THE RELEASE OF SERIOUS VIOLENT OFFENDERS AND COMMUNITY SAFETY

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The question of the release of serious violent offenders and community safety raises many of the same issues which have been canvassed earlier. Thus the response of a community to persons classified as serious violent offenders depends upon how a community defines dangerousness, a community's attitude to preventative detention, the resources of that community, and the effectiveness of programs to modify the behaviour of serious violent offenders in an appropriate way. In preparing this paper we came to the realisation that the same issues canvassed in the other papers were pertinent. We deliberated for a considerable time in an attempt to focus on different issues. Ultimately we abandoned this venture and decided to identify, from our perspective, the basic issues in detaining and then releasing persons who have committed and/or may commit violent offences, at the risk of being repetitive.

We have identified five issues which are relevant to the release of serious violent offenders. The first issue concerns the principle that a community has the right to protect itself and its members from serious harm from both 'outsiders' and other members of the community. The second issue involves identifying those harms which are serious. The third issue concerns the
process of identifying persons who are likely to commit those serious harms. The fourth issue deals with the effectiveness of the community's response to the perceived threat of serious harm. The fifth and final issue is the validity of criteria to be employed in assessing the suitability for release of those persons detained as 'dangerous' persons.

Protection of the Community

Social scientists have established that one reason why individuals form groups is to enable those individuals, working in cooperation with one another, to achieve goals which would not be attainable individually. One basic need of persons is the need for safety and security (for example, Lorenz 1966; Maslow 1971; Murray 1938). By joining a group, the members of that group can protect one another from harm from 'outsiders' (Moreland 1987). Indeed, the phenomenon of forming groups for protection from external threats is not restricted to the human species. Group membership, however, requires that the individual surrenders some of his or her freedoms. The activities of the individual cannot be inconsistent with the goals of the group.

To minimise the occurrence of individual activities which may threaten the existence of a community, the community creates rules and laws to regulate the activities of its members. If these rules or laws are violated, sanctions against the violator are initiated. The severity of sanctions is likely to vary with the perceived threat of the offending activity to the community. To allow community members to inflict injury on one another would negate one of the fundamental reasons for the existence of the community, namely, the protection of its members. Thus, activities which cause physical harm to members of the community are likely to be proscribed by most communities. Further, communities will invoke whatever sanctions are perceived as necessary to deter or prevent community members from committing the threatening activity. Most commonly punishment is meted out to the offender for having committed the proscribed act, particularly when it is not the first time that the offender has committed that act.

Punishment for violations of laws is seen as having a specific and general deterrent effect. The punishment deters the offender from committing the proscribed act again and others are deterred by the knowledge that they will receive similar punishment if they commit a similar act. However, for the most part, sanctions invoked by the criminal justice system have been for acts already committed rather than acts which may be attempted in the future.

It is clearly in the interest of the community, all other things being equal, to anticipate harmful acts and to prevent the occurrence of these acts. One way of endeavouring to prevent the occurrence of harmful acts is by identifying the environmental factors which may be causally linked to harmful acts and eliminating these factors. This approach may involve major restructuring of the community and tends not to be a preferred option. A second approach is to identify those individuals who are likely to engage in harmful acts and then take whatever action is necessary to ensure those persons will not be able to commit those acts. This latter approach is often the preferred option because it requires little or no effort on behalf of most members of the community. This type of
preventative action has often been achieved through civil commitment. Such a community response to persons who are believed likely to engage in harmful activities is not new. Monahan (1988) quotes Brydall, writing in 1700, as attributing civil commitment to the 'old Roman law' which provided for 'Guards or keepers (to) be appointed for madmen not only to look that they do not mischief to themselves, but also that they be not destructive to others'. The same end may be, and indeed often has been, achieved through the criminal law by 'dangerous' persons legislation.

The principle that a community has the right, and indeed the responsibility, to protect its members from harm, particularly physical harm is one which would appear to be widely accepted today. It is a principle that appears to be operative in many societies and it is one which we also accept. However, in practice its implementation is fraught with difficulties.

**Classification of Harms**

Harms suffered by members of the community as a result of the activities of another member of the community can vary enormously, both in type and extent. Thus, for example, the harm may be physical injury to someone's body, it may be emotional injury, it may be damage to someone's property, or it may be a violation of someone's civil liberties. The extent of harms can also vary from the trivial through to the severe, even life-threatening.

Although emotional harm and harm to one's civil liberties may often constitute graver harm than many physical harms, it is the physical harms which appear to be the focus of communities' concerns. For this reason, in the discussion which follows we shall restrict our observations to serious physical harms. Nevertheless, it is clear that not all activities which lead to serious physical harm attract ongoing community opprobrium. Until recently, our community has had a tolerant attitude to culpable driving. Even today harm caused to countless persons in many communities by industrial pollution and occupational hazards generates relatively little concern, a state of affairs which is reflected either by the absence of sanctions or the exaction of paltry penalties for breach of pollution and occupational safety laws. This differential response by communities to harms inflicted on a readily identifiable victim by a particular person or persons compared with harms suffered by masses of difficult-to-identify persons by institutions or their representatives may reflect the less obvious connection of harm suffered by individuals from pollution and occupational hazards, or it may reflect that costs to the community at large in initiating sanctions is less when an individual is the offender rather than a powerful amorphous institution.

**Identification of Dangerous Persons**

Persons who are perceived as likely to inflict serious injury on other persons are categorised as being dangerous persons. The identification of dangerous persons is a complex matter and is fraught with difficulties. Presently there is a dearth of theories of dangerousness to guide the identification of dangerous persons. Further, it has been shown that the accuracy of prediction of
dangerousness by mental health professionals may be even less accurate than others (Ziskin & Faust 1988, p. 413).

Studies of predictions about the occurrence of harmful behaviour of violent offenders have found predictions to be accurate 20−30 per cent of the times. Monohan (1981) in his review of the literature on prediction of dangerousness concluded that the error rate in predicting dangerousness ranged from 54 per cent to 94 per cent with the majority of cases having an error rate of 80 per cent or more. Others have found an even higher error rate. In the Baxstrom study (Steadman 1973, pp. 421–2) 967 persons had been assessed by psychiatrists as being dangerous and had been confined to maximum security mental hospitals. In 1966 the New York courts ordered a release of all these patients either into the community or into ordinary hospitals, on the basis that the civil liberties of these persons were being violated by being held in the security mental hospitals. Approximately one-third of these patients were released into the community. In the four years which followed, Steadman found that only 3 per cent of these former inmates of the maximum security mental hospitals had been detected engaging in violent behaviour. Thus, in this particular study, even allowing for the fact that some violent behaviour was undetected, the psychiatrists were wrong nearly every time in their assessment of these persons as being dangerous.

Clanon and Jew (1985) examined the claim that stress-prone persons were more likely to be violent than persons not stress-prone. Parole and arrest records of 1000 potentially violent men were followed up from two to ten years. Clanon and Jew found that reactions to stressful situations were not useful predictors of violent behaviour.

The main finding to emerge from a large number of studies is that prediction of dangerousness is little better than chance (Ziskin & Faust 1988, for review). Given the low base rate of violent behaviour, the most accurate prediction is that no one will be dangerous (Megargee 1976). Predictions about events with low base rates invariably produce large 'false positive' errors. Thus the majority of persons predicted as likely to engage in future dangerous behaviour will not display such behaviour.

Some of the sources of errors in predicting dangerous behaviour have been identified. There is a tendency to predict dangerous behaviour on the basis of available data without considering the prior probabilities and the reliability of the available data. The more easily the violent behaviour can be recalled, the less likely the base rate will be considered. Violent behaviour is often seen as a pathological trait stemming from the individual and so a stable and consistent characteristic or personality trait. Therefore this behaviour can be perceived as fairly typical of the person and so likely to occur again. Situational or interpersonal events which may have triggered off the violent behaviour are invariably overlooked. This tendency to attribute undesirable behaviours to internal dispositions rather than to situational factors has been well documented by social psychologists and has been called the fundamental attribution error (Ross 1977).
Intervention Options and Their Effectiveness

A wide range of intervention options exist and are employed by communities in their attempts to modify the behaviour of persons who have been institutionalised for their violence, either through the criminal justice system or by civil commitment. These options include restriction of the individual's liberties, perhaps indefinitely, by continued detention in prison or mental institution, either with or without other interventions such as chemotherapy, behaviour modification programs, and a range of other psychotherapy programs.

Continued detention of the individual because he or she is assessed as being dangerous without the implementation of other programs, to control the violence of the individual is tacit acknowledgment that the principal and perhaps only purpose served by detention is to keep the individual out of circulation. Aside from infirmity of old age, there can be little confidence that the person assessed as dangerous will be any less dangerous at the end of a period of preventative detention. If imprisonment for a specific term for committing a particular offence does not effectively reduce the violent behaviour of serious violent offenders the basis for continued detention beyond the specified term must be questionable. Indeed, there is good reason to believe that the person will be more dangerous.

Preventative detention is likely to result in the dangerous person placed for an extended period in a violent environment, an environment which may positively reinforce violent behaviour. Preventative detention may exacerbate any feelings of resentment towards the community or particular members of the community held by the detained person. Thus while preventative detention by itself may be less expensive money-wise and effort-wise in the short term, in the long term it may be counterproductive if its purpose is to make the community a safer place.

Chemotherapy programs have been found to be effective in reducing the incidence of violent acts such as assaults and aberrant sexual behaviours for some individuals. Putting aside considerations of the serious side-effects of some drugs and the violations of human rights when the serious violent offender may be coerced into participating in a drug program, a major problem with chemotherapy is to ensure the continued adherence to the drug regime by the serious violent offender after his or her release from detention. Unless an effective means of monitoring adherence to the prescribed regime by offenders is available there can be no assurance that offenders are taking the drug as prescribed. To the extent that chemotherapy programs depend on the self-discipline of the offender, once the offender has been released from custody they will frequently fail. Failure to comply with the prescribed regime means these offenders are likely to engage in violent behaviour again and put at risk the safety of other members of the community.

A variety of psychotherapy programs are available and have been employed to reduce the occurrence of violence by offenders. The psychotherapies available range from psychoanalysis, to rational-emotional therapy, to insight therapy, to behaviour modification. For any of these programs to be effective the offender must be willing to participate and must have the desire to change his or her behaviour. Willing participation and
desire to change would appear to rule out psychotherapy as a viable option for many serious violent offenders as many lack the motivation to change.

A survey of the literature on violence indicates a multiplicity of motivations, antecedents, and situational factors linked to violence (Geen & Donnerstein 1983). Given this state of affairs no single approach is likely to be successful for all violent offenders. Nor for that matter is one single approach likely to be successful for any one offender. Thus imprisonment and commitment are by themselves likely to be ineffective. However, imprisonment and commitment do give the opportunity to involve the offender in chemotherapy and psychotherapy programs which can be continued after the offender has been released from detention. Nonetheless, even multiple forms of intervention may have little effect on many violent offenders.

Validity of Criteria in Assessing Suitability for Release

Unless there are valid criteria for assessing the suitability of detained persons for release the community is either faced with the alternative of detaining a detained person indefinitely or releasing a detained person who may still be considered dangerous. The first alternative would be a travesty of human rights and surely repugnant to a civilised society. The second alternative would be an exercise in futility. Thus, before any preventative program of detention is introduced valid criteria for releasing detainees must be available.

An analysis of the likely scenario suggests the obtaining of valid criteria are unlikely. Given that preventative detention has been imposed on an individual based on his or her past violence, then the only additional information that is available to a tribunal assessing the suitability for release of a detainee is his or her behaviour while in detention. To base a decision about the suitability of a detainee on his or her institutional behaviour would appear to be highly dubious. On the one hand the structured environment of a prison or mental institution may remove many of the situational stresses and pressures present in everyday life which trigger off violent behaviour in some persons. On the other hand, for other persons the only way they are able to survive a violent environment such as a prison or a mental institution is to respond aggressively and violently. While their behaviour may be effective in surviving the hostile environment of the institution it will almost inevitably mean they are deemed unsuitable for release.

In essence, the community is faced with the same problems and issues when release is considered as when making a decision to detain someone on the basis that he or she is likely to be dangerous. There are no psychological tests which can be said to measure reliably and validly a detainee's suitability for release. No extensive comparisons on test profiles of dangerous and non-dangerous persons have been reported. Given that most tests are poor in discriminating between prison and non-prison populations it is hardly surprising that they are unable to distinguish between normal and the ill-defined category of dangerous persons. As has already been noted, accuracy in prediction is little better than chance.
Thus a tribunal is placed in a parlous position when it is required to determine whether or not a person deemed as a dangerous person should be released. Apart from the information that led to that person being detained the only additional information such as behavioural reports from the custodial staff, clinical reports from psychologists and psychiatrists, available to the tribunal is of questionable validity. In the absence of a clear and unambiguous assessment from the professionals that the detainee is or is not suitable for release the most appropriate decision would be to release the individual (Megargee 1976). However, it is more likely that the tribunal will err on the conservative side. In the event of a released detainee committing another act of violence the decision by the tribunal to release that person will be the subject of considerable public and political criticism and even censure. However, assessing a person who is non-dangerous as dangerous seldom if ever receives public attention, nobody but the individual, his family and the tribunal know of his plight, nobody but the individual and his family seem to care.

Conclusion

The issue which we were asked to address was the release of serious violent offenders and the community safety. We have argued that in principle a community has the right to protect its members by detaining persons who will be violent to others and that these persons should not be released until they no longer pose a threat. However, until accurate and valid measures of predicting violent behaviour are developed and unless effective treatment and management programs exist there can be no justification for preventative detention. The goal of totally eliminating all violence to members of the community can never be attained. The cost to the community of detaining anyone who is alleged to be dangerous in terms of money to build detaining institutions and in terms of violation of human rights, is a cost that no community can afford to pay.

References


