Title: Managing Meaning: Metaphor in Criminal Justice Policy

Author: Sarah Armstrong

Contact Details:
Scottish Centre for Crime and Justice Research (SCCJR)
University of Glasgow
Florentine House
53 Hillhead Street
Glasgow G12 8QF
tel. 0141 330 8257
fax 0141 330
email: s.armstrong@lbss.gla.ac.uk

Word Count (incl. footnotes, abstract & references): 9,353

ABSTRACT

'Managing Meaning: The Use of Metaphor in Criminal Justice Policy'

This paper takes an unorthodox approach to the study of policy, by analysing the use of metaphors in policy documents. Policy language presents an important topic of study because the policy text is an increasingly important technique of governance, aiming at one level to satisfy desires for transparency and public consultation, and, at another, to translate law and norms into technical rules of everyday practice. Conceptual Metaphor Theory (CMT) provides the analytical framework for exploring the role metaphors play in policy texts. While metaphor is commonly thought of as an optional linguistic ornament used to convey an unfamiliar concept in terms of a familiar one, CMT claims metaphors are ever present features of language and fundamental to how we come to know the world. Analysis of metaphor in a key criminal justice policy text, The MacLean Committee's Report on Serious Violent and Sexual Offenders, reveals that alongside an explicit argument about the need for policy change, there flows an implicit discourse that re-shapes our understanding of violent and sexual offending, risk, and legal judgement, among other things.

Key words: policy analysis, metaphor analysis, rhetoric, risk management, sex offenders, Conceptual Metaphor Theory

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MAIN TEXT

'Managing Meaning: The Use of Metaphor in Criminal Justice Policy'

Like any specialist area, criminal justice policy writing has its own lingo of acronyms, short-hand references and terms of art. The jargon is so familiar to us insiders that it is nearly impossible not to use it, even when developing arguments that are critical of the assumptions on which many of our concepts rely. It is easier to bracket our concerns about using a term like 'sex offender' than to deploy less stigmatising but distractingly overwrought alternatives.[1] The purpose of this paper is to explore language use in criminal justice writing, attempting to 'see' it anew, and consider the implications of particular language choices for policy making. I pursue this task through the study of metaphor, a method that is not common in criminology. Given this, the paper also acts as a trial run for using specific applied techniques of cognitive linguistics in criminology, and so some attention is devoted to describing how the cognitive approach to metaphor analysis works and what its relevance might be for analysing social policy.

The empirical focus is on a particular form of writing, one of the most boring examples of language there is – the policy document. Unlike political speeches, newspaper articles or novels, policy documents are presented as authorless and purport to be 'practical, functional and geared to efficiency'(Shore and Wright 1997: 10). They aim to sober up, rather than incite, the reader. They try to convince through exhaustively evidenced arguments, rather than base appeals to emotion. They are rarely brief. In contrast, the policy making *process* from which these texts emerge not uncommonly features raging arguments, fundamental value conflicts and uncertain evidence. How is an orderly narrative that clearly frames problems and solutions produced from such a disorderly process? Language choices play an important part as the chaotic tussling of policy deliberation gives way to the crafted dispassion of the policy text.

Metaphor analysis offers a way of getting at the language element of the answer, providing a technique for unearthing implicit claims and conceptual frameworks that work alongside explicit messages. Conceptual metaphor theory (CMT), the approach followed in this paper, proceeds from a view of metaphor far removed from a lay person's sense of it as a means of embellishing one's 'real meaning'. CMT is the highfalutin label for a set of simple but profound claims about the importance of metaphor for thought and action. Lakoff and Johnson's (1980) seminal work on the topic exploded the standard view of metaphor as linguistic ornamentation, chosen at will to add colour and emphasis to language and therefore peripheral to our core meaning. They argued that our perception of reality is mediated through our conceptual system, and conceptual systems are largely metaphorical (Id: 1). We would be unable to think about the world without metaphor and so they are both fundamental and unavoidable.

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[1] 'People who have engaged in or are at risk of engaging in concerning sexual behaviour' is a line I admit to using.

Study of metaphor has proved effective for illuminating the operation and impact of social policy, showing that metaphors can be 'generative', creating new meaning by defining problems in a particular way and thereby framing how they are perceived and addressed (Schön 1993; and see Haw 2006). Metaphors thus might assist the fitting of complex and contingent elements of a policy process into a coherent narrative. Metaphors can also act as 'carriers of cultural elements', shaping how we make sense of the world (Gherardi 2000: 1062).

In this paper I look at the metaphors surrounding two issues that are predominant concerns of contemporary criminal justice policy and also highly contested – the serious violent sexual offender (SVSO) and risk management. Both of these terms are relatively new to the criminological imagination, constructs that have required definition and justification. Language innovations such as these are not merely academic, however, but have material origins and consequences. The case examined here is a Scottish policy document which defined the problem of SVSOs and provided the platform for government action – The MacLean Committee's *Report on Serious and Violent Sexual Offenders* (2000). The MacLean Report led to major changes in law, resource allocation, and social control, which underlines the significance of how problems are defined.[2]

On one level changes in policy following publication of the MacLean Report can be attributed partly to the report's effectiveness at mounting a measured, rational argument about the empirical existence of serious violent sexual offenders, the urgent need to do something about them, and risk management as the superior strategy of control. On another level, a more emotive and ambivalent message emerges, one which becomes visible through the analysis of metaphor. As I will show below, the report constituted a new group – SVSOs – and framed our understanding of them through use of metaphor.

Risk management, by contrast, is a prominent concern in the Report but is never explicitly defined. Perhaps this is why the metaphors of risk management in the MacLean Report are ambiguous and multiple, a fact which implies the concept's usefulness because it is flexible and can be adapted to changing and even conflicting aims of criminal justice governance – from working *with* or *on* offenders to containing threats to public safety. The paper begins by presenting the basics of Conceptual Metaphor Theory and the method of analysing metaphors taken in this paper. It then reviews metaphors for offenders and risk management. Finally, some conclusions are suggested about the potential and limitations of metaphor analysis in criminology.

Conceptual Metaphor Theory

Metaphors are 'a cross-domain conceptual mapping' (Deignan 2005: 34), meaning the description of one kind of thing in terms of another kind of thing.[3] Although we tend to

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[2] Another example of the importance of problem construction is the 'dangerous and severe personality disorder' label which subsequently led to a reorganisation of services and substantial investment in a specific infrastructure for dealing with this group (Manning 2003).

[3] Deignan (idem) further specifies a metaphor to be: 'a word or expression that is used to talk about an entity or quality other than that referred to by its core, or most basic meaning. This non-core use expresses

think metaphors are easily spotted in a text, they are not always obvious because of the diverse forms they can take, and whether they are 'innovative' (striking) or 'dead' (common and unremarkable) (Id.). There are also grammatical metaphors (Id., and see Charteris Black 2006). A Scottish Government commissioned report on women offenders *(Women Offenders – A Safer Way*, 1998) displays the use of a grammatical metaphor that has the effect on gendering criminality. Criminal conduct by women is nearly always presented in the *passive voice* through use of grammatical constructions and preposition choices, while the criminal behaviour of men in that report, and in the MacLean Report, was more frequently described in an *active voice*.[4]

The boundary between the literal and the metaphorical can become obscured when a cross-domain mapping occurs between domains that are very near to each other. This is a particular problem for a sub-discipline like criminology, which both describes itself as part of, but also through analogy to, other disciplines. It is one thing to identify the metaphor in the statement that 'he has a heart of stone', but quite another to identify it in the statement that 'risk assessment provides early diagnosis of a threat of violence in an individual'. Diagnosis is a concept from the domain of medical science and it might be meant generically here as a synonym of 'identification' or literally as a claim about risk assessment being the same thing as a high accuracy medical assessment, or both. It might also be providing a metaphor for risk assessment in criminal justice. That is, a more familiar process (medical diagnosis, the source domain) is used to convey how a less familiar process (risk assessment, the target domain) works. Most people will have picked up enough from a visit to the doctor to know that diagnosis involves investigation into symptoms, possibly consultation of an authoritative text on the desk and conclusion as to the likely condition. We are subsequently reassured not to worry too much or referred to a specialist for further investigation or treatment. The concept of risk assessment is related in terms of the concept of medical diagnosis, and therefore the latter is an example of a *conceptual* metaphor.

Metaphor *concepts* are the systematic usage of particular words and grammatical constructions (whether conscious or not) that, taken together, create an overarching imagery that provides a coherent frame of reference and basis of conceptualisation. When an argument is described as having a 'winner' (or a loser), as requiring an 'arsenal' of evidence and reasons, as having 'force', it is being *conceptualized* using a metaphor of war. The ARGUMENT IS WAR metaphor is a common one and may be so embedded in our conceptual system – our habituated knowledge about how things are – that contrasting metaphors for argument not only jar our senses but appear to be simply wrong. Lakoff and Johnson (1980) demonstrate the power of the war metaphor concept for framing our perception of what argument is (and not simply what it is *like*) by positing the metaphor

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a perceived relationship with the core meaning of the word, and in many cases between two semantic fields.'

[4] Consider this passage from Women Offenders – A Safer Way (para. 16): 'Some women…are drawn <u>into</u> crime because of their associates or other factors in their lifestyle - <u>such as a propensity</u> to be rowdy and aggressive in their social lives' (emphases added). Women are not drawn <u>to</u> crime, but <u>into</u> it by other people. Aggression and rowdiness are not characteristics of women themselves, but are forces that exert a pressure ('propensity'), suggesting women are pulled into bad behaviour rather than choose it. The gendering effect of some metaphor constructions is discussed further below.

ARGUMENT IS DANCE. Applying concepts drawn from the source domain ('dance') like synchronization, cooperation, playfulness on the target domain ('argument') demonstrate this.

These contrasting images of what argument is also show that metaphors simultaneously hide and highlight important features of the thing being talked about (Id.). Legal argument fits well within the war metaphor concept with frequent references to 'fighting' for the truth or justice, 'attacking' the evidence, and so on. The trial – an adversarial confrontation – itself provides the dominant imagery for our sense of what law is. However, prevailing in a legal proceeding requires more than a combative approach: one must *persuade* judge and jury, *cooperate* on matters of discovery, and *negotiate* the outcome (by agreeing to settle or make a plea bargain, for example) as much as *fight* for it. Whether we understand the legal system through metaphors of war or cooperation has important implications for understanding how law works (and in policy terms, how it might work better). The metaphor of war focuses our attention on one spectacular moment of a lengthy process – the trial – while the metaphor of legal argument as negotiation draws our attention to the importance of the overall process. These distinct frames for imagining the legal process lead to very different kinds of understandings about what is important. They also map onto the differing concerns of sociolegal studies and conventional legal studies, for instance, where the former emphasises the importance of process (Feeley 1992), and the latter privileges the role of the trial in developing a notion of justice (Duff et al. 2007).

Metaphors not only shape our basic conceptual understanding by explaining one thing in terms of another, but through this framing imagery introduce a normative dimension as well (Schön 1993). Consider the contemporary policy emphasis on multi-agency approaches, which are described as 'joined up thinking', 'partnership', 'collaboration', and 'information sharing'. This is contrasted by the presentation of separate agency approaches as 'fragmented' and 'disjointed' services where systems 'don't talk to each other'. Thus it appears self-evident that working together is a good thing. In fact it is not necessarily a good thing or the only way of conceiving of effective service delivery ('service delivery' itself constituting a consumerist conceptual metaphor of public sector activity). Schön (1993) uses this example to point out that 'fragmented' services might equally well be described as 'autonomous' ones, related through checks and balances to other agencies. Here the benefits of non-integration (independence and discretion) are highlighted, while the disadvantages are hidden.

Metaphors and Criminal Justice Policy

To pursue the distinction between isolated metaphors and metaphor concepts in criminal justice policy writing, consider this excerpt from former Home Secretary Jack Straw's introduction to the White Paper on crime control, *No More Excuses* (1997):

> 'This White Paper seeks to draw a line under the past and sets out a new approach to tackling youth crime. It begins the root and branch reform of the youth justice system that the Government promised the public before the Election. It will

deliver our Manifesto pledge to halve the time it takes to get persistent young offenders from arrest to sentencing.'

'Drawing a line under' the past and 'tackling' crime through 'root and branch' reform are all obvious examples of metaphor, but these are not systematic metaphors that, when taken together, add any overarching meaning to the text; they are clichés common in British policy and political rhetoric.

The terms might be interesting, though, for analysis as grammatical metaphors in that they emphasise the active voice used throughout the document (Charteris-Black 2006). The White Paper 'seeks' to distinguish current from past action, 'sets out a new approach', 'begins' a major reform effort, and 'delivers' on a pledge thus acting on a Government 'promise'. Overall, the effect is to convey a particular image of government in its approach to crime, personifying the state as an actor with a direct relationship to the citizen. The conceptual metaphor here is GOVERNMENT AS DOER. This contrasts with a more restrained role of Government as facilitator or laissez-faire custodian (c.f. Rose 2000: 327).

Let us now take an excerpt from the main text of *No More Excuses*:

'An excuse culture has developed within the youth justice system. It excuses itself for its inefficiency, and too often excuses the young offenders before it, implying that they cannot help their behaviour because of their social circumstances. Rarely are they confronted with their behaviour and helped to take more personal responsibility for their actions. The system allows them to go on wrecking their own lives as well as disrupting their families and communities.'

From a go-getting image of Government we move to a very different picture of the youth justice system, which has developed an excuse culture. The system is personified as an agent of this excuse culture; the *system itself* excuses the bad behaviour of young people, rationalizes it, fears confronting it, and thereby lets these young people go on 'wrecking' their lives. The metaphor concept here is: YOUTH JUSTICE SYSTEM AS BAD PARENT.

Conceptual metaphor analysis allows us to see multiple messages of a text, with one meaning presented in explicit terms while another meaning is conveyed simultaneously through conceptual metaphors. At one level, *No More Excuses* provides the policy statement behind New Labour's slogan of 'tackling crime, tackling the causes of crime'; at another level, neither crime nor its social circumstances are presented as the problem; it is the *system itself* which is the main concern. Subsequent reforms have seemed to address themselves primarily to this issue of system failure (through reorganisation of youth justice, passage of the Crime and Disorder Act 1998, and more recent proposals to devolve youth justice to local authorities), rather than to crime or its causes, although it is these latter two areas that have been the focus for the critique of New Labour's criminal justice policy.

This points to the value of metaphor analysis for showing how the policy reforms undertaken by Government were responsive to its perception of the problem, rather than non-responsive (to its explicit aims) as its critics have argued. Awareness of how the problem was being conceptualised might have allowed for earlier critical analysis of the strength of the Government's claims about the system's failures, something which was largely absent in the early days following creation of ASBOs, the Youth Justice Board and Youth Offending Teams.

Method

Methodologically, it is typical in conceptual metaphor analyses to select a number of texts to build up a corpus for analysis of systematic use of metaphor concepts. This allows for the possibility of quantitative analysis of metaphor, and for more robust qualitative analyses (Deignan 2005). Unlike the literary study of metaphor, for example, where figurative meanings are assessed within a single novel or poem, the analysis of metaphor for its relevance to policy would seek to establish the stability of metaphor concepts used in multiple forms and instances of discourse. The choice of selecting only a single document for analysis in this article follows from its objective to introduce a novel methodological approach and demonstrate how it works, rather than to prove the content of the analysis. That is, the primary issue before us is understanding how even the straightforward, dispassionate, literally-minded language of policy writing is replete with metaphorical imagery.

The selected document provides an example of a policy text that had clear consequences on action and which deals with two concepts of central concern to criminologists. Identification of metaphors in the present analysis follows the approach to Conceptual Metaphor Theory mainly as set out in the work of George Lakoff (1993, 1987, and with Johnson, 1980) and specified by Deignan (2005). The reader is referred to these writers for a thorough elaboration of metaphor definition and identification. For this analysis, I read the chosen text several times, in later readings focusing on how SERIOUS VIOLENT AND SEX OFFENDERS and RISK MANAGEMENT, the report's main themes, were presented. In readings focused on language use, I highlighted words, phrases and grammatical structuring around the key terms; these excerpts were then reviewed for consistent and repeated use of presentational imagery. I attempted to group metaphor concepts into those appearing most frequently throughout the text, and then to organize these thematically into groups. This article focuses on one metaphor for offenders that emerged as predominant and several metaphors of risk management.

The MacLean Report on Serious Violent and Sexual Offending

The MacLean Committee was commissioned by the Government:

> 'To consider experience in Scotland and elsewhere and to make proposals for the sentencing disposals for, and the future management and treatment of serious sexual and violent offenders who may present a continuing danger to the public…' (p. 1).

The MacLean Committee sought to address a perceived gap in control over people who represent a serious risk of future harm, but who are not subject to a life sentence and are not detainable under mental health laws.[5] The committee defined this new category of 'serious and violent sexual offender' by reference to the types of people to whom it might apply rather than by identifying qualifying violent and sexual crimes. It rejected drawing up lists of serious offences as a basis for receiving the SVSO label on the grounds that 'such lists are likely to be both over-inclusive and under-inclusive' (para. 1.3): while some people who have committed serious offences like rape and murder might not present a continuing danger to the public, '[a]t the same time, it is our view that some persons appearing before the court for sentencing may be regarded as "serious" offenders, although they have not yet been convicted of a serious act of violence or a serious sexual offence' (para. 1.5).

The MacLean Report constitutes a significant development in Scottish criminal justice policy. Following recommendations contained in the report, Scotland established a new extra-sentence form of control, the Order for Lifelong Restriction (OLR), and a new public body, the Risk Management Authority (RMA). The OLR allows for formal state control of an individual for the rest of his life based on a risk assessment of the threat and severity of harm he presents.[6] This is distinct from, and does not require, having a signficant criminal history. It is similar to the civil commitment orders available in some parts of the United States for post-sentence confinement of sex offenders, although OLRs may be served in the community as well as in an institution (Davey and Goodnough 2007).[7] The RMA plays a role in OLRs, training and accrediting risk assessors who will assist the decision to issue one, but has a much broader remit as well. It serves as a centralised organisation for the support and development of criminal justice risk assessment across Scotland.

The Committee stated in its introduction that: 'We believe that these proposals, taken as a whole, provide a comprehensive framework for dealing with this difficult group of offenders. They are intended to meet the requirements of public safety, while respecting human rights' (p. 2).

The challenge of the Committee's remit was immense. The Committee had to define the qualities of people requiring lifetime control without relying solely or even mainly on their criminal (legal) history.[8] It had to present evidence on the inability of current mechanisms to identify and contain the threat of this group. Finally, it had to develop and justify a new form of control – lifelong control supported by risk assessment and risk

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[5] Mention of the key case/offender triggering review of serious violent and sexual offending? [John Cronin]

[6] All existing OLRs have been issued to men, and males are clearly the dominant focus of the MacLean Committee's effort (MacLean Report, para. 1.21).

[7] The Order for Lifelong Restriction has been available to High Court judges since June 2006. As of March 2008 five such orders have been issued.

[8] The existence of 'serious violent and sexual offenders' is taken for granted in the main text, although the definition of this group is contestable and was not clear cut even for the Committee, which commissioned two independent researchers to provide a literature review of the concept. Loucks (2002) further provides some critical comment on the MacLean Report's presentation of the category as unproblematic.

management. How did the MacLean Committee achieve its aims in the report? Of course the success of the overall effort to create a policy for management of SVSOs was due to numerous factors beyond the text itself including a prior political consensus about the need for more, and more permanent, control over certain types of people who were falling between legal and mental health system nets, as well as the general movement in Scotland towards a risk framework to assess and manage all offenders. But the report itself has a unique importance in that it is a public document, providing the tangible and lasting statement of the rationale for change.

Conceptual Metaphors about Offenders[9]

I identified in the Report at least three metaphors for serious violent and sexual offenders, of which the last was by far the dominant one:

        1. OFFENDERS ARE PATIENTS

        2. OFFENDERS ARE THERAPEUTIC CLIENTS

        3. OFFENDERS ARE DANGEROUS ANIMALS

Before devoting the bulk of attention to the dangerous animals metaphor, it is illustrative of the CMT approach to show how the first two metaphors are present in the text. The metaphor concept of the 'patient' manifests in language that identifies the offender as the passive subject of *treatment* or *diagnosis*, and as an entity to be worked *on*. Such a metaphor concept emerges also in comparing the risk assessment of criminal danger to medical disease: 'the degree of accuracy with which we can predict risk of violence is comparable to, or greater, than that achieved in…for example, the likelihood of cardiac bypass surgery improving mortality rates…or the impact on mortality of chemotherapy for breast cancer' (para. 2.11).

The 'therapeutic client' concept appears in language describing not how the offender is worked *on* but worked *with*, that is, actively *engaged* in treatment. Thus the report is interested in 'the contribution each agency could make…in <u>enabling</u> the successful rehabilitation of the offender' (para. 3.4, emphasis added). And, 'The Authority may wish to see <u>specific work</u> that is not normally available being <u>undertaken with</u> someone in prison' (para. 3.11.2, emphasis added).

Neither of these metaphor concepts arise in the discussions about the gap in services for the group of offenders under review, nor in the recommendations for a new infrastructure for addressing this gap. That is, they do not appear to be central to the definition of the problem or development of the solution. Treating the offender and engaging him in this

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[9] The notion of offenders might qualify as a metonymy (and more specifically, synecdoche) and be subject to a conceptual analysis of its own since it is the shorthand reference to a person or group of people by an attribute (their having transgressed the criminal law). It is not an entirely satisfactory shorthand reference as noted at the outset.

treatment are ancillary to the primary goal of establishing the distinctive identity of the serious violent and sexual offender. This may explain why the 'offender as dangerous animal' metaphor predominated.

Offenders as Dangerous Animals

> ….we saw a system of <u>satellite tracking of 'tagged' offenders</u> in operation in Phoenix, Arizona…the capability to <u>restrict and monitor offenders' movements automatically</u> may well have potential that an Authority might wish to explore. (para. 3.11.1)

> Our experience of the system in parts of the USA, particularly as it deals with sex offenders, was highly instructive….[where] legislation <u>striking</u> at the <u>sexually violent predator</u> has been introduced in several States. (para. 4.27)

I have highlighted language in these excerpts that is suggestive of an OFFENDERS AS DANGEROUS ANIMALS metaphor concept. This is not, however, the only possible interpretation. While 'tagging' is a term used for what biologists do when marking animals in the wild, it can also have non-animalistic connotations, for example 'tag' is also a children's game. Moreover, the fact that the report places quotation marks around the word 'tagged' might be read as an attempt by the Committee to distance itself from the labels circulating in the discourse around sexual offending; tagging, the use of electronic monitoring equipment attached to a person, might be used here in order to describe the practice in the language of its users. Similarly, in the second excerpt, the phrase 'sexually violent predator' merely lists the given term used in America to describe laws that target people who engage in crimes of sexual violence.

The case for treating these as promoting a dangerous animal metaphor emerges by looking at the surrounding language. The Committee describes the legislation as 'striking at' predators, and approves the potential of 'tagging' technology to restrict and monitor 'offender's movements automatically'. The normative view of control emerging is one which takes no account of the human agency of the offender; the concern is about monitoring and restricting their movements. Here are two more examples (underlining added):

> Other orders which can be <u>imposed to control</u> anti-social behaviour in the community include Anti-Social Behaviour Orders and Non-Harassment Orders. The latter, in particular, are intended to deal with '<u>stalking</u>'. (para. 4.41)

> The offenders with whom we are concerned are <u>predominantly male</u>. On a visit to Durham prison, members of the committee heard of the very difficult problems that can be presented by some <u>women offenders</u> with severe personality disorders - particularly in relation to self-harming behaviour. (para. 1.21)

There were numerous references to offenders as predators, and as in the first excerpt here, to 'stalking'. Many of the animalistic images surrounding criminal offenders – stalking

laws, predatory behaviour – are not inventions of the MacLean Report, but repetitions of the contemporary jargon for offenders, especially sex offenders. The occasional use of quotation marks around such language might highlight Committee members' discomfort with this imagery, but does not necessarily mean the approaches recommended in the report do not build on them, or that the conceptualisation of offenders as dangerous animals has been entirely rejected. Here metaphor concepts are channelling particular conceptualisations already present in discourses about offending, strengthening them in a process of 'translation of knowledge through physical, behavioural and verbal artefacts – that is, [concepts are] "passed" from actor to actor via translation agents (human and non-human) each with its own interest in performing the operation' (Gherardi 2000: 1060).

The second excerpt above shows continuities between the instances of words that the Committee distanced itself from through use of quotation marks and its own rhetorical choices. The juxtaposition of the 'predominantly male' offender and 'women offenders' in the same passage is notable for the biological label in the case of the former, and the gender label in the latter. This excerpt picks up on a pattern in the text: offenders who are men are *only ever* referred to as males.[10] In contrast, there is roughly equal usage of the terms 'female offenders' and 'women offenders' in the report.

A specific quality of wild animals highlighted in the report is their *danger*, highlighted in the following passages:

> It is a fundamental aspect of the new sentence that the offenders should not be released into the community until they have served an adequate period of time in prison to meet the requirements of punishment, and do not present an unacceptable risk to public safety. (p. 2)

> However there are others, notably paedophiles, who present no problems whatsoever in prison but who would be highly dangerous on release (para. 1.1.2)

> In British Columbia we saw initiatives that had been taken to improve the training of practitioners and decision takers involved in implementing the …Canadian dangerous offender legislation. (para. 3.25)

In the coupling of the verb 'release' with the prepositions 'on' and 'into', these word choices build up a view of offenders as more like wild lions, or toxic waste, than people. It is easy to forget that in literal terms what is being described is people returning home after completing a penal sentence. This mundane activity – every year, tens of thousands of people go back to their communities after completing a prison sentence in the UK – has been recast as 'releasing' a danger 'into' a populated area.[11] In all of these excerpts

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[10] Interestingly, the usage of 'men' rather than 'males' arises for the first time in Section 3 of the report as part of a more narrow and somewhat peripheral aspect of the Committee's remit to consider those with personality disorders. Even here, though, the label 'men' appears but twice. The only appearance of the word 'men' in Sections 1 and 2 is in a sentence referring to a shortage of hostel provision for 'homeless men'.

[11] In the United States, the discourse around post-sentence offenders has begun to favour the concept of 're-entry' in place of 'release' to refer to people returning to communities from prison. This is displayed in the

the priority is ensuring safety from a continuing threat presented by certain offenders. Danger is a constant, unpredictable and invisible risk of harm. The metaphorical suggestion of danger frames policy action at a time when explicit uses of concepts such as 'dangerousness' are vulnerable to accusations of being vague, ideological and unscientific (e.g. Pratt 1997).

Metaphors of Risk Management

Use of Metaphor to Hide Strengths

Conceptualising offenders as dangerous animals undermines the legitimacy of modes of knowing and acting based on understanding the problem as the harm caused by the intentional acts of rational or irrational people. Working with or on offenders therefore becomes not only an irresponsible strategy but a nonsensical proposition. Before laying out its proposals for action, the MacLean Report clears away three traditionally important perspectives for dealing with offenders:

- social welfarism (addressing need);
- clinical judgement (treating illness);
- legal judgement (punishing harm).

In the case of social welfarism, the Report de-emphasises dealing with an offender's needs by simultaneously referring to public protection, implicitly treating this as the priority: 'What is needed is…a service response which is flexible enough to deal with the needs of individual offenders in a way which offers protection to the public' (para. 1.10). The needs of individual offenders becomes entirely constrained within a context of public protection; addressing needs which are not obviously linked to this goal becomes unacceptable. This is in line with the 'what works' approach in offender management which translates and legitimates this constrained relationship in terms of the concept of 'criminogenic need' (McGuire 1995).

Given the frailty of social welfarism as a ground for action in contemporary criminal justice, little work is required to dismiss it in the MacLean Report. However, clinical and legal perspectives continue to thrive despite the increasing importance of risk assessment in the field. The MacLean Report devoted more time to these approaches, and deployed powerful metaphor concepts to analyse them. The main tactic against both legal and clinical practice equates their form of judgement with an inherently subjective and arbitrary level of human caprice. The following underlined sections of text display how clinical judgement is presented:

> 'the clinical approach has been criticised as relying on 'an <u>informal, "in the head" impressionistic, subjective conclusion, reached (somehow) by a human clinical judge</u>. This characterisation sounds harsh, but the evidence is

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recent Second Chances Act (1997) and the recent creation of the Reentry Policy Council. This language deserves its own analysis given its similarity to that used for describing spaceships returning from outer space to Earth's atmosphere.

unequivocal that clinical judgements, even by experienced practitioners, are poor predictors of future violence' (para. 2.19).

'Decisions have, of necessity, been based as much on "feel" as on solid evidence' (para. 2.20).

'This is not to deny that a professional with experience and specialist skills can contribute greatly to risk assessment. It is simply to say that for any such assessment to have real predictive power it must be carried out in a structured way, having due regard to all relevant factors' (para. 2.21).

Here the metaphor concept is: JUDGEMENT IS WHIM. Alongside this resides another set of metaphors contrasting (subjective, unexaminable) judgement with (objective, testable) statistical evidence. The calculation by a human decision maker about danger produces a piece of fantasy, an act of imagination. Quantitative evidence that supports an accurate assessment of risk, has tangible qualities that may be objectively sensed and measured, and thus is 'real', unlike determinations based on 'feel'. The presentation of judgement in this way simultaneously positions actuarial evidence as what is 'real', treating numbers as empirical objects. Hence a metaphor for actuarialism is juxtaposed with one about judgement, next to which it appears obviously superior.

In contrast to categories generated by actuarial analysis, the logic of legal judgement is organised around the unique qualities of an individual case and rejects the commonalituies of the large group (Feeley and Simon 1992). Judging requires autonomy and the needs of justice are perceived (by judges themselves) to preclude the possibility of being constrained by managerial concerns about resources and efficiency. The MacLean Report frames legal judgement in terms that hide the benefits of these requirements while highlighting their weaknesses:

'It is because [sentencing] aims are so diverse, as of course are offenders and the crimes they commit, that sentencers have traditionally enjoyed a wide discretion in Scotland' (para. 4.1)

'the procedures for deciding what sentence to impose or whether to release an offender may not be sufficiently discriminating to use the discretion effectively….. . [Judicial discretion] has many advantages, but one possible disadvantage is that guidance which might assist a sentencer in selecting an appropriate sentence is relatively unsystematic' (para. 4.7).

'judges are alert to some of the key factors which create higher risk, but the decision about risk is taken in an unstructured way' (para. 4.11).

In all the instances where discretion is attributed to judges it is almost always (except in one case, in the second excerpt above) described as a form of 'enjoyment'. This may be

partly to do with convention but it is not a full explanation.[12] When the Report refers to *Ministerial* powers of decision making it describes this as 'exercising' discretion (see para. 8.19). The 'enjoyment' of discretion emphasises aspects of decision making which are personal and beyond regulation, aspects which are not connoted by alternate possible verbs like 'having', 'exercising' or 'possessing'. As a result of enjoying their discretion judges arrive at their choices through 'unstructured' and 'unsystematic' processes.

The criticism of judges and clinicians is not merely that they should work harder to improve the consistency and reliability of their decisions. It goes deeper than that to imply that the nature of the problem presented by the serious and violent sexual offender is beyond the epistemological and material capacities of these fields. Yes, it is important to punish the those who commit crime, but judges cannot act on the possibility of crimes not yet committed. Similarly, clinicians will always have a role to play, but the magnitude of harm that SVSOs present mean that the system cannot afford for anyone to give an offender the benefit of the doubt.

The limited recognition of what judges and clinicians contribute is weighed against more ample coverage of how they fail to secure public protection. While judicial discretion is acknowledged to have many advantages, these are not specified while the failures of this discretion are. The MacLean Report initially set out human rights as a substantive concern alongside public protection, and it might easily have made more of the importance of the criminal legal system and its emphasis on due process. However, when we think of judges as having to deal with enormously complex and competing demands of individual's rights, the harm to communities and future victims, and the difficult process of gauging the risk of harm, the metaphor concept of JUDGEMENT AS WHIM is difficult to sustain. The impetus of the MacLean Committee's work – the desire to contain a person whose dangerous propensities is not reflected in his criminal history – necessitated a search for solutions outside of the criminal law, the jurisdiction of which is triggered only by what someone does and not by what they might do.

Use of Metaphor to Highlight Strengths

Into this gap, the MacLean Report inserted risk management: 'Our proposals are designed to establish a clear responsibility, to be vested in a new Authority, for the maintenance and delivery of a systematic risk management plan throughout the lives of offenders.' But it is a fluid term, empty of much specific content. In fact, while the Committee grappled in the report with the difficulties of defining risk *assessment* (para. 2.3), there is no similar effort vis à vis risk *management*. Instead, rather than a substantive explanation of what it is, the Committee recommends it, specifying only how the management system should be designed and overseen:

> 2.39 It is our view that a properly co-ordinated risk management process should be developed for serious violent and sexual offenders. We believe that this should have the following key features, namely it should:

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[12] The conventional phrase 'enjoy discretion' may have its origins in the definition of enjoy as 'having the use or benefit of' (a 15th century usage).

be based on best practice:
- be empirically based
- take a multi-disciplinary and multi-modal approach to information
- be based on access to all relevant information
- allow sufficient time for assessment - where appropriate on a residential basis
- use all appropriate technology

be dynamic:
- be sensitive to changing conditions
- continue over time

produce practical outcomes:
- identify factors which aggravate or mitigate risk
- lead to management strategies
- involve systematic monitoring of risk outcomes

be open and regularly monitored:
- be transparent and open to challenge
- contain quality control systems

This guidance could apply to the risk management of nuclear reactors, hospitals, financial services or any of the myriad areas where risk is a dominant concern. So then, what conclusions can be drawn about how risk management will advance the ability to contain the threat presented specifically by serious and violent sexual offenders?

While the Report lacks a specific and explicit definition, numerous metaphors around risk management promote particular ways of framing and normatively positioning the recommendations of the Committee. Risk management, specifically, is presented through metaphors of systems and machines, highlighting its scientific orientation, efficient and networked coordination and therefore its superior ability to exert control. It is:

- Something that is future-oriented and continuous in *time*
- Something that *sees* everything
- Something that can be *delivered*
- Something that is *built*
- Something that connects everything in a *network*

Examples from the text display these different hoped-for qualities of 'management':

> Time: assessing 'future serious violence and sexual violence', 'staged approach', 'progress in manageable steps', 'transition to the community', 'for the rest of his life'
>
> Seeing: 'intensive supervision and surveillance', 'monitor and supervise'
>
> Delivery: 'service delivery', 'deliver a management plan'

Building: 'need for structural improvements', 'concrete and usable results', 'assessment tools', 'flexible service response', 'robust'

Networks: 'information exchange', 'systems incompatibility', 'systems and procedures', 'assessment links to positive action to manage risk', 'integrated management of custody, therapy, and community services'

Metaphors promote the risk management process as all seeing, permanent, delivered as a product, as protective as an actual edifice, and coordinated into a coherent system of action. All of this is wrapped up in the package of the Order for Lifelong Restriction (OLR). It aims to be panoptic through an architecture of information and practice rather than space. It suggests both Bentham's and Foucault's versions of the Panopticon because while it seeks discipline through an invisible cage, it is nevertheless a direct and literal form of control by actually surveilling the behaviour of SVSOs, reporting on it, and coordinating agency action around it. Unlike Foucault's elaboration of the concept, this is a panopticism which does not rely on an anticipatory self-discipline, but like his larger theory of bio-power is fully invested in the politics of large populations and their statistically delineated sub-groups (Foucault 1991).

In the absence of a definition, and its specification in terms of process, coordination and quality assurance, risk management is presented as a form of systems management. System failure is the real problem identified in the MacLean Report given that legal and clinical arenas cannot cope with the problem of SVSOs. 'Management', moreover, is a concept that flattens distinctions between regulators and regulated. Both present risks of harm that need to be managed; the offender's risk of harm is direct while the system's failure to control offenders leads to a risk of harm both indirectly to the public and to the legitimacy of the system itself.

These points move us beyond what the tools of Conceptual Metaphor Theory reveal and begin to engage with the critical literature on risk. This work has drawn attention to the reflexivity of risk management practice, where the external causes that supported adoption of a risk management approach in the first place (serious offending in this case) give rise to, and possibly way to, a concern about managing the risks of regulatory organizations themselves (Kemshall and Parton 1997; Rothstein, Huber and Gaskell 2006). Indeed, the aspirations possible within a regime of risk management appear to further demonstrate the state's awareness of its limited role in affecting what happens 'out there' and so the priority becomes the legitimacy of its own sovereignty (Garland 1996). Risk management monitors and coordinates, and in so doing creates transparent paper trails to support a distinctively thin form for contemporary accountability. It is a paradigm that avoids the absolutes of treating crime as disease or criminals as blameworthy, notions that provide clear but empirically unobtainable goals.

Risk management itself is presented metaphorically as a physical entity. This is partly accomplished through use of metaphors of buildings, which emphasise the positive aspects of social control (containment of danger) where the older metaphor for social control of 'wider, stronger and deeper nets' emphasised its negative dimensions

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(legitimating extending control to non-dangerous groups) (Austin and Krisberg 1981, Cohen 1984). What are the implications of treating a risk management process as a thing itself rather than what it literally is: a diverse set of planned and contingent practices, carried out by personnel at numerous public and other bodies, implemented unevenly in space and time?

One important feature of the entity metaphor is that human agency, as was the case with the construction of the SVSO problem, is outside the frame. The RISK MANAGEMENT AS MACHINE metaphor assumes its rationality supersedes human judgement; questioning the machine's superiority amounts to claiming one could more accurately weigh a substance in one's own hand than on a scale or calculate the millionth decimal of pi from memory better than a computer could. Such a frame closes off critical conversations about the definitions of problems in the first place – are we weighing substances or engaging human minds or fighting crime or something else? It also treats human agency as relevant only at the margins; the role of personnel is to input data, provide maintenance, and apply interventions as identified through a risk management process. Risk managers are conceptualised abstractly as units that are able to do this continuously and flawlessly. We know, however, that such work relies on the contributions of human beings, who are subject both to fatigue and opinions. This has an effect on how a risk management process can re-define the magnitude of a risk worth managing and also create the conditions of resistance or apathy (see, e.g., Kemshall and Maguire 2001).

Conclusion

Conceptual Metaphor Theory has provided insights into the MacLean Report, alerting us to the fact that much of what appears to be literal language is figurative, and that figurative language is always incomplete. The particular metaphors of risk management appearing in the MacLean Report highlighted its potential to realise its effectiveness in an automatic and self-contained way. The previous discussion used awareness of these metaphors to explore the qualities of risk management that therefore were hidden: it remains only partially systematized, based on only partially validated research, and utterly dependent on scarce resources and a variety of actors involved in contingent and incomplete ways.

Such insights produced from a conceptual approach to metaphor anlaysis can allow us to build on the widespread awareness of metaphors already present in criminological writing. In but two examples, Crawford (2003) has written that the notion of 'contractual governance' appeals as much to the metaphor of contract than to its reality, and Rose (2000) has depicted Government as working under a particular metaphor of the state. These are astute and insightful observations, but they stop short of a systematic perusal into how particular metaphor concepts are conveyed in a text or discourse generally (and so whether these claims of metaphor identification stand up to scrutiny), and how this affects they way in which we understand the issues. They also tend to contain a shard of criticism about metaphor itself – suggesting that the government employs figurative images when it lacks the ability or integrity to deal with things literally; use of metaphor is presented as an act of evasion or deception. When metaphor is placed at the centre of

the analysis, however, we can begin to think about how particular imagery has come into being and what purpose it serves.

In fact it may be overweening to claim for CMT or any other form of metaphor analysis that it can reveal its own purpose. What it can tell us is that the way we have come to think about social phenomena in terms of a particular problem with some solutions appearing more sensible than others is attributable partly to how the metaphors used in a given debate have colonized the way we think about things. This observation claims both that metaphor analysis is a powerful tool for understanding but also a limited one. Unlike other methods involving the study of language, such as Critical Discourse Analysis (Fairclough 1995) or Foucauldian influenced approaches, analysing metaphors might help uncover but does not explain or trace the role of ideology. As a technique limited to the space of the text itself, CMT does not provide an explanation of how language choices reflect or are otherwise linked to the social, cultural, political or historical context in which they are set.

These apparent limitations have advantages, though. By accepting the inability of metaphor analysis to tell us anything directly about who chose them and for what purpose, we avoid conveying complex policy processes reductively as vast neo-liberal (or other sorts of) conspiracies. Such an approach can accommodate more nuanced explanations of social action that understand policy as a process itself influenced by key actors with political capital but also by others and by chance. The metaphor of 'electronic tagging' can have a sinister connotation but also an innocent one, and it is in the practices around its actual use, and not only in the language used to describe it, that we will fully come to grips with its social importance.[13] Metaphor analysis is a tool that is to be used in conjunction with other methods that engage directly with questions of history and politics.[14]

This technique is especially useful for the study of policy, however, because of its ability to expose figurative language in what is presented as purely literal. This cursory review of one example of a policy document suggests that the technique would provide valuable assistance in understanding the meaning and operation of such pervasive concepts as 'evidence-based policymaking'. CMT's claim that metaphors both hide and highlight qualities of what is being described lead to the conclusion that what counts as evidence is as much about selection and presentation of information as it is about content. In other words, emphasising certain points over others is not just a way of selecting the best evidence, it is a means of constituting evidence in the first place. In the MacLean Report, the statistical evidence produced through risk assessments is given a metaphorical framing (as 'real' etc.) but actuarialism itself may be a metaphor for conveying a desirable picture of the logic of criminal justice. Rose (2000: 332) argues that, in fact, criminal justice professions 'are only weakly numericized. For the control professionals it

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[13] Thanks to Mike Nellis for making this particular point.

[14] For an interesting analysis of metaphors for risk in the financial services industry see, J.J. Young (2001), a CMT influenced analysis which stops short of connecting risk metaphors to the critical literature of risk. There has emerged a small movement to link up metaphor analysis more directly with critical analysis. See Charteris Black (2006), who explains the power of metaphors in ideological terms.

is probably better to understand what is happening in terms of the emergence and routinization of a particular style of thought: risk thinking'.

Discourse analysis has long been a familiar mode of critique in criminology, but one which commits itself at the start to the particular importance of ideology and notions of power and resistance. While such work has opened up for inspection important sites where power is displayed and channelled, we continue to be in need of tools that can cast light on corners of practice which remain in shadow. Policy writing constitutes both an important stage and artefact in the arrangement of power, but one which is often neglected in favour of ostensibly more urgent times and places. Even in light of Foucault we tend to be drawn more to spectacles than schedules. Within these schedules, however, lies a world of imagery and argument that metaphor analysis begins to reveal.

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