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The Rise and Restraint of the Preventive State

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Abstract

Security has always been a core function of the modern state. Yet the rise of the Preventive State captures an intensification of that role as threats to security and demands for public protection increase, prompting states to prioritize new practices of preventive criminalization, policing, and punishment. The rise of the Preventive State may promise greater security, but the costs of ever more coercive preventive laws and measures are burdensome and pose a threat to civil liberties. This review considers the drivers, multiple manifestations, and direct and collateral consequences of preventive endeavors that assess and manage risk, target hazards, and restrain or detain those deemed dangerous. It also explores their ramifications for criminology and criminal justice. It concludes by considering the potential of criminology to join cross-disciplinary efforts to articulate a new jurisprudence of security and to elaborate principles of preventive justice with which to restrain the excesses of the Preventive State.

INTRODUCTION

Like other influential concepts before it—the culture of control, the new penology, and actuarial justice (Feeley & Simon 1992, 1994; Garland 2001)—the Preventive State is a criminological construct. It is a conceptual tool that aims to identify significant developments in criminal justice and to deepen our understanding of them. It is also a descriptive device that identifies apparently diverse developments as constituent parts of a larger phenomenon that signals the rise of the Preventive State. Thus, it invites us to recognize that the proliferation of state security laws, preventive measures, policies, and practices are not unrelated and that, in different ways, all are motivated by the same preventive impetus to minimize risks and forestall harms. Identifying the state's preventive role is by no means novel. As Tulich (2017, p. 14) observes, “preventive strategies have long been part of the arsenal of liberal states.” Indeed, a central theme in classical political theory is the state's core function as guarantor of the safety of its citizens and defender of the nation's security.¹ Equally, the implications of the exercise of state power for preventive ends and the threat thereby posed to individual security have also long been objects of concern.² So although the objective of preventing harm underpins state authority to criminalize, police, and punish,³ it has always been tempered by the risk that the state will exercise that authority excessively or arbitrarily (Zedner 2017b).⁴ If the resultant coercive laws, measures, and practices are not to threaten individual security unwarrantedly, those concerned with the preventive role of the state cannot avoid addressing its legitimate scope and its limits.

The preventive or security function of the state has a long history, but the term Preventive State is newer and has a particular contemporary salience recognized by Carol Steiker (1998) in the influential article “The Limits of the Preventive State.” Here, Steiker observed that although the nature and limits of the punitive state have been explored extensively, “courts and commentators have had very much less to say about the related topic of the limits of the state not as punisher. . . but rather as preventer of crime and disorder generally” (Steiker 1998, p. 774). The state's preventive function in seeking “to identify and neutralize dangerous individuals before they commit crimes by restricting their liberty in a variety of ways” (Steiker 1998, p. 772) calls for greater attention to the underlying similarities among apparently diverse measures.⁵ Instead of studying manifestations of the Preventive State in isolation, she suggested that they should be seen “as a facet of a larger question in need of a more general conceptual framework” (Steiker 1998, p. 778). Dismissing the contention that merely preventive laws and measures do not require the restraints ordinarily applied to punishment, Steiker proposed that the relative neglect of normative theorizing around preventive laws and measures could best be rectified by a “more productive analyses of what limits we should place, as a matter of constitutional law or public policy, on the preventive state” (Steiker

¹For example, Thomas Hobbes famously argued, “The office of the Sovereign (be it a Monarch, or an Assembly) consists in the end, for which he was trusted with Sovereign Power, namely the procuration of the safety of the people” (Hobbes 1651/2008, Carvalho 2017).

²As the philosopher John Locke observed, “Men are so foolish, that they take care to avoid what Mischiefs may be done them by Pole-Cats, or Foxes, but are content, nay think it Safety, to be devoured by Lions” (Locke 1690/1988).

³The state mandate to prevent harm is set out most famously in the harm principle elaborated by J.S. Mill (1859/1979, p. 68): “That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others” (see also Finkelstein 2003, Harcourt 1999, Simester & von Hirsch 2011).

⁴As J.S. Mill (1859/1979, p. 165) famously observed, “It is one of the undisputed functions of government to take precautions against crime before it has been committed, as well as to detect and punish it afterward. The preventive function of government, however, is far more liable to be abused, to the prejudice of liberty, than the punitive function.”

⁵These measures range from police stop-and-frisk powers, search and seizure, pretrial preventive detention, community notification statutes, and sexual offender registries to the postsentence indefinite civil commitment of convicted sex offenders.

1998, p. 779). On this view, academic inquiry into the form and function of the Preventive State cannot overlook the risks it entails and the need for delimiting principles to contain those risks.

Steiker's (1998) trailblazing article appeared at a time when criminologists were already alert to the growing importance of the preventive endeavor, not least in the fields of social, community, and situational crime prevention (SCP) (Clarke 1995, Crawford 1998, Felson & Clarke 1997, von Hirsch et al. 2000). As Steiker acknowledged, "the preventive state is all the rage these days" (Steiker 1998, p. 774). The risk society (Beck 1992, Ericson & Haggerty 1997), actuarial justice (Feeley & Simon 1994), and the threat posed by dangerous people (Pratt 2000, Walker 1996) were already live topics of criminological inquiry and debate. This was greatly intensified by the terrorist attacks of 9/11. Thereafter, questions of security and counter-terrorism, previously generally considered beyond the scope of criminology, became central topics of interest and wide-ranging research. It is perhaps an overstatement to claim (as one of us once did) that the effect of 9/11 was to provoke a shift to a precrime society that called into question the very enterprise of criminology (Zedner 2007). Nonetheless, the radical changes in state security policies that occurred post-9/11 and their implications for the scope of policing, crime control, and, indeed, the realm of criminological research were significant and widely acknowledged and debated (Deflem 2004, McCulloch & Pickering 2009, Rosenfeld 2004).

Consequently, the many aspects of the Preventive State have attracted considerable interest within criminology and, more recently, among criminal lawyers and legal theorists (e.g., see Alexander & Smith 2011, Duff 2015). Part of that interest derives from the fact that it draws together several disparate ideas and objects of inquiry. Most obviously, the Preventive State denotes the preventive function that lies at the heart of the state's fundamental *raison d'être* to provide security for its citizens. As such, it encapsulates core areas of legislative endeavor and public policy that derive from the earliest foundations of the modern state and that continue to raise questions about the nature and extent of the state's obligation to protect and the citizens' right to security (Lazarus 2015, Ramsay 2012b). The term Preventive State also connotes a more recent tendency for states to pass preventive laws and measures designed to enhance their capacity to forestall risk and reduce or preempt harm. The graver the risk and the more serious the prospective harms, the greater the powers the state accords itself to combat them. Much scholarly attention has been devoted to mapping the diverse manifestations of this preventive turn, particularly since 9/11 (Janus 2006, Mayson 2015, Sajó 2006).

In the immediate aftermath of 9/11, the then US Attorney General John Ashcroft declared the US administration willing to use any available legal, and significant extralegal, measures to combat terrorism.⁶ Around the world, jurisdictions like Canada, the United Kingdom, and Australia followed the US lead at least insofar as they introduced extensive new laws and measures to defend national security (Roach 2011). The effect was arguably to terrorize criminal law, criminal justice, and crime control more generally, as new laws expanded the scope of criminalization and police powers, eroded or evaded criminal process protections, and permitted exceptional derogations in the name of security (Stuntz 2002, Zedner 2014). Consequently, another important area of criminological and legal inquiry has concerned the overreaching of state power in the name of prevention and the hazards thereby posed to social values and fundamental rights (Forcese & Roach 2015, McCulloch & Wilson 2016, Ramsay 2012b). It is this last sense of the Preventive State that has piqued most recent attention and the most determined efforts to articulate bases for restraint (Daniels et al. 2001, Goold & Lazarus 2007, Gross & Ní Aoláin 2006, Hudson & Ugelvik 2012, Ignatieff 2004). Across these domains, a rough division of labor can be traced: The

⁶Speech delivered on October 31, 2001, by US Attorney General Ashcroft (2001).

Preventive State has attracted most attention as a domain of criminological inquiry into the underlying drivers of risk, public protection, and security as well as the form and function of preventive measures (Annison 2015, Maurutto & Hannah-Moffat 2006, O'Malley 2010, Simon 2007, Zedner 2009a), whereas questions of justification, individual liberties, risks of overreach and the need for limits have been addressed more often by criminal lawyers (Dubber 2013, Farmer 2006), criminal justice scholars (Slobogin 2003, Steiker 2013), and political philosophers (Dworkin 2002, 2003; Waldron 2010). As this review shows, there is much to be said for closer interaction among these various domains, between disciplines, and across otherwise separate avenues of scholarly inquiry.

This review considers the rise of the Preventive State and explores the many practices of prevention that have attracted criminological attention. It goes on to consider the pains of prevention: the burdens and costs entailed by preventive endeavor; the profound concerns they raise; and the resulting critiques of techniques of risk assessment and practices of prevention. The following section considers attempts within criminology, and even more so in legal and political theory, to develop a jurisprudence of security or framework of preventive justice by which to elaborate principled limits on the powers of the Preventive State (Ashworth & Zedner 2014, Tulich et al. 2017). The concluding section looks to the future and explores recent scholarship that seeks to apply ideas of preventive justice in new domains and to advance the debate beyond the Preventive State. The review's larger aim is to explore the many manifestations of the Preventive State, the challenges they pose, and their implications for changing conceptions of criminal justice and, not least, for the enterprise of criminology.

THE RISE OF THE PREVENTIVE STATE

From Criminology to Pre-Crime?

The rise of the Preventive State can best be understood by references to wider developments in criminological research and criminal justice practice in the closing decade of the twentieth century and the opening decades of the twenty-first. These include, but are not confined to, the growth in studies of risk, crime prevention, community safety, and security that both informed criminological interest in changing state responses to hazards and harms and underpinned the structural foundations of the Preventive State. Risk as a subject of social scientific interest was stimulated in part by the social theorist Ulrich Beck's identification of the advent of the *Risikogesellschaft* or risk society (Beck 1992). Beck argued that this marked the shift from industrial society to a society in which it is not only the poor who suffer existential threats but in which everyone is endangered by environmental, technical, and other hazards. Unsurprisingly, the advent of the risk society, its widespread preoccupation with potentially catastrophic harms, and the need to ensure future safety were seen to have a significant impact on state responses to crime.

In the early 1990s, Feeley & Simon (1992, p. 449) made the then bold claim that the Old Penology was being overtaken by a "new language of penology" that was risk-oriented, reliant upon new actuarial techniques, and concerned less with punishing individuals than with managing aggregate populations. This new penology, Feeley & Simon (1992) suggested, replaced the former focus within criminal justice on the assignment of guilt through criminal procedures designed to test evidence, establish culpability, and impose punishment. By contrast, they argued that the new penology availed itself of increasingly sophisticated actuarial risk assessment instruments (ARAIIs) as means of "identifying and managing unruly groups" (Feeley & Simon 1992, p. 455). The contention that the new penology constituted a radically different orientation was further developed in later work that suggested criminal justice practices were being reshaped by actuarial justice (Feeley 2004, Feeley & Simon 1994). The intellectual origins of actuarial justice lay in systems

analysis and the emphasis wrought by the law and economics movement on utilitarian over moral considerations. The resulting focus was said to be less on blame and censure than on a largely amoral calculation of how to minimize harms and mitigate losses. Rather than respond reactively to committed crimes, actuarial techniques sought to prevent future harms by calculating aggregate risks to minimize their probability and reduce their severity. In turn, risk assessment led to new techniques of risk management, including the proliferation of technologies of surveillance, profiling, targeted use of the police powers of search and seizure, and, as a last resort, the preventive detention of those deemed dangerous (Cole 2009, Feeley & Simon 1994). Wider criminological attention has been focused on the growing use of risk technologies at each stage of the criminal process, from profiling by police and risk assessment with respect to pretrial detention and at sentencing to risk-based decisions with respect to punishment and parole (Harcourt 2003, Krasmann 2007, Lippke 2014, Monahan 2006, O'Malley 2010, Skeem & Monahan 2011, Zedner 2012).

Alongside the rise of the Preventive State, the rapid growth of the private security industry has created a vast market for commercial security goods, technologies, and services (Christie 1994, Ericson 2007). As state welfare provision has declined, the insurance industry has become increasingly important, prompting investment in security services and technologies to reduce risk and limit insurance premiums (Ericson & Haggerty 1997). The rise of the private security industry erodes the role of the state as the primary security provider but also expands its remit. The contracting out of policing and security to private providers renders the state one of the biggest purchasers of private security. Moreover, the selling of public expertise and services to private consumers and the emergence of public-private finance initiatives and partnerships have transformed the relationship between state and commercial sectors, blurring distinctions between them (Zedner 2009a). Unsurprisingly, the expansion of private security has prompted lively debate about the consequences of selling security and the possible means by which to defend security as a public good (Dupont & Wood 2006, Loader & White 2016).

Risk and security, already objects of inquiry in the 1990s (Ericson & Haggerty 1997, O'Malley 1992), became yet more central objects of research after 9/11, when the potential for further terrorist atrocities significantly increased existing pressure on the state to act preemptively to forestall the gravest harms (Ackerman 2006, Stern & Wiener 2006). The global impact of 9/11 and the continuing perpetration of terrorist attacks, particularly in the Middle East, Africa, and Europe, effected a lasting change in the political environment in which risk was viewed and managed. Although ARAIs continued to be tools of choice within the criminal process, paradoxically the difficulty of measuring the risk of terrorist threats (Monahan 2017) led not to greater caution about the scope of preventive endeavors by the state but rather to demands for action even in the face of uncertainty. In part, this can be attributed to populist demands for public protection and fear of reputational risks by politicians and security chiefs should attacks occur. At least as important was the wider influence of the precautionary principle, which stipulates that in the case of threat of very serious harm a lack of full scientific certainty should not be treated as a reason for inaction by state officials (Goldsmith 2007, Heberton & Seddon 2009, Ramsay 2012a). An influential early articulation of the precautionary principle is to be found in the UN Environment Program Rio Declaration that says, "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (UN 1992, Principle 15). Whether with respect to the environment, crime, or terrorism, the intense political pressure on states to protect against the gravest threats led to a paradoxical situation in which the greater the uncertainty about serious risks to public safety or national security, the more pressing the onus on states to take preventive action.

The resulting preemptive or preventive turn has since been spurred on by growing demands for public protection against threats (Edwards & Hughes 2009, Zedner 2009b). These threats are most

powerfully represented in the embodied form of sexual predators, the serially violent, or would-be terrorists, who are variously depicted as monsters or wild beasts against whom new preventive laws and measures must be directed (Corrado 1996, Hudson 2006, Robinson 2001, Simon 1998). It is this increasing demand for public protection in the face of unprecedented threats to security from crime and terrorism and the resulting prevalent sense of ontological insecurity that provide the sociopolitical context for the rise of the Preventive State and its accompanying technologies of profiling, surveillance, electronic tagging (Aas et al. 2008), and, not least, preventive detention.

Although many of these changes are of relatively recent origin and can be seen to constitute a palpable shift in the dynamics, aims, laws, and technologies of crime control that together are said to constitute the rise of the Preventive State, it would not do to overstate their novelty. Indeed, Carvalho makes a powerful case for understanding prevention as an integral facet of liberal criminal law, whose roots can be traced to the establishment of the modern state (Carvalho 2017). Certainly, prevention was integral to the establishment of the first police force, the Thames River Police, founded in late-eighteenth-century London (McMullen 1998, Zedner 2006). Although Garland rightly described this early preventive orientation as “the path not taken” when the Peelian Metropolitan Police force was later established in nineteenth-century London (Garland 2001, p. 30), prevention remained an integral facet of policing and crime control throughout the nineteenth and twentieth centuries (Ashworth & Zedner 2014). Thus, although the developments typically associated with the rise of the Preventive State in the late twentieth and early twenty-first century constitute a palpable shift in orientation, aims, and practices, to claim that they collectively signify a watershed or epochal change is to disregard or downplay the enduring historic place of prevention in criminalization, policing, and crime control (for opposing views, see Bayley & Shearing 1996, Jones & Newburn 2002). Reference to the rise of the Preventive State therefore requires a degree of caution to determine precisely what is new about the developments described and suggests a need to reflect upon the hazards, as well as the explanatory and analytical value, of grouping these developments under the umbrella of the Preventive State.

To acknowledge that the phenomenon of the Preventive State is far from new is not to deny that the term captures a shift that entails both the greater prevalence of risk and security and a consequent increase in preventive laws and measures (Ashworth & Zedner 2014, Krasmann 2007). Designating these as traits of the Preventive State is not intended to ground grandiose epochal claims about change nor to ignore the continuing variety of modes, means, and aims of crime control. Rather it aims to illuminate salient and important shifts worthy of closer criminological attention and to make possible greater analytical clarity about the ways in which states seek to govern. Added to which, much criminological interest in the Preventive State is driven by concern about the hazards that arise when states exercise power for preventive ends. To designate developments as attributes or manifestations of the Preventive State is to draw attention to the overextension of state power by assessing their import and potential for harm collectively rather than in isolation. The following section maps out some of the more salient and significant developments, not least the widening scope of criminal liability (especially inchoate offenses such as possession, preparation, facilitation, and attempt) together with extensions to police powers (to stop, search, and detain) and extended sentences of preventive, indefinite, and whole-life detention. Together, these developments significantly expand the state’s coercive powers on preventive grounds. In isolation, any one of them would merit critical inquiry; taken together, they interact to generate a much greater scope for intervention that raises larger concerns about the resulting potential for the exercise of arbitrary or excessive state power. It follows that reference to the Preventive State almost invariably signals an inquiry that is simultaneously descriptive, analytical, and critical and almost always explicitly or implicitly normative, in that to recognize the hazards posed by the rise of the Preventive State is also to seek its limits. But first it may be helpful to

identify those areas in which preventive practices and developments are most marked and most problematic.

Practices of Prevention

Which developments best exemplify the Preventive State at work? As we have seen, the use of preventive measures is not a new phenomenon (Ashworth & Zedner 2014, Carvalho 2017), but some of its recent manifestations in criminal law and sentencing are cause for concern. Thus, criminal law has long had a preventive element, evident in the inchoate offenses of attempt, conspiracy, and incitement, which criminalize people before they have actually caused the prohibited harm (Ashworth & Zedner 2012, Simester 2012). The law on inchoate offenses typically requires (a) proof of the person's intent to cause the prohibited harm and (b) proof that the person has taken a substantial step toward that goal. However, there is now increasing attention paid to preinchoate offenses that do not meet these requirements. For example, section 5 of the UK Terrorism Act 2006 created a sweeping new preparation offence that reads: "A person commits an offence if, with the intention of (a) committing acts of terrorism, or (b) assisting another to commit such acts, he engages in any conduct in preparation for giving effect to his intention." This formulation criminalizes very early preparatory steps remote from any resulting harm. The same legislation penalizes the publication of a statement likely to be understood as encouraging terrorism, a distinct extension of the inchoate offense of incitement (for further international examples, see Roach 2011). Similarly, laws that penalize membership of a prohibited organization (such as section 11 of the UK Terrorism Act 2000) may tend to punish a person for what others may subsequently do, and offenses of possession that do not require proof of an intention to perpetrate a prohibited harm are objectionable on the same grounds (such as section 57 of the UK Terrorism Act 2000) (Cornford 2015, Simester & von Hirsch 2011).

This preventive expansion of criminalization has not been confined to antiterrorist laws. Some sexual predator laws criminalize preinchoate conduct, for example, meeting a groomed child for the purpose of committing a sexual offense (Janus 2006, Sorell 2017). Some anti-money-laundering laws penalize failures by those working in the financial sector to report suspected money-laundering, the reporting duty being justified on grounds of prevention (Ashworth & Zedner 2014, pp. 100–101).

In the section above titled *From Criminology to Pre-Crime?*, we recalled the nineteenth-century origins of preventive policing, but the idea of preventive policing has seen a resurgence with the arrival of new technologies. The development of CCTV, satellite tracking, data mining and retention, electronic surveillance, risk profiling, and other measures has enabled greater emphasis on "policing as the provision of security through surveillance techniques designed to identify, predict and manage risks" (Ericson & Haggerty 1997, p. xi). One prominent illustration of this is the rise of predictive policing in the United States, using electronic data to identify risky locations and individuals for property crimes (and, subsequently, for violent crimes) and deploying police patrols for preventive purposes (Ferguson 2017). However, this raises issues of principles and priorities that call for further debate (Ferguson 2017, Harcourt 2007).

The detention of certain defendants prior to their trial is a feature of most legal systems, but it too raises deep issues of principle. Thus, in its judgment in *US v. Salerno* (1987), the Supreme Court held that pretrial detention is a regulatory function, that "preventing danger to the community is a legitimate regulatory goal," and that this goal "can, in appropriate circumstances, outweigh an individual's liberty interest." Much depends on how much weight is given to the liberty interest, to the presumption of innocence, and to the presumption of harmlessness in this calculation (Ashworth & Zedner 2014, Duff 2012).

Probably the largest expansion of coercive powers for preventive purposes has been with respect to postconviction detention. Even in legal systems that subscribe to proportionality in sentencing, there is often an exception for incapacitative sentences for those deemed dangerous (McSherry & Keyzer 2011). Detention on preventive grounds has long been a feature of public health laws, which provide for the civil confinement of persons with contagious diseases that cannot be contained by any less restrictive measure (Ashworth & Zedner 2014, Morse 1996). It is also a feature of mental health laws, which provide for the confinement of those assessed as presenting a danger to themselves or to others (Morse 1999, Peay 2011).

The rise of preventive sentencing manifests itself in various ways. One contentious aspect of the Preventive State is the spread of legal restrictions and disabilities consequent on conviction, sometimes known as collateral consequences (Hoskins 2016, Mayson 2015). The purpose of such measures is said to be preventive, and the US Supreme Court in *Smith v. Doe* (2003) held (when considering Alaska's sex offender registration scheme) that it was intended to be preventive, not punitive, and that its practical effects were not so onerous as to justify the court in overriding the legislative intent. Thus, constitutional restrictions on punishment, such as the ban on retrospectivity, do not apply. Another form of preventive sentencing manifests itself in not only longer sentences followed by surveillance on release for those assessed as dangerous but also indefinite confinement and, in some cases, confinement for life or life without parole (Ogletree & Sarat 2013). The contestability of judgments of dangerousness is well known (Monahan 2006, Skeem & Monahan 2011, Zedner 2012). In relation to eligibility for incapacitative detention, it has been argued that conviction for a serious violent crime should be sufficient to displace the normal presumption that each individual will be law-abiding, and this loss of the presumption of harmlessness therefore opens the way for an assessment of risk posed by a convicted offender with a view to long-term preventive detention (Floud & Young 1981; Walen 2011a,b).

The question arises of whether it is logical for an individual to be held sufficiently responsible to stand trial and to be convicted of a serious sexual or violent offense but then to be held liable after serving a sentence to postsentence civil confinement on grounds of a mental abnormality or personality disorder. In *Kansas v. Hendricks* (1997), the US Supreme Court upheld the legality of such confinement, adopting the argument that the purpose of the detention was preventive and protective of the public, not punitive, and that the detention was therefore correctly classified as civil. Leading writers have exposed the inconsistency between finding the individual to not be mentally disordered at point of conviction and sentence and yet finding the individual to be suffering from a form of personality disorder sufficient to render him or her so dangerous as to require indefinite commitment (Janus 2000, Morse 1999, Robinson 2001, Steiker 1998). Faced with a similar problem, the European Court of Human Rights adopted a different analysis in *M v. Germany* (2010): M had been sentenced to five years' imprisonment plus ten years' preventive detention, and then the law was changed to allow courts to impose indefinite preventive detention. A German court subsequently imposed indefinite detention on him; M argued that this was invalid, being a retrospective and more severe punishment contrary to Article 7 of the European Convention on Human Rights. The German courts held the indefinite commitment valid because its purpose was preventive, not punitive. However, the European Court held that the preventive purpose was not determinative when the substance of the detention was punitive, i.e., if the detention is in ordinary prisons with no special provisions for the detained individuals. Unless the detention had a clear therapeutic orientation, it could not be regarded as civil (Ashworth & Zedner 2014, Kinzig 2013; see also *Ilseher v. Germany* 2017). In the meantime, the US Supreme Court in *Kansas v. Crane* (2002) defined mental abnormality for the purposes of civil detention as serious difficulty in controlling behavior, a most unsatisfactory designation because it goes well beyond

clinical definitions of mental disorder and could apply widely to persons convicted of sexual and violent offenses (Janus 2004).

This section describes just some of the many preventive practices that have developed in recent years. As is apparent from the court decisions mentioned in the previous paragraph, one of the concomitants of moving from a punitive sanction to a preventive measure is that the constitutional safeguards attaching to punishments do not apply. These developments have been condemned by Ericson as designed to “erode or eliminate traditional standards, principles and procedures of criminal law that get in the way of pre-empting imagined sources of harm” (Ericson 2007, p. 24). Thus, one of the elements of what Garland described as “the new apparatus of prevention and security” (Garland 2001, p. 170) is the absence of constitutional or human rights protections for those subjected to them. Because those protections tend to be focused on criminal trials and punishment, it seems that coercive preventive measures fall into a jurisprudential black hole—a point to which we return in the section below titled Conclusion: Beyond the Preventive State?

Whereas the above examples focus on the use of coercion by the Preventive State, in parallel many preventive initiatives have developed that do not entail direct coercion. Demands for community safety resulted in the proliferation of crime prevention programs and policies, from early developments in social and developmental crime prevention schemes (Crawford 1998, Crawford & Evans 2017) targeted mainly at identified individuals to later innovations in SCP. New policies and practices of SCP were underpinned by rational choice theory and sought to manipulate incentive structures through techniques of signaling, target hardening, and opportunity reduction (Felson & Clarke 1998). The rolling out of SCP has led to the restructuring of urban spaces, construction of defensive street architecture, and increased reliance on new techniques and surveillance technologies, such as public area CCTV (Clarke 1995, Goold 2004). One might expect these largely technological fixes to result in crime control policies that were more rational, less emotive, and universal in application, but, quite aside from the demonization of those considered dangerous, the targeting and stigmatization of those deemed risky or simply antisocial or uncivil continues to prevail (Beckett & Herbert 2009, Levi 2009).

THE PAINS OF PREVENTION

Contemporary concerns about risk and the need for security have thus led to the proliferation of diverse practices of prevention. Together they significantly expand the state’s exercise of coercive power over its citizens and thereby threaten core liberal values of individual liberty and autonomy. Across disciplines, scholars have drawn attention to the overextension of state power that is liable to result when fear triumphs over reason, uncertainty trumps risk assessment, and precautionary preemptive action comes to be regarded as the only prudent course (Lomell 2012, McCulloch & Wilson 2016). The most high profile of these contributions arguably come not from criminology but from self-proclaimed public intellectuals, particularly in the United States. For example, Sunstein’s *Laws of Fear: Beyond the Precautionary Principle* charts the risks arising variously from global warming, terrorism, and genetic engineering and the concomitant dangers inherent in the precautionary laws and measures passed to tackle them (Sunstein 2005). Dershowitz argues that 9/11 led to a fundamental shift toward a new order of preemptive practices of torture, extraordinary rendition and targeted killing of terrorists, defensive military strikes against weapons of mass destruction (WMDs), and proactive crime prevention techniques (Dershowitz 2006), and he deplores “the unwillingness of our legal system to develop a jurisprudence of preemption in the face of the reality” (Dershowitz 2006, p. 26). Another legal luminary, Richard A. Posner, goes much further to warn of catastrophic risks from natural (e.g., loss of biodiversity, asteroid collision) as

well as artificial causes (e.g., terrorism, WMDs) and claims that not only are the risks of global catastrophe greater than they were in the past and growing rapidly but that, notwithstanding their individually low probability, they are “convergent or mutually reinforcing” (Posner 2006, p. 245). In sharp contrast to most legal commentators, Posner is dismissive of the concerns of those who, he asserts, “oppose the slightest curtailment of traditional liberties” (Posner 2006, p. 262). Indeed, Posner argues for “some curtailment of our expansive personal liberties” in accordance with his view that the potential for catastrophe “has made the world less secure than at any time since the height of the Cold War” (Posner 2006, p. 262). Notwithstanding the fact that these doom prophesiers and catastrophe theorists come mainly from outside the discipline of criminology, they have been influential in contributing to a climate of fear or zeitgeist whose influence can be felt across the social sciences from politics and international relations (Aradau & van Munster 2007) to sociology (Lentzos & Rose 2009), criminology, and criminal law (Ramsay 2012b).

Criminologists have long had a taste for criminologies of catastrophe (Garland 1999, O’Malley 2000), so it is hardly surprising that their dominant engagement with the workings of the Preventive State has tended toward the nihilistic (Zedner 2002). In his highly influential *Crime in an Insecure World*, Ericson (2007, p. 1) observed, “catastrophic imaginations are fueled, precautionary logics become pervasive, and extreme security measures are invoked in frantic efforts to preempt imagined sources of harm.” Ericson elaborated a compelling account of the contemporary obsession with uncertainty and the precautionary logic that drives the criminalization of all perceived sources of hazard (Ericson 2007). He contended that the state’s over-ready creation of new offenses entailed lowered standards of criminalization, a disregard for principled justification, and the erosion of evidentiary and due process protections. As such, he argued, it constituted a resort to counter-law or use of laws against law (Ericson 2007). Ericson’s powerful account concludes that these counter-laws result in more uncertainty and greater insecurity, not less (Ericson 2007). Other authors, including criminal lawyers such as Ramsay (2012b) and Carvalho (2017), offer similarly insightful critiques of the questionable underlying premises, the adverse effects on the legitimacy of the criminal law, the robustness of the criminal process, and even the authority of the state itself. Carvalho observes, “for both Ericson and Ramsay, it seems that the growing preventive apparatus of the criminal law gives form to a waning of political authority experienced by the preventive state as it, in employing this apparatus, is openly and fundamentally questioning the force and the validity of its own authority” (Carvalho 2017, p. 76). In short, the dominant academic preoccupation is as much with the risks posed by the rise and rule of the Preventive State as with the hazards to which it purportedly responds.

Yet a different level of engagement with the hazards and pains of prevention can be found in the growing body of studies focusing on the costs entailed by specific substantive developments. To recall, much of this endeavor was provoked, directly or indirectly, by Steiker’s (1998, p. 806) call to arms, which warned that “preventive state actions like the incarceration of the dangerous or the implementation of suspicionless searches and seizures give the state much greater power over and much greater knowledge of its citizenry.” In this article, Steiker invited research into the precise costs and consequences entailed by particular preventive laws and measures. Those who took up this call are too numerous to recount in full but just a few prominent examples suffice to convey the breadth and import of their contributions to charting the burdens entailed by the Preventive State. Harcourt’s (2007) masterful attack on the fundamental claims of actuarial justice in *Against Prediction* called into question the underlying premises of many preventive endeavors by challenging the validity of actuarial assessment and, therefore, the justifiability of predictive techniques based on ARAIs. Criminal lawyers have tended to focus on the adverse impact of prevention on the scope and reach of criminal law, particularly the extension of inchoate and preinchoate liability. They have highlighted the ethical issues inherent in seeking

to attribute responsibility for future crimes, the risks of overcriminalization, and the hazards to basic principles posed by preventive criminal laws designed to criminalize dangerousness (Alexander & Kessler Ferzan 2012, Ramsay 2013, Sullivan & Dennis 2012). Still others have voiced concerns about the risks of departure from the protections of the criminal process posed by civil, administrative, and executive preventive orders (Ashworth & Zedner 2010, Simester & von Hirsch 2006). Probably the gravest concerns arise in response to penal practices that depart from proportionality on preventive grounds (Steiker 2013), such as sentences of extended and indefinite preventive detention that severely compromise fundamental rights (see below). Taken together, the burdens and costs consequent on the exercise of excessive power by an overbearing Preventive State have generated profound disquiet, and this, above all, has stimulated the nascent literature on the restraint of the Preventive State that is the subject of the next section.

THE RESTRAINT OF THE PREVENTIVE STATE

The Jurisprudence of Security

We noted above that, in recent decades, terrorist incidents across the globe have led to renewed calls for states to provide greater security and that the prevention or at least reduction of risks of serious harm has become a major feature of public debate and of lawmaking in many countries. When the term security is used, it is often assumed that it is the principal value with which governments should concern themselves and that other values are secondary at best. However, there are two difficulties with this assumption. First, although people tend to look to the state when terrorist attacks occur, states may not only pursue policies aimed at security but may also behave injuriously to security (Loader & Walker 2007, Zedner 2009a) by trampling on rights in general or on the rights of minorities and the powerless. Thus, it is important to ensure security against arbitrary government by means of respect for rights and rule-of-law values (Dyzenhaus 2013, Krygier 2016), particularly when the government purports to be acting in the interests of security. Second, the emphasis on security may have the effect of transforming normative questions about how the state ought to respond to major risks (such as terrorist attacks) into empirical questions about finding effective means of preventing those risks (Asp 2013). It is indeed important to pursue the empirical questions because any debate about prevention and security must be based on what it is possible to achieve through certain measures. Thus, as Waldron (2010) warned, we should not find ourselves giving up portions of liberty in exchange for preventive gains that are symbolic rather than real. However, if efficacy is not to be the sole determinant by which new laws are formulated and new measures implemented, the normative questions themselves must also be addressed.

This brings us to the need to develop a jurisprudence of security and prevention (Ashworth & Zedner 2014, Farmer 2006, Loader & Walker 2007, Slobogin 2003). Security is promoted as a necessary precondition to human flourishing and to the enjoyment of all other rights (Shue 1996), as protection against physical harm or material depredation, and as the subjective value of living without fear (Ericson 2007). If we are not to adopt the position that security is necessarily the principal value, outranking all others, then we must ask what other values should be brought into the debate and how any conflict of values ought to be resolved. One familiar response is to recognize that liberty and other basic rights must be respected at least as much as the pursuit of security and prevention, and to argue that the aim should be to balance liberty against security. However, the metaphor of balance here is fraught with difficulty. It is natural to resort to the imagery of balance when there are values pulling in different directions, but it must be borne in mind that there are questions about the relative weight or priority of liberty and other rights, particularly those rightly regarded as fundamental rights, and there are also questions about the

different extent to which the security of various groups is enhanced or diminished. As Waldron (2010, p. 36) observes,

If security gains for most people are being balanced against liberty-losses for a few, then we need to pay attention to the few/most dimensions of the balance, not just the liberty/security balance.

Accordingly, Waldron regards references to balancing exercises as having a “treacherous logic” (Waldron 2010, p. 11): The balance might amount to no more than a “proposal to trade off the liberties of a few against the security of the majority,” or, worse, to trade off the security of a few against the security of the majority (Waldron 2010, p. 13). Dworkin, similarly, warned that often “the only balance in question is the balance between the majority’s security and other people’s rights” (Dworkin 2003). If a jurisprudence of security and prevention is to be developed, attention must be paid to these few/most dimensions as well as to the liberty/security dimensions (Zedner 2005).

Preventive Justice and the Principles of Restraint

Probably the furthest-reaching form of a coercive preventive measure is deprivation of liberty on grounds of dangerousness, especially if it is to last for many years or indefinitely (see section above titled Practices of Prevention). It can be strongly argued that the minimum requirements for long-term detention based on a judgment of dangerousness should be (a) loss of the presumption of harmlessness, (b) the absence of a less restrictive appropriate alternative measure, and (c) a well-founded assessment of dangerousness. Regarding the presumption of harmlessness, the starting point should be that every person is presumed harmless, but this presumption may be rebutted when that person has been convicted of a serious violent crime (Floud & Young 1981). Similarly, Walen (2011a) argues that basic respect for each citizen upholds the presumption that they are immune to long-term preventive detention, but this status may be lost if the person has been convicted of a very serious crime (Dimock 2015). Regarding the absence of a less restrictive appropriate alternative, this principle points to deprivation of liberty as a last resort, only to be used after other measures (such as curfew, house arrest, reporting or registration requirements, and supervision in the community) have been considered and rejected as inappropriate or ineffective (Slobogin 2003). A well-founded assessment of dangerousness must be based on the most recent research evidence and professional expertise. This judgment must also be based on an assessment of the seriousness of the likely harm and the degree of probability of its occurring. At a minimum, the state should bear the burden of proving that the person represents a significant risk of serious harm to others. In the rare cases in which indefinite detention is being considered, the state should establish that it is highly probable that the person will perpetrate a very serious or catastrophic harm (Ashworth & Zedner 2014).

These minimum requirements relate to deprivation of liberty, but there remains the question of the form of that detention. Robinson (2001) has argued strongly in favor of the segregation of imprisonment justified as punishment within the criminal justice system from civil confinement of persons adjudged to be dangerous. The former should be attended by all the normal procedural protections at sentencing, whereas civil confinement for the protection of society should be carried out in nonprison facilities with as normal a regime as possible and regular reviews of suitability for release. Robinson’s complaint that the current system cloaks preventive detention as a form of punishment is reversed by two other authors. Morse (1996) proposes the enactment of an offense for presenting an extremely high risk of serious violence, having been convicted of at least one such offense already, and failing to take reasonable steps to avoid the materialization of that risk, an offense of omission that brings within the criminal justice system dangerous offenders

who are not mentally disordered. Similar in some respects is Husak's (2011, 2013) argument that preventive detention should be brought into the criminal law and criminal sentencing. In other words, those elements that identify a person as dangerous would be made into a criminal offense (see Floud & Young 1981 on the wrong of presenting an unacceptable risk of dangerousness), and the punishment would flow from having committed that offense. As a result, those against whom preventive measures were taken would be able to call on all the rights and procedural protections of the criminal process.

More familiar in Anglo-American law is preventive detention as part of the penal system but without special procedural protections. In the section above titled Practices of Prevention, we referred to doubts about the tests propounded by the US Supreme Court in *Kansas v. Hendricks* (1997), based on serious personality disorder, and again in *Kansas v. Crane* (2002), based on serious difficulty in controlling behavior. These tests are vague and depend on clinical assessments for which the evidential basis is contestable (Johnstone 2011). In the most optimistic view, the predictions on which these tests are based yield true positives in less than half the cases (Monahan & Skeem 2016, Skeem & Monahan 2011). Slobogin (2003) argues that this is acceptable because many key forensic decisions turn on assessments of probability (e.g., beyond reasonable doubt, balance of probabilities); this is how the system has to operate, a view also propounded by Schauer (2013). However, the magnitude of the possible consequences (absolute and indefinite loss of liberty) strongly suggests that it is right to insist on the high standard of proof set out above in the rare cases in which long-term detention on preventive grounds is properly under consideration.

Although the restraining principles discussed thus far in this section have been confined to the use of preventive detention, there is a further range of restraining principles applicable to measures of preventive justice at an earlier stage. For example, police powers to stop and detain should be subjected to requirements of reasonable grounds and to principles of necessity and proportionality; the principle of the least restrictive approach; and remoteness constraints so that individuals are held liable for the acts of others only if they have a sufficient normative involvement in them, and preinchoate offenses should satisfy the harm principle discussed above. Further, preventive pretrial detention, as well as the detention of certain immigrants and the detention of persons with contagious diseases, should be permitted only in cases in which the individual presents a significant risk of serious harm to others that could not be adequately mitigated by less restrictive means and detention should continue for no longer than is necessary (see further Ashworth & Zedner 2014, Lippke 2014). Measures of these kinds may trample on the constitutional rights or human rights of the individual; thus, such restraining principles are needed to curtail the exercise of state power (see below). The attempt to articulate restraining principles may seem to be more naturally the task of jurisprudence or political theory than of criminology. However, there is a long tradition within criminology of radical, critical, and politically aligned criminological endeavors committed not only to critique but also to constructing agendas for reform whether in pursuit of a utopian vision of a future social order or, more immediately, to influence state policy, whether along Marxist, left realist, conservative, or liberal lines. In short, criminology is well placed to contribute to the further development of an empirically grounded, sociologically informed theory of preventive justice. In the final section below, we reflect on the influence, impact, growth, and possible futures of preventive justice scholarship within criminology and criminal justice.

CONCLUSION: BEYOND THE PREVENTIVE STATE?

Recent scholarship on the many manifestations of the Preventive State has done much to fulfill the plea by Steiker (1998) that links be drawn among preventive endeavors across diverse fields to reveal their common scope, similarities of form and purpose, and collective import. Determined efforts

(cited throughout this review) have been made to identify, classify, and evaluate new preventive endeavors, assess their costs and consequences, and elaborate normative frameworks applicable across the diverse activities of the Preventive State. Preventive justice scholarship has gained such momentum that it may even raise the risk of seeing prevention everywhere (Zedner 2017a) and may lead too readily to the assumption that widely differing laws, measures, and practices have sufficient commonality to permit their classification and analysis as constituent parts of a coherent entity: the Preventive State (Tulich 2017).

This review focuses on the rise and restraint of the Preventive State but does not claim that this is the only policy being pursued: Traditional criminal justice institutions remain significant, together with a range of forms of criminal responsibility under criminal law (Lacey 2016). Even if one accepts that the proliferation of preventive endeavors signifies a shift in the way states govern, classificatory problems remain. Should criminological attention be confined to those preventive endeavors aimed at activities properly thought of as criminal or should research and critical scrutiny extend also to those measures aimed at subcriminal conduct such as antisocial behavior or minor incivilities (Crawford 2009, Gayet-Viaud 2017, von Hirsch & Simester 2006)? Or does this risk elevating merely antisocial behavior and minor incivilities into legitimate objects of crime control?

Arguably, research on the Preventive State should not only focus on overtly coercive measures but should be extended to measures that operate in less or noncoercive ways such as civil preventive orders, surveillance, and data mining and retention. Taken together, these may have adverse implications for civil liberties and values such as privacy, social solidarity, and trust (Miller 2017, Ohana 2010). Concerns about the erosion of civil liberties have tended to focus on measures aimed mainly at individuals, overlooking the fact that many practices of the Preventive State involve universal, mass public, or group-based measures, often along unwarranted racial or religious lines (Harcourt 2007). The wider ramifications of preventive measures that affect us all, such as mass surveillance, data retention, and intelligence sharing, because they are universally applied and borne by all, appear less unfair, less obviously coercive, and less objectionable. Arguably, only the impact of radical shocks, such as the revelations brought to light by the Edward Snowden leaks in the NSA affair (Miller 2017), bring home the fact that the general public is also the target of mass surveillance and security.

A further concern is that thus far relatively little attention has been paid to the question of against whom preventive measures are in practice most commonly targeted. How much targeting occurs along lines of race, religion, class, gender, and citizenship or noncitizenship status (Demleitner 2004), and how much do the consequential costs and burdens fall disproportionately on already marginalized groups? Arguably, to explore “the intersectionality of these different classifications would enable us to see how the burdens of prevention are in fact distributed and by whom they are principally borne” (Zedner 2017a, p. xxii).

Efforts to develop normative frameworks for preventive justice have sought to articulate restraining principles for preventive laws and measures (Ashworth & Zedner 2014, Dubber 2013, Steiker 2013). In turn, the preventive justice literature has provoked ongoing debates about how, where, and to what end these limiting principles should be applied. The principle of necessity raises further questions about the degree of likelihood and the gravity of prospective harm needed before preventive interventions, particularly those involving coercion, can be considered justifiable (Tyulkina & Williams 2017b). The least restrictive appropriate measure principle, which requires authorities to satisfy themselves that no other less restrictive measure would be proportionate and consistent with the preventive purpose (Ashworth & Zedner 2014), has provoked discussion as to whether it must first be established that existing regimes are inadequate to the task before more intrusive measures can be considered warranted (Tyulkina & Williams 2017). These debates raise further questions about which principles apply to different preventive policies, laws, and measures

or whether preventive justice principles can be universally applied. There are doubts as well about whether a principled approach could suffice to restrain the most egregious exercises of power by the Preventive State or whether prerogative powers and emergency and exceptional measures will inevitably continue to escape the strictures that should be imposed upon the Preventive State (Gross & Ní Aoláin 2006). An important ongoing concern shared by many scholars of preventive justice is whether the attempt to articulate and promote principled restraint runs the risk of providing some degree of legitimacy to measures that might better be subject to critique.

Despite these various doubts, research continues on the need for critical inquiry and normative theorizing in diverse substantive areas such as criminalization (Carvalho 2017, Cornford 2015, Mayson 2015, Sorell 2016), preventive detention of the dangerous (Annison 2015, Dimock 2015), preventive policing of the mentally ill (McSherry 2017, Punter 2017), and counter-terrorism (Hardy 2017, Sajó 2006). Although the dominant tenor of this scholarship is toward restraint of the Preventive State, it would be misleading to suggest that radical preventive measures have no defenders. Strong defenses of preventive action have been articulated: The more serious the threat, the more readily preventive intervention is seen to be justified, even if the probability of occurrence is low. By way of example, Sorell (2016) provides a sustained defense of serious crime prevention orders in the United Kingdom and Dimock (2015) provides the same for preventive detention in the United States. Unsurprisingly, the strongest defenses of preventive action are made with respect to those who are deemed to be irredeemably dangerous or defiantly determined to imperil public safety or national security and for whom indefinite or life-long preventive detention appears to some to be the only solution (Walen 2011a).

At the other end of the scale, there is continuing interest in the ways in which prevention is pursued outside the criminal process through civil and administrative laws and measures (Ashworth 2013, Ashworth & Zedner 2010, Dennis 2012, Ohana 2010) and increasingly through immigration law, security, and counter-terrorism laws (Fenwick 2017, Pratt & Anderson 2016, Stumpf 2007). By side-stepping the criminal process, these developments evade due process protections to pursue prevention in less onerous procedural channels but also blur the lines between crime control, security, counter-terrorism, and immigration laws. Coercive preventive laws do not have dedicated constitutional or human rights protections in the same way that criminal trials and punishments have, and therefore it may appear that they fall into a jurisprudential black hole. However, coercive preventive laws can be said to engage some fundamental rights. The fundamental right to liberty is relevant to not only punitive sentences but also any form of preventive detention that is not a punishment; thus, even in the Supreme Court judgment in *US v. Salerno* (1987), there was acceptance that an individual's liberty interest must be taken into account. It was suggested above that the individual's liberty interest should be given greater weight than current pretrial detention law assigns to it. Turning to the presumption of innocence (Ferzan 2012), this does not apply directly outside the criminal trial, but it lends some weight to the argument that individuals have a right to be presumed harmless, which they forfeit on conviction for a very serious offense. But if coercive preventive measures are then to be imposed, their imposition should be subject to restraining principles along the lines we have already suggested: for example, the principles of the least restrictive appropriate alternative, parsimony, and necessity. These restraining principles draw their strength from respect for each individual as an autonomous subject and must be linked with the individual's right to challenge decisions taken in her or his case (Ashworth & Zedner 2014).

However, there remains the problem that the effect of taking preventive measures serves to prioritize prevention over other values and goals and this may be to securitize criminal justice more generally (Crawford & Hutchinson 2016, Ogg 2015, Zedner 2016). Concern about such trends is further provoked by new security threats, such as the ongoing conflict in Syria and Iraq; the recruitment and, increasingly, the return of foreign terrorist fighters; and, not least, the recurrence

of terrorist attacks that provoke great public fear and political apprehension, raise national threat levels, and increase pressure on the Preventive State to do yet more to ensure security, even at the countervailing cost of imperiling rights.

Although the doomsayers still have a powerful voice, interest in reasserting and protecting individual liberty against state overreach continues to be strong and has resulted in sustained attempts to articulate frameworks for restraint. More recent works focus on the regulatory possibilities of preventive justice as a means of circumscribing the scale and reach of preventive laws and measures (Cole 2015, Tulich et al. 2017). By way of example, Stacey seeks to resurrect the precautionary principle from the panning it has received by scholars of the Preventive State, and she argues that there is more in common between it and the normative project of preventive justice than has been acknowledged (Stacey 2017). The contention is that the precautionary principle furnishes a deliberative framework, applicable not only in its originating domain of environmental harms but also with respect to crime and security, whereby regulation under the constraints of democratic governance and the rule of law can proceed in an orderly fashion even in the face of uncertainty (Stacey 2017). Furthermore, although coercive laws and measures continue to preoccupy, there are growing signs of interest in the ways in which noncoercive interventions may have the potential to divert those who are at risk to themselves, as well as to others, away from the formal criminal process through the exercise of soft power (Hardy 2017) and, at least in the case of the mentally ill or those needing medical help, into therapeutic channels (Punter 2017). Given the predominantly coercive or, at least, negatively proscriptive character of many preventive endeavors today, the diversionary, soft power, and therapeutic possibilities of prevention are the least explored but perhaps provide some grounds for hope. As McLeod suggests, in addition to the principled restraints commonly promoted to constrain the Preventive State, an “alternative conception of preventive justice offers a manner of constraining punitive preventive measures other than through procedural mechanisms—namely, by substantively conceptualizing prevention in other terms and proliferating noncoercive modes of facilitating collective security” (McLeod 2015, p. 1,219).⁷

The threat of excessive or arbitrary use of coercive state power has spawned a growing literature of Preventive Justice that seeks to articulate principled limits and means of restraint. However, the risk remains that it “may lead preventive justice scholars to inadvertently furnish a justificatory veneer to laws and measures that are inherently problematic” (Zedner 2017a, p. xxii). An alternative way forward might be for criminologists to explore how far and in what ways the Preventive State opens the way for early intervention programs and less coercive, less punitive means of prevention. The success of this venture is unlikely to lie within criminology alone. As this review has made clear, tackling the overreach of the Preventive State is a problem that has taxed not only criminologists but also criminal lawyers and legal and political theorists. The task of thinking imaginatively about how the Preventive State might pursue the goal of reducing risk and mitigating harm might best be served by bridging disciplinary boundaries to collaborate on the ambitious task of reconceiving the Preventive State along less coercive, less rights-eroding, and more socially constructive lines.

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⁷McLeod elaborates on a series of promising alternative strategies in a social institutional and structural register, including justice reinvestment, decriminalization, alternative livelihood programs, design innovations, urban redevelopment, and the creation of safe harbors (McLeod 2015). Intriguing but perhaps less plausible is Rich’s (2014, p. 883) advocacy of “perfect prevention—the use of technology by the State to make criminal conduct practically impossible.”

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