

Risk Assessment in New Zealand Prisons: Questioning Experiential Outcomes

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INTRODUCTION

In spite of well-publicized drops in crime recorded in New Zealand over the past 20 years, prison populations have burgeoned. Since 1990, the New Zealand prison population has more than doubled, to a current muster of 8500. A great deal of the growth has been due to rises in violent crime prior to the early 1990s, harsher penalties for individuals convicted of violent offenses, and hair-trigger recall (i.e. parole violation for minor breaches) procedures (Newbold, 2007). As a result, the percentage of people in prison for violent offenses increased from 43 percent in 1987, to around 60 percent today (Newbold, 2007). Approximately 50 percent of all released prisoners are re-incarcerated within five years of release (Spier, 2007).

Because of the high levels of public concern about violent offending, significant research has gone into the development and implementation of various forms of violence risk assessment. Violence risk assessment in New Zealand prisons is used to determine a prisoner's security level, as well as to predict his/her readiness for release. This is important, because under the *Parole Act 2002* a prisoner in New Zealand cannot be released on parole unless the parole board adjudges him/her not to present an undue risk to the safety of the community. Prisoners with low security classifications have greater access to programs and are thus more likely to impress the parole board with their readiness for release. The purpose of this paper is to examine the risk assessment process in use in New Zealand prisons and to consider the reliability of its outcomes.

THE PROCESS OF RISK ASSESSMENT

Violence risk assessment has one fundamental purpose: to obtain some idea of an individual's likelihood of behaving violently in the future. Internationally, risk assessment is used in a wide range of settings (Shipley and Arrigo, 2012, p. 38). It is utilized most heavily, however, within government departments such as those of mental health and corrections. Within these sectors, hospital patients and prisoners are often assessed for risk of violence when decisions are being made about transfer to less secure facilities or whether to grant them release. In New Zealand, all

prisoners who are incarcerated for violent offenses are assessed by either a Corrections Department or a Probation Service psychologist prior to their appearance before a parole board (Brady, 2009, pp. 2.6-2.7). A significant component of that assessment is a risk of violence evaluation (Brady, 2009, pp. 2.7, 2.9). The outcome of this evaluation becomes pivotal to the parole board's decision regarding transfer, or release and subsequent management (Petersilia, 2003, p.71).

The process of risk assessment has altered considerably over the years. During the 1970s and 1980s, risk assessment was comprised primarily of clinical judgment, a process that involved an expert professional considering all known factors about a subject – such as family background, educational level and offending history (Langan, 2010). On the basis of these factors, as well as a criminalized individual's personal presentation and demeanor, the clinical expert would, using their knowledge and experience, make an informed estimate of his/her level of risk. The range of factors to be considered was extensive, however, and this was one reason for the decline of the clinical approach. It was argued that there are too many circumstantial factors for an evaluator to be able to consider subjectively (Large and Nielssen, 2011, p. 414). The clinical method, although defended by its advocates on the basis that it treats a subject as an individual, has also been strongly criticized because subjective, clinical findings lack transparency and are prone to bias (*ibid*, p. 417).

It was largely due to such concerns about subjectivity that an actuarial approach to violence risk assessment was sought during the 1990s. Actuarial methods, which are applied within the New Zealand Department of Corrections today, involve the use of statistically-normed measurement tools. These tools, such as the Violence Risk Assessment Guide (VRAG), incorporate interval level scales that assess a set of factors that are held to be reliable predictors of violence (*ibid*, pp. 414-415). These factors include age, race, violence history and gender (Petersilia, 2003, p. 152). Depending on the number of predictors found, the subject of the assessment will obtain a score that designates him/her as either in a high or low risk category of future violence (Large and Nielssen, 2011, p. 415). The call for objectivity and the consequent mainstreaming of the actuarial model of assessment has largely sidelined the subjective clinical approach (Szmukler and Rose, 2013, p. 132). Clearly, the pertinent question in all of this is whether or not such developments have been more effective in

predicting the risk of future violence. If the answer is no, then what are the implications and who is affected?

RISK ASSESSMENT AND OUTCOMES

The efficacy of actuarial risk assessment tools is the subject of controversy. A solid body of research supports the contention that actuarial instruments consistently produce more accurate findings than do clinical judgments (Langan, 2010, p. 90; Shipley and Arrigo, 2012, p. 36; Bakker *et al.* cited in Coombes and Te Hiwi, 2007, p. 383). However, others argue that the use of objective statistical tools has made no noteworthy addition to the struggle to accurately predict violence (Szmukler and Rose, 2013, p. 128). Another prominent argument is that hence, all currently-used forms of risk assessment, be they clinical, actuarial or a combination of both, can be wildly inaccurate (Large and Nielssen, 2011, pp. 414, 417). In fact, some consider that, given the difficulties involved, it is futile even to attempt to measure violence risk (Langan, 2010, p. 97).

One problem with statistical-based predictions of this type is that the personal and subjective circumstances of an individual cannot be taken into account and are often overlooked. Another problem is that due to the angry public reaction that sometimes follows an erroneous prediction, psychologists and parole authorities have learned to be cautious in their assessment procedures and interpretation. If a parolee offends seriously after an erroneous assessment, the decision makers cannot only face public pillorying, but also feel a grievous sense of personal responsibility for the outcome. A recent tragic example is that of Christy Marceau (age 18), who was stabbed to death at home in front of her mother in 2011. Her killer had been granted bail on charges of kidnapping, threatening and assaulting Christie only four weeks before, and had been bailed to an address near her. The case caused massive public outrage and withering criticism of the judge concerned. Whilst opinions on the issue are diverse, Shipley and Arrigo (2012, p. 42) sum up the various arguments by noting that, at present, none of the existing risk assessment tools are able to give highly accurate predictions of future risk. "Our field's ability to accurately predict who will engage in future violence is still limited", they write (*ibid*, p. 35). Thus, whilst those tools may arguably be more accurate than clinical prediction, much remains unclear, or at least unproven, regarding their usefulness to the

assessment process. What is clear, however, is that the accuracy of actuarial instruments is overestimated by those who use them. Another thing that is apparent is that violence risk assessment, in its present form, produces a number of unjust outcomes, which we outline below.

THE CONSEQUENCES OF FALSE-POSITIVES

While risk-averse policies may reduce the minority of cases where tragic consequences follow, they also have the converse effect of keeping individuals in confinement who in fact present no real threat to the community. Such an outcome, known as a false positive, is unfair to individuals and damages the credibility of the system. Although legal authorities usually justify a high number of false positives through the claim that they serve “the wider good” (Large and Nielssen, 2011, p. 416), false positives can also negatively impact on the mental health and reformative progress of a criminalized person.

Being classified as having a high risk of future violence – erroneously or not - has a number of negative effects. A prisoner who is assessed as presenting a high risk of future violence will almost certainly be denied parole (Petersilia, 2003, p.190) and will retain a higher security rating than one who is not. Thus, overly-cautious risk-assessments result in longer sentences, higher levels of deprivation, and inevitably, burgeoning prison populations. If the assessment is false, the second guiding principle of the *Parole Act 2002* (s.7(2)(a) “that offenders must not be detained any longer than is consistent with the safety of the community”, is frustrated. From the point of view of the criminalized, being held for longer in unnecessarily harsh conditions may engender a loss of faith, and a negative attitude toward the classification system, the parole system, and vicariously toward the society which produces them. Anti-social attitudes may thus be reinforced.

The first author of this article, who has so far served 12 years of a life sentence, has witnessed a number of instances where long-term prisoners, in spite of excellent conduct reports, successful completion of required criminogenic programs, and positive recommendations from unit managers, have been denied parole because of high risk-of-violence assessments. The psychological impact of being denied freedom on the basis of criteria that are opaque, and which may seem unjust, is significant. The men become

despondent and cynical, and lose their motivation to prepare for release. Confidence in the competency of psychologists, and trust in the advice of prison managers, is undermined. A growing disdain for ‘the system’ begins to appear, affecting not only the individual’s attitude toward his confinement and his custodians, but also toward the society it represents. Successful post-release adjustment is thereby impaired (Shipley and Arrigo, 2012, p. 40; Szmukler and Rose 2013, p. 134), decreasing the chances of positive future recommendations. The original high risk assessment thus becomes a self-fulfilling prophesy.

Another unfortunate outcome of this anti-rehabilitation, anti-system culture, which often follows an inaccurate risk assessment is that, as noted by Petersilia (2003, p.73), some prisoners will decline even to appear at their parole board hearings, through disillusionment with the process. The outcome for these prisoners is discharge at the very ends of their sentences, with little support from post-release probation authorities. Given that post-parole support and supervision is crucial to community safety, Petersilia (2003, pp.74-75) considers that “the joke is on us”. If prisoners disengage with support agencies by boycotting parole, community safety is jeopardized. In this case, the first guiding principle of the *Parole Act 2002* (s.7(1) – “the paramount consideration ...[is] the safety of the community” – is undermined. The importance of risk assessments that are transparent, fair and accurate is critical.

THE PROBLEM OF CROSS-CULTURAL APPLICABILITY

In the international literature, the problem of applying uniform standards cross-culturally is well recognized. This difficulty applies not only to risk-assessment, but also to related areas such as security classification and parole determination. Martel and colleagues (2011), for example, argue that in Canada markers such as substance abuse, community origins, lack of healthy role models, a background of sexual and psychological abuse and low educational levels are high in Canadian Aboriginal communities and automatically mark such persons intrinsically as high risk. Culture-specific risk factors such as a lack of Aboriginal spiritual values and cultural identity are missing from traditional assessment criteria. Moreover, as Andersen (1999) points out, determining precisely what ‘traditional’ cultural practices

and processes were employed, and in which groups, is far from clear. There was in fact huge cultural variety between different tribal groups in pre-colonial Canada. How to accommodate them fairly and accurately in correctional practice is unclear. Moreover, it is not only Indigenous value systems that are at stake. In a field study of Canadian parole hearings, Silverstein (2005) examines some of the practical and ethical problems facing parole boards as they try to grapple with and accommodate multicultural differences – in this case the variation between Aboriginal, Hispanic and Asian prisoners' responsabilization in parole hearings.

In Australia, similar problems are found. Shepherd (2014) and Jones and colleagues (2002), for example, argue for culturally relevant strategies in relation to Indigenous violence prevention programs. Some of the strategies employed in Australia are considered by the authors above, as well as Barclay and Scott (2013). Australia's situation is compared and contrasted with New Zealand's in Newbold and Jeffries (2010).

In a multi-cultural country like New Zealand, where approximately a third of the population is non-European (primarily Maori, Asian and Pacific peoples), cultural factors are an important consideration for the risk assessment process. The largest non-European group is the native New Zealanders, the Maori, which comprise about 15 percent of the total population. As the nation's original inhabitants, Maori have special status in New Zealand, which is recognized in law. Constituting a large social underclass, Maori are also hugely overrepresented in New Zealand's crime statistics (see Newbold, 2000; Newbold and Jeffries, 2010), and constitute around 50 percent of the prison population.

Durie (cited in Coombes and Te Hiwi, 2007, p. 386) notes that Maori often have to "liv[e] with the bad results of the cultural presumptions of Western professionals". This is a well-recognized problem in New Zealand and the Department of Corrections has taken extensive steps to provide for Maori prisoners' needs. It also recognizes that programs based on white European models may be inappropriate for Maori and it has endeavored to create systems that respond to Indigenous ethnic differences. Special needs-assessment procedures have been developed for Maori, and there is a strategy aimed specifically at reducing Maori reoffending. Maori cultural advisers are employed at all major prisons and use of Maori language is encouraged in the workplace. In addition, the Department of Corrections operates dedicated Maori Focus Units within five of its 19 prisons. In

comparison with Australia and Canada, however, where Aboriginal populations were culturally diverse with numerous mutually unintelligible languages, traditional Maori culture was relatively uniform and linguistic differences between the regions were not great. So in New Zealand, the problem of indigenization of assessments is simplified.

Notwithstanding this, risk assessment as it currently operates is out of alignment with the cultural difference and Maori perspectives used elsewhere in the corrections system. This makes it difficult to accurately assess Maori risks of future violence. A primary reason is that although specific Maori criminogenic needs are recognized and catered for, the actuarial instruments used in risk assessment are not normed on populations that are culturally representative of Maori (Coombes and Te Hiwi, 2007, p.386). Instead, they are usually normed on white, middle-class populations, amongst which issues like lifestyle violence and alcoholism are far less prominent. When Maori are found to score highly on standardized risk factors, they are therefore deemed to be high risk. Little consideration is given to the fact that certain risk factors tend to be high in many minority groups, largely due to the effects of marginalization, low socio-economic status and high levels of childhood abuse and neglect. They do not necessarily indicate an individual propensity to violence. An additional problem is that in many cases, actuarial instruments are based on unalterable static factors (ibid, p. 383), leaving an individual with a stigmatizing label they are unable to change. Since many of these static factors are found in Maori risk assessments, Maori find themselves burdened with higher security rankings and longer prison time based on criteria that by their nature, cannot change. In spite of the New Zealand Psychological Society's stated ethical obligation to embrace diversity and promote community well-being (Coombes and Te Hiwi, 2007), a form of double marginalization takes place.

THE IMPACT OF PROFESSIONALS

We have contended that risk assessment produces a number of unjust outcomes for those subjected to it, but what of the professionals who do those assessments? There is a body of literature that argues that they too are affected as are the organizations they work for. Arrigo (2013, p. 11), for example, says that "forces of captivity" entrap all who have a stake in the risk assessment process. In regard to psychologists, those forces may

be seen within the culture of accountability that pervades the process. For example, Langan (2010, p. 93) notes that risk assessment professionals are expected to minimize public fears by identifying the potentially violent. Those professionals are held accountable by politicians, who are held to account by an ever-fearful public (Szmukler and Rose, 2013, p. 134). In 2003, for example, New Zealand psychiatrist Dr. Peter Fisher was fined \$86,000, suspended for six months, and ordered to undergo retraining, for releasing a dangerous mental health patient from custody who stabbed his mother to death the next day. Whether assessment is subjective or actuarial, no process can be 100 percent accurate.

Cases like this, and that of Christie Marceau mentioned above, create a heavy burden for judges and health professionals. The objective inflexibility of risk assessment forces some to assign high risk categories to the criminalized who they do not believe present a real risk, while others may choose to ignore objective indicators and act upon their own judgement. In Dr Fisher's case, this had tragic consequences. The poor predictive power of risk assessment can lead to other negative outcomes for workers. In the United States, the monitoring and regulation of assessment work by a risk-averse employer has been found to contribute to both defensive practice (Langan, 2010, p. 93) and to deliberate, though subtle, deception by employees (Szmukler and Rose, 2013, p. 135). The impact of this "risk colonization" (ibid, p. 134) of the work environment raises many concerns for the psychological profession, both in terms of ethics and in terms of the ability of psychologists to make unbiased assessments when functioning under intense external and internal pressures. Health care professionals must balance the requirement of public safety against the fundamental ethical principle of not causing harm to a client through an inaccurate risk assessment. Balancing client interests against public interests forces the professional to practice within a complex and constrained psycho-legal environment (Shiple and Arrigo, 2012). Arrigo (2013, p. 3) suggests that until risk assessment moves to an approach that does not marginalize people, there will be no overcoming the forces that hold the government, the public, the professionals, the criminalized, and thus society, captive. It is our opinion that, until those forces are overcome, psychologists and violence risk assessors will continue to be subjected to the stress that accompanies being held responsible for the community's safety.

A primary reason for risk assessment being counter-productive to just outcomes concerns the driving force behind it. Risk assessment is largely a response to public fears about the extreme, but rare, instances of violent reoffending that sometimes occur. In New Zealand, a number of highly publicized cases where persons convicted of violent offenses killed whilst on parole, sensitized the public to the danger of releasing violent men without proper monitoring. Examples include Taffy Hotene, who raped and murdered a young woman in 2000; William Bell, who murdered three pensioners in 2001; and Graeme Burton, who killed one person and wounded four others while on parole for murder in 2007. Incidents such as these gave rise to what Szmukler and Rose (2013, p. 126) term a “moral outrage”, in which people demanded to know how the incidents happened and, more importantly, how they could have been prevented. Violence risk assessment has been one of the government’s main responses to that outrage. It has become a major component of parole board deliberations concerning the interests of public safety (Szmukler and Rose, 2013, pp. 126-127).

Thus, arguably, we can say that the primary focus of risk assessment is not prisoner welfare, but the protection of the community. The assessment process allows correctional and parole authorities to demonstrate an awareness of accredited scientific risk-management practices, while at the same time reducing the concern that accompanies the release of high profile prisoners. Risk assessment is used as much as a practical tool for parole determination and release conditions, as it is a means of assuaging public timorousness (Szmuckler and Rose, 2013, p. 131).

CONCLUSION

We have seen that coincidental with rises in levels of incarceration for those convicted of violent offenses, the use of clinical assessments of risk gave way to actuarial measures in the 1990s. Actuarial measures have the advantage of removing subjectivity and guesswork from the risk assessment process, but they have the disadvantage of being inflexible and not responsive to subtle differences or changes in the circumstances of the criminalized. In recent years, an emphasis on community safety over client welfare has led to a more conservative approach being taken in relation to assessments which disadvantages a large number of persons in conflict with the law. The extra protection that this approach offers the community

is minor. Actuarial methods are relatively crude, and struggle to account for ethnic or other individual differences, or to detect subtle changes in an individual's behaviour or outlook. A consequence of this is larger numbers of prisoners being held in high security for longer than is realistically warranted. Such a situation breeds cynicism within prisoners and staff alike. Negative attitudes and low confidence in the efficacy of classification and prison parole systems adversely impact on a person's chances of successful post-release adjustment.

ENDNOTES

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