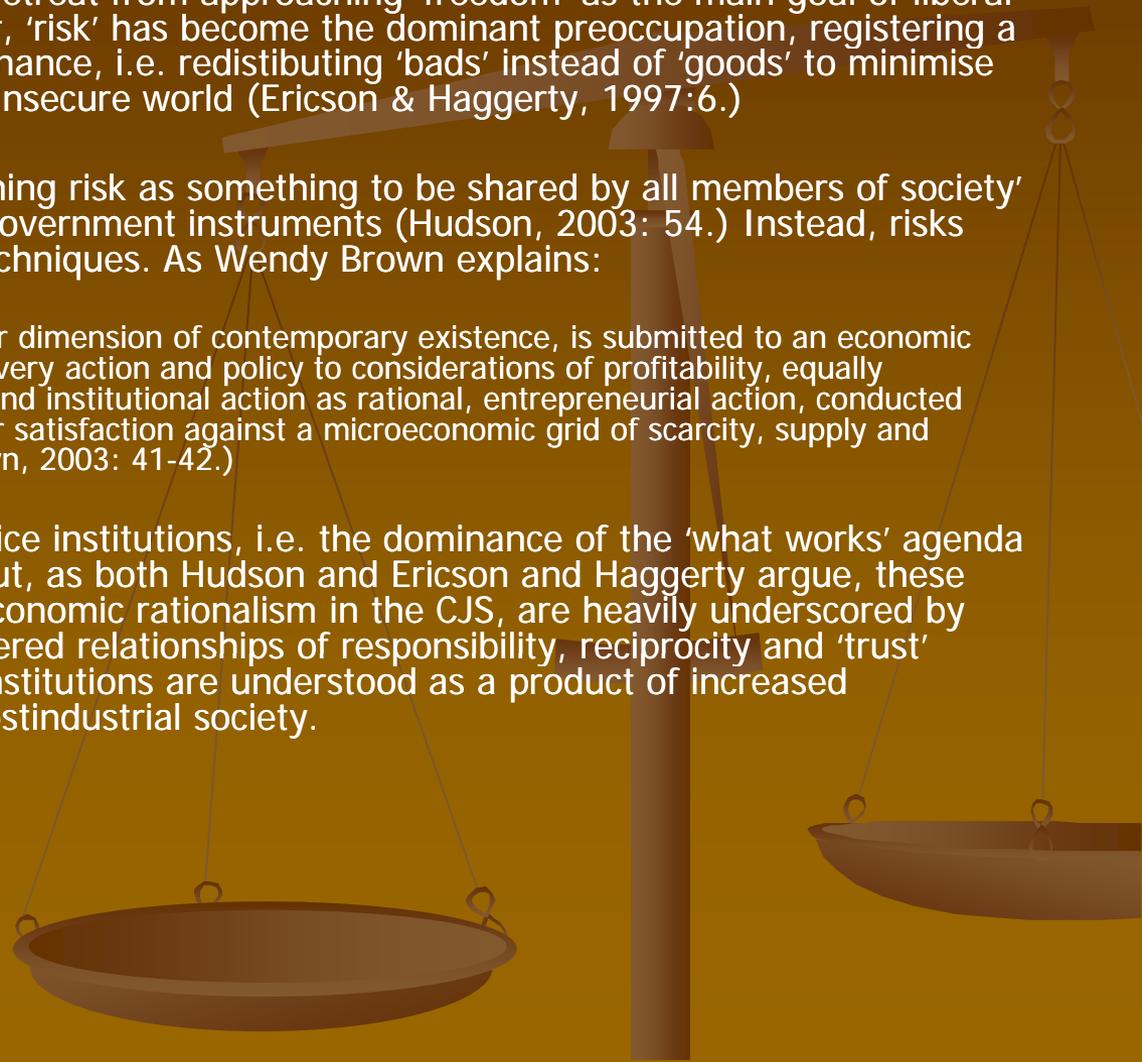
Risk Society: Themes and Effects

Themes

- Risk theorists emphasise the shift towards individualism and the 'progressive loss of tradition and social bonds as parameters for structuring identity' (Hudson, 2003: 44-45)

- Co-terminous with this trend, the mass migrations of globalisation are understood to have eroded structures of social solidarity, e.g. reliance on community as the social unit through which risks are defined, and solutions formulated has defaulted and been replaced with 'communities of strangers' who share different values, pursue different lifegoals, and are only united by a solidarity of fear and the anticipation of threat from one another (Hudson, 2003: 44-45).

- Increased individualism encourages reliance on risk institutions and experts as opposed to relying on communal solutions

- Contemporary notions of community are reconfigured by and reorganised around (institutionally) communicated knowledge about risk' Police play a central role in the formation of 'risk communities' by promoting reflexivity about risks (Ericson & Haggerty, 1997: 67-75.)

Social Effects

- The breakdown in social solidarity and the increasingly privatised lives of individuals, has resulted in a demand for crime strategies which are defensive and repressive. 'We want those who threaten us excluded from our immediate environment, and thus from any possibility of inadvertent contact, both before and after crime, the risk event' (Hudson, 2003: 44-5)

- In criminal justice 'these changes are all in the direction of identifying offenders according to the degree of risk they pose rather than addressing them as rational moral agents (2003: 41-42)

- Crime, being a divisive, not a unifying force means that communities organised around crime awareness come together solely to determine who is included/excluded from the community (Hudson, 2003: 91.)

- Mobilising against 'threats, fears and the urge of security' is all that remains (Ericson & Haggerty, 1997: 78) of community.
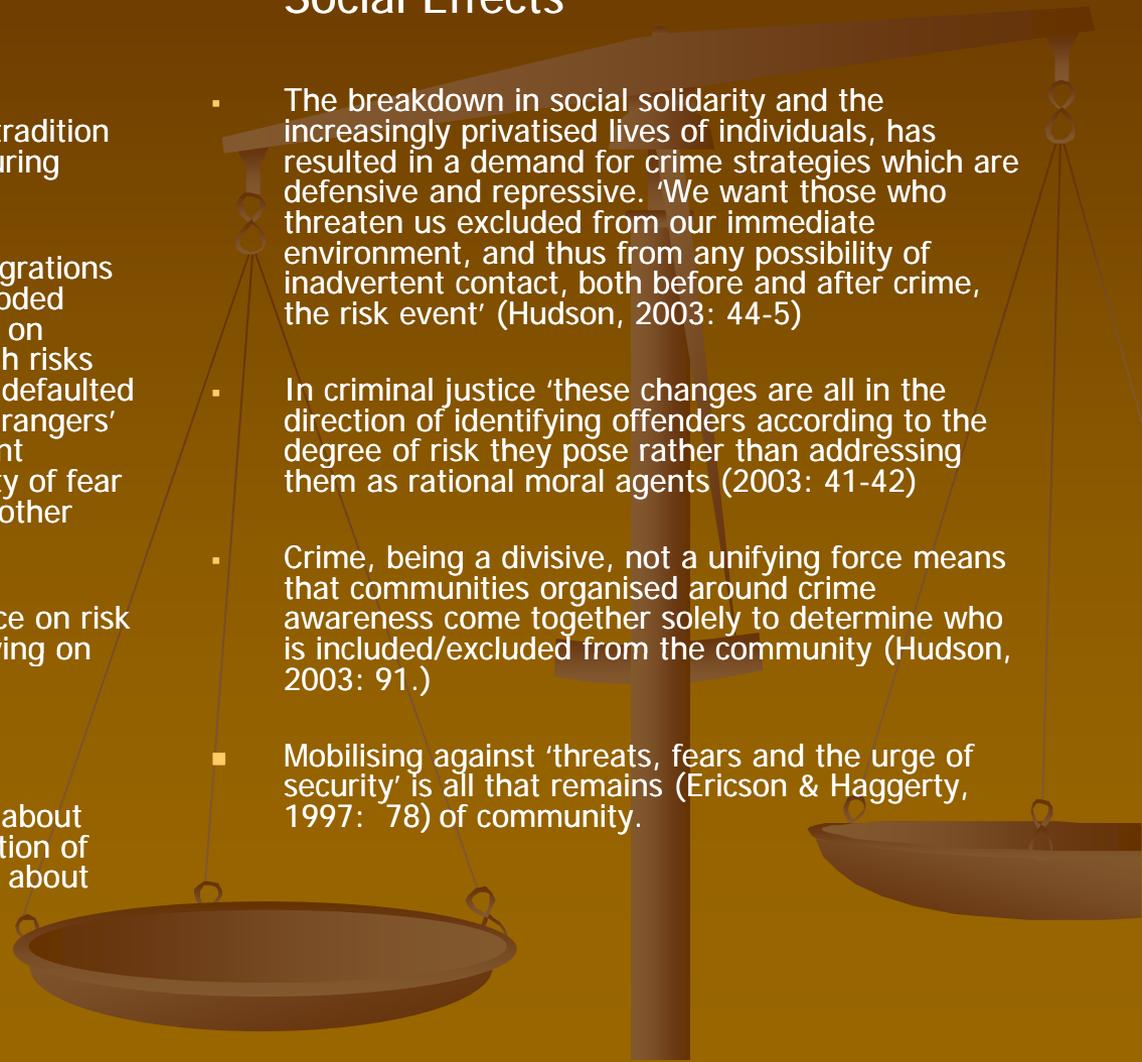
The risk paradox

Reflexivity

- One of the key features of risk society is reflexivity about the risks and harms that have emerged from modernity (i.e. environmental pollution, terrorism, increased crime and disorder in urban centres) This extends to increasing demand for and dependency on expert systems and technologies to increase knowledge of possible future crime risk.

Risk Paradox

- This leads to the paradox of risk society: That concentrating on risk and finding new security solutions drives the need for more knowledge of risk but 'this search for inexhaustibly detailed and continuous risk management knowledge...gives rise to new knowledge about insecurities' (Ericson & Haggerty, 1997: 85) requiring more and more technical solutions to address constantly proliferating risks.

- These increasingly complex systems also intrude on privacy 'creating the constant reminder of uncertainties of trust' in such systems (Ericson & Haggerty, 1997: 6)
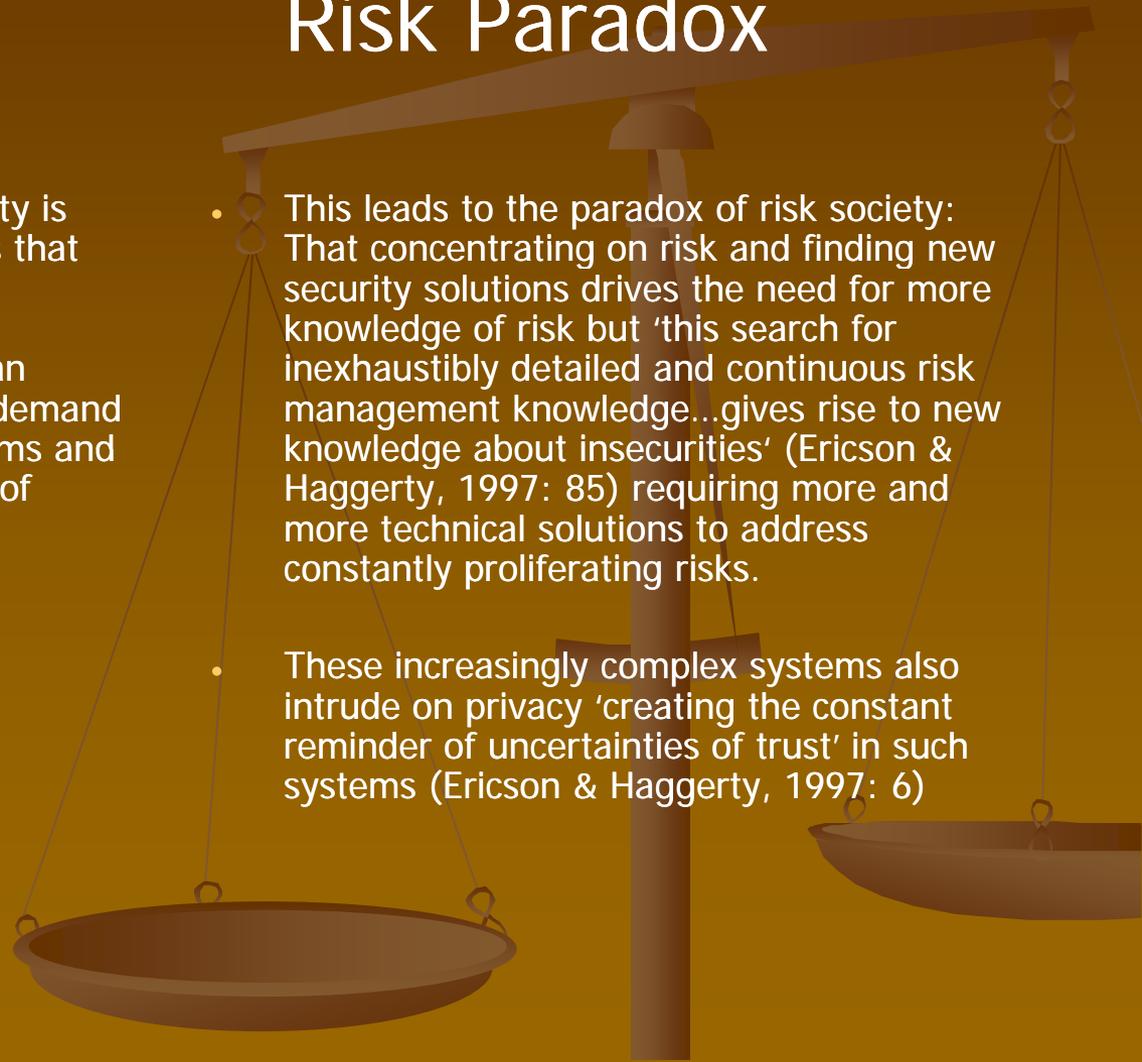
Surveillance
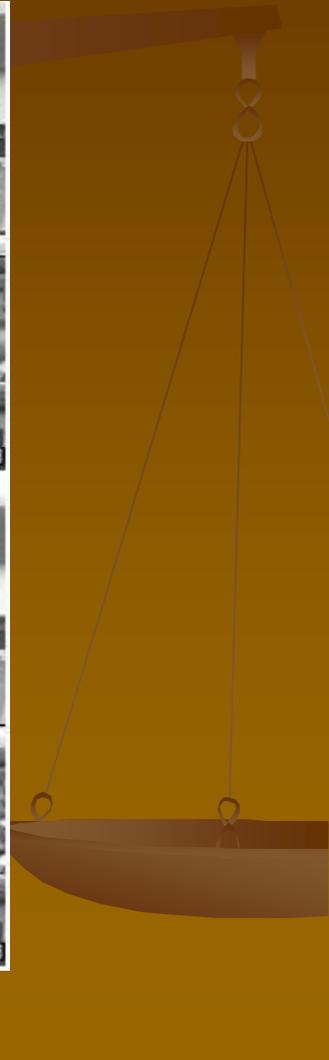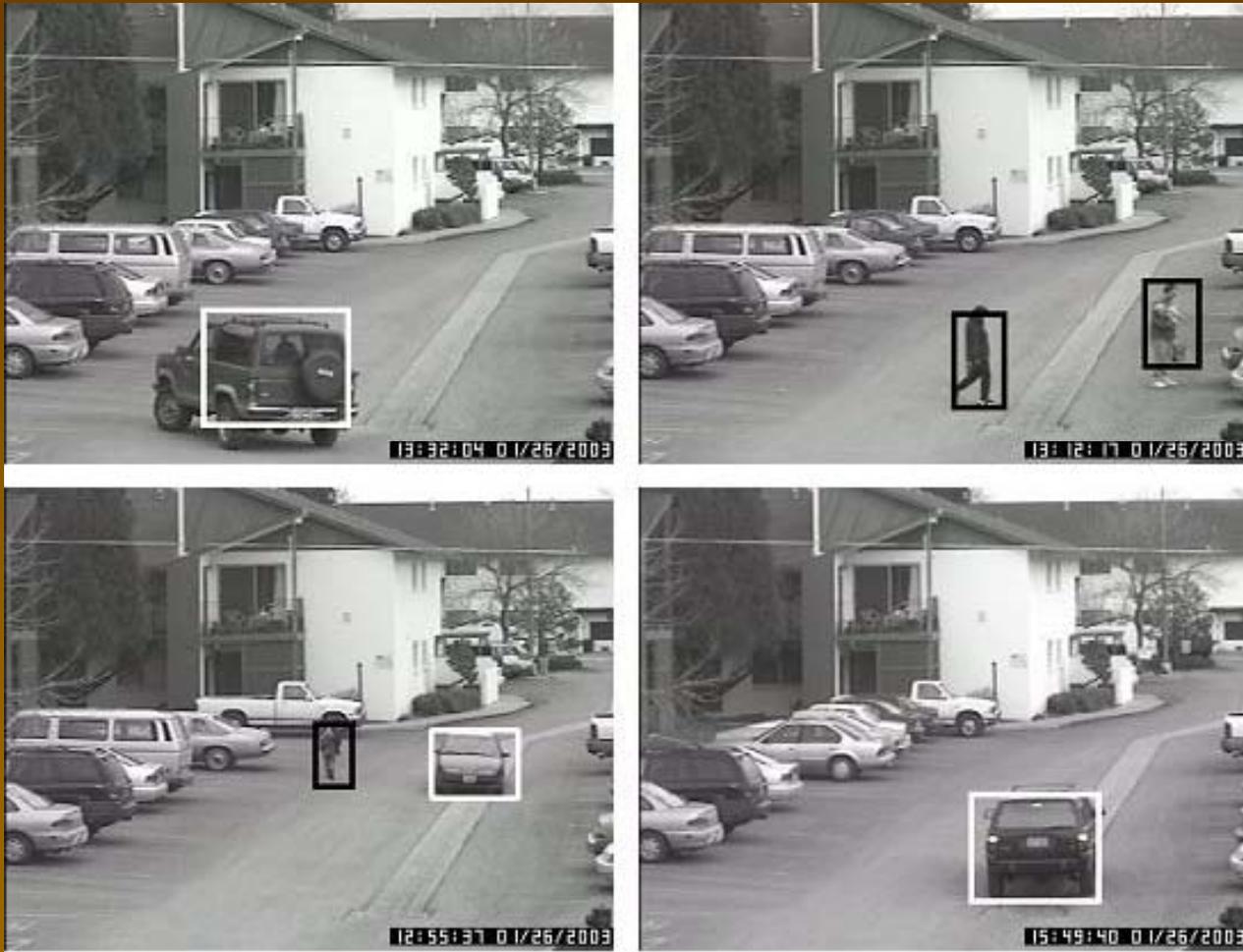
- One outcome of the climate of excessive fear and insecurity in the risk society model is the public demand for extended systems of surveillance to 'trace population movements in time and space' (Ericson & Haggerty, 1997: 7) and to 'risk-profile populations' (1997: 8.) This new priority shifts policing away from individual service delivery based around rapid response, towards increasing the capacity for police to produce and disseminate risk knowledge. Ericson and Haggerty claim that this carves out a new role for police as 'knowledge workers' in the new risk economy:

  Meaning that police don't just mobilise interventions into the lives of individual citizens, but they collect crime related knowledge and make it accessible to external institutions for their internal risk assessment and security needs (Ericson & Haggerty, 1997: 5).

- The key area of *population*, is particularly enhanced, emphasising the governing technique of 'biopower' (1997:197) which takes over from 'disciplinary' power in the new penal order. In the new criminal justice system the emphasis is on managing diverse populations from a distance, using techniques which broaden the net to increase the scope for risk detection and capture, whilst at the same time targeting resources at risk targets to increase efficiency.
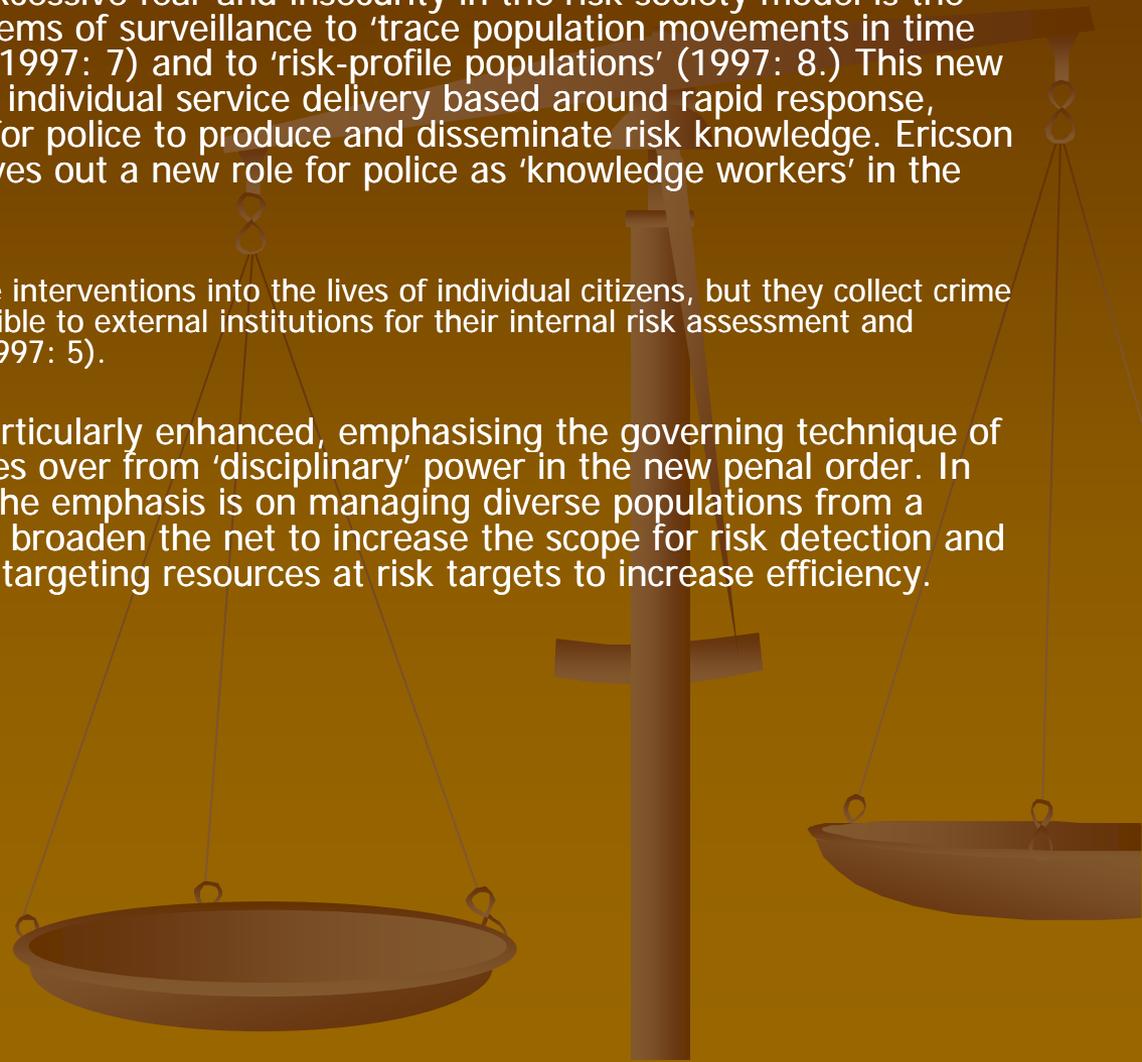
Racial Profiling
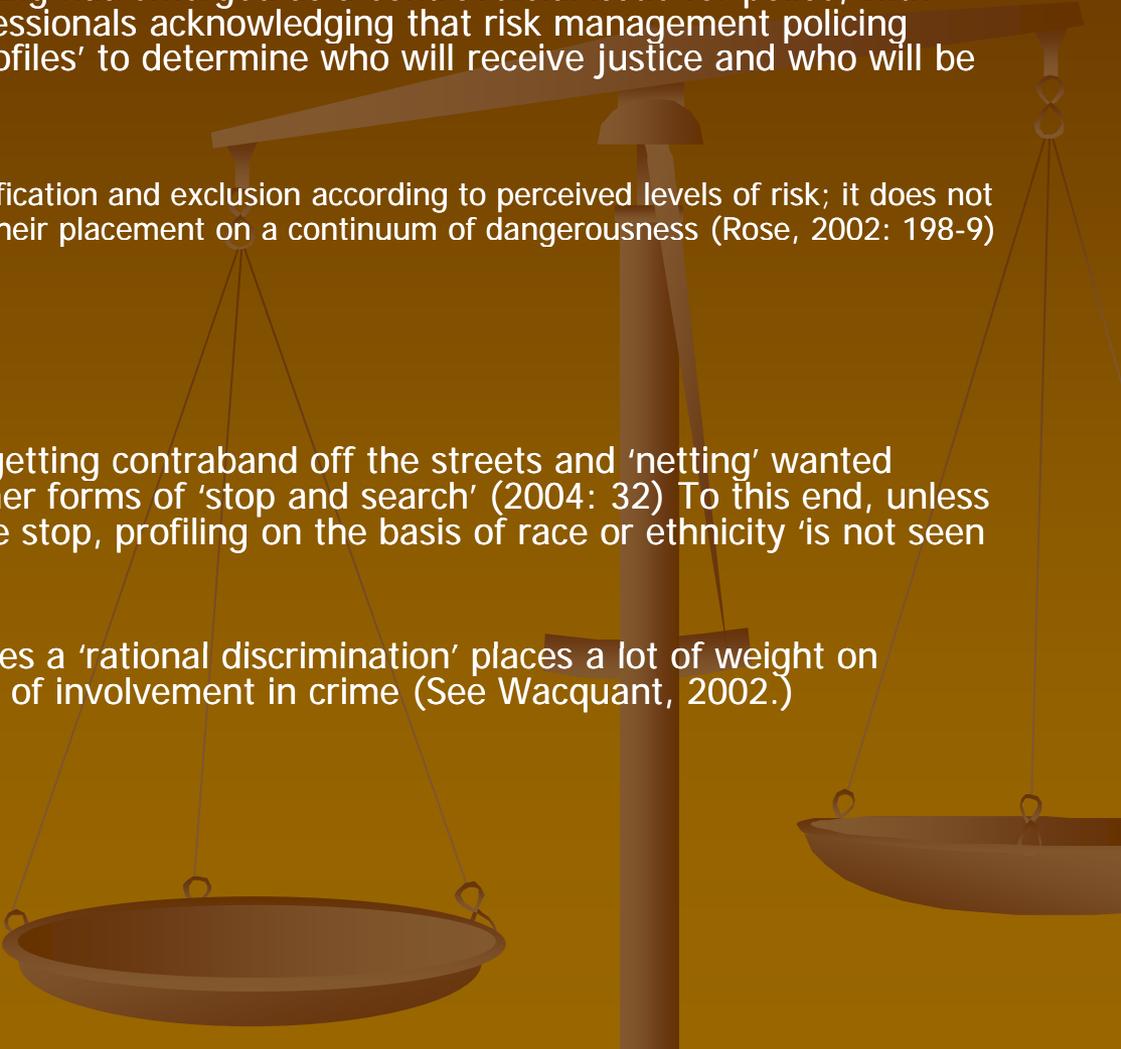
- In this new environment, racial profiling has emerged as a controversial issue for police, with researchers and criminal justice professionals acknowledging that risk management policing increasingly relies on institutional 'profiles' to determine who will receive justice and who will be dealt with through punitive action:

  In this context, race allows for ready classification and exclusion according to perceived levels of risk; it does not speak the truth of the criminal but allows their placement on a continuum of dangerousness (Rose, 2002: 198-9)

Arguments For:

- risk profiling is primarily directed at getting contraband off the streets and 'netting' wanted persons through traffic stops and other forms of 'stop and search' (2004: 32) To this end, unless 'race' is the only factor prompting the stop, profiling on the basis of race or ethnicity 'is not seen to constitute discrimination.'

- the idea that racial profiling constitutes a 'rational discrimination' places a lot of weight on evidence linking race to higher levels of involvement in crime (See Wacquant, 2002.)

Ethical risks for police

Arguments against:

- the 'routinisation' of racial profiling in practices such as traffic stops, often turns randomised, preventive measures into targeted interventions against sub-populations, even when a criminal act has not been committed (Rose, 2002: 200.)

- Risk classification is not aimed at increased knowledge of cultural complexity or specificity, but instead reflects a system which 'maintains cultural coherence' through stereotypical articulations of 'us' and 'them' (1997: 287) enabled through false constructions of group homogeneity. Such a system is unhampered by the complexities of identity politics but is guided by instrumental rationality aimed at increasing governability of diverse populations.

- Baton & Kadleck argue that police 'ways of seeing' extend beyond occupational training and experience, to join up with broader social narratives which link 'race' and 'ethnicity' to dangerousness. On this basis, 'suspicion' is more likely to be projected upon visible minorities than whites, 'reinforcing linkages between criminality and minorities' (Skolnick, 1994: 32-33):

    Stereotypes permeate police work and are manifested through the use of discretionary authority contributing to the belief that searches of minorities and their vehicles are likely to be productive in terms of netting contraband and criminals.The result is a self-fulfilling prophecy as officers target vehicles operated by minorities and simultaneously pay less attention to others (Baton & Kadleck, 2004: 34.)
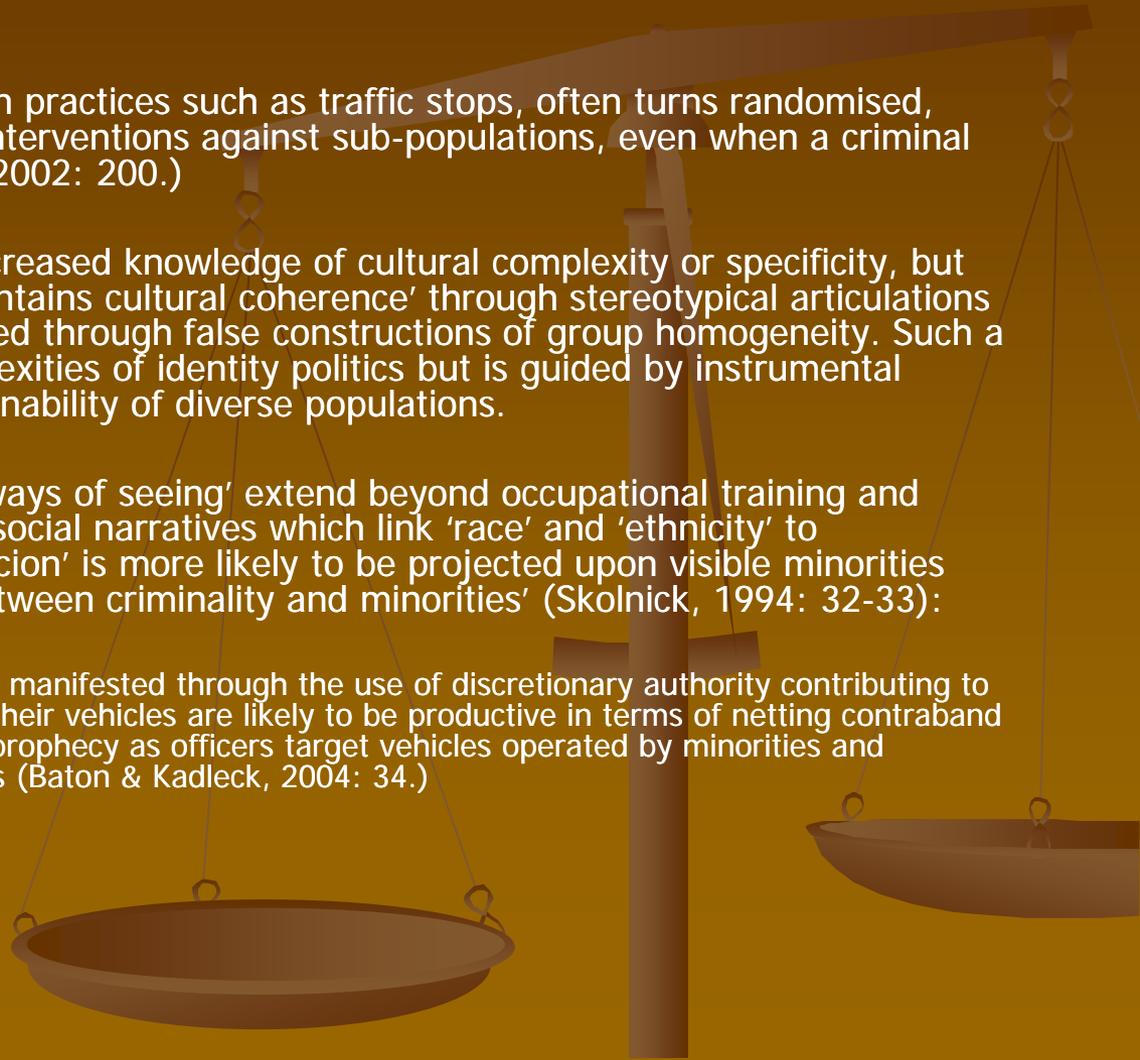
What works? What is ethical?

- This last statement returns us to the paradoxical truth of risk society; that the expert systems and technologies relied upon to better 'know' risk, are dependent upon forms of human reason and action, meaning that human error is an inevitable feature of those systems.

- In particular, this paper has made reference to the way surveillance technologies and the demand for institutional risk classification elevates 'ways of seeing' into a standard of objective, indeed scientific evaluation, despite the socially mediated and subjective nature of sight.

- As Hudson states, with the coupling of proactive police action and extended surveillance technologies that intrude into every corner of social life, the stakes in the security v freedom debate have been raised, with the consequences of human error being more profound than ever before.

- It is for these reasons that I conclude my paper with a call for a re-evaluation of police ethical standards to ensure that the goals of procedural justice and democratic rights are institutionalised as ethically prior to the instrumental goal of security provision; the alternative, as Jurgen Habermas claims, would lead to the failure of the constitutional state and the erosion of institutional relationships based around trust, which is the only effective framework of managing risk.