

# *Thinking About New Directions in Juvenile Justice: Risk and Cognitive Behaviourism*

*Emilie Priday\**

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The policy and practice of juvenile justice is currently on shifting terrain as the familiar landscapes of welfarism and justice appear to be subsumed by the less certain terrain of 'risk'. From identifying 'risk factors', to quantification of 'risk assessment', to the preoccupation with 'risk management', the discourse of risk has become central to the policy and practice rhetoric of juvenile justice. Just as risk has come to dominate the juvenile justice landscape, so too have the principles of 'effective practice' based on the 'what works' literature. This essay seeks to examine some of the implications of these discourses in relation to policy and practice within the NSW juvenile justice context.

This analysis will be informed by the growing literature around 'risk society' and more specifically by the work of Simon and Feeley and their conceptions of 'new penology' (1992) and 'actuarial justice' (1994). Whilst actuarial justice has been orientated towards adult offending populations, this paper will seek to assess the extent to which these ideas and discourses apply to the juvenile justice sphere and contextualise them within more traditional, but competing welfare and justice models of intervention.

As it is not within the scope of this essay to comprehensively address the many facets of intervention in juvenile justice, specific reference will be made to the Youth Level Service Case Management Inventory Australian Adaptation (YLS/CMI-AA) and the Reasoning and Rehabilitation (R&R) program as illustrative of the wider concerns of this shift. By critically discussing the application of these interventions this paper will challenge the apolitical and 'neutral' status that risk assessment is assigned. This discussion will make visible the range of power/knowledge relations that operate within this risk technology and argue that conceptualisations of risk put forth by authors dealing with adult offending populations, such as Feeley and Simon, only tell half the story in relation to way young offenders are constructed and the intervention that they receive. Instead, this essay will begin to open up a space where the moral, political and individualising effects on young offenders can be explored.

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\* Master of Criminology student at the University of Sydney. Email correspondence to <emilie.priday@student.usyd.edu.au>.

## From Welfare to Justice to Risk: Theoretical Models and Juvenile Justice

Risk discourses and principles in relation to juvenile offending have not arisen within a vacuum; rather they are contingent to social, economic and political conditions. For this reason, it is important to evaluate them within an awareness of other models of juvenile justice intervention to understand their evolution and current political saliency. Similarly, it would be foolish to regard these models or principles as absolute in practice. However, they do hold significance and have been; 'invoked in order to conceptualise changes within the system and to measure the system against principles' (Cunneen & White 2002:117). This discussion will cite some of the changes that have occurred in the field of theory to begin to analyse the complex and sometimes contradictory effect that it has had on the realm of policy and practice.

From the 1980s onwards there appears to be a growing concern in the criminological and sociological literature to explain the shift away from a model of welfarism in the governance of populations (Pratt 1999:141). The welfare model in relation to juvenile offenders saw a crucial role for the state to not only 'fix' the offender by privileging rehabilitation in the sentencing process, but also make visible the number of socio-economic factors that impacted on the offending behaviour.

However, from the 1960s on, this model of intervention came under attack from a diverse range of interests, with criticisms ranging from institutional abuse, lack of due process rights for offenders, the apparent failure of the rehabilitative ideal to calls for a 'just deserts' approach to offending (Cunneen & White 2002:118). Consequently, in the 1980s a raft of reform was implemented which shifted towards a model of intervention more orientated to a justice approach. Some characteristics of the justice approach are a decreased emphasis on offender's rehabilitative needs, an increase in the amount of responsibility that the young person must take for their actions, and a 'just deserts approach to sentencing'. Justice models of juvenile justice can also be seen as indicative of the themes of neoliberalism.

Within this climate of change new explanations began to challenge the dichotomies of the welfare/justice nexus. Characteristic of this is Ulrich Beck's conceptualisation of the 'risk society' as a society which becomes organised around concepts of risk rather than traditional notions of class. This intersects with crime and crime control by establishing a regime of knowledge around risk where, 'problems are being governed in terms of statistical aggregates, populations and distributions rather than individuals' (O Malley 1998:xi).

The project for crime and crime control is then to map which groups of society are most 'risky' to predict further crime, rather than dealing with crime at an individual or transformative level.

Concepts of the risk society have been expanded by Simon and Feeley in their work around 'new penology' which they later reframed as 'actuarial justice'. Simon and Feeley argue that there has been a break within criminal justice discourses and operations, which has moved away from the individual as the 'unit of analysis' (Simon & Feeley 1992:451) Simon and Feeley argue that the 'new penology' is:

markedly less concerned with responsibility, fault, sensibility, diagnosis, or intervention and treatment of the individual offender. Rather it is concerned with techniques to identify, classify and manage groupings sorted by dangerous. The task is managerial not transformative (Simon & Feeley 1992:452).

Contextually, this reflects the proliferation of ‘nothing works’ literature in the 1970s and early 1980s led by Martinson with his influential meta analysis of over 230 separate studies around offender interventions. At the end of the study, Martinson came to the sweeping conclusion that ‘nothing works’ to reduce offending and ultimately questioned the value of any specific type of intervention with offenders (Kendall 2002:188). Whilst this view has certainly been challenged since and has resulted in a more positive literature around ‘what works’ it nonetheless made a significant impact on the policy makers around the world already concerned with the growing costs of intervention with offenders, the pressures of economic rationalism and more broadly neoliberalism.

The intersection with neoliberalism is an important factor in understanding how actuarial justice has come about. Just as the welfare model of juvenile justice was informed by ideas of the welfare state to ‘encourage ... the mutuality of social risk and the encouragement of social solidarity’ (Parton 1996:99), so too neoliberalism explains the conditions that have lead to this theoretical shift. In contrast, neoliberalism privileges the:

the enterprising activities and choices of autonomous entities ... striving to maximise its own advantage... by means of individual and local calculations of strategies and tactics, costs and benefits (Rose in Pratt 1999:142).

Neoliberalism moves away from state and collective responsibility, to individual responsibility. The individual has become responsible for managing risks in a range of social spheres such as education, employment, health and income security. All social actors are conceptualised as having the same responsibilities and capacities to manage these risks, despite the range of disadvantages they may face.

It is this climate of economic rationalism, neoliberalism and the drive for cost effective and efficient ways of dealing with offenders that Simon and Feeley argue has brought about the specific techniques of actuarial justice. Whilst they discuss a broad range of techniques such as preventative detention, incapacitation, privatisation of corrections, the increased use of community based options for less serious offenders, what is common to all of these techniques is the central role of risk assessment in regulating and managing groups in the most cost effective way.

Risk assessment has become a statistical, actuarial process that attempts to predict the risk of the individual reoffending by comparing salient characteristics of the offender against an aggregated norm to plot their level of risk. Garland summarises the rationale of actuarial decision making as:

detailed statistical enumerations and calculations of the rates at which events happen—storms at sea, accidents in the work place, unemployment, ill health, death. Over time, the accumulation of large databases, and a predictive knowledge of risk probabilities, has produced a new way of reasoning that has significant social implications (1997:181).

This pseudos-scientific measure of risk replaces clinical, individualised judgement and as it will be argued, obscures the political, moral and cultural dimensions of this power/knowledge dynamic.

## **From Theory to Practice: Youth Level of Service/Case Management Inventory**

In 2002 the NSW Department of Juvenile Justice joined the growing international bandwagon of risk assessment sweeping the corrections landscape. For the most part, this movement originated from the United States and Canada and was more widely developed for adult offending populations (Thompson & Putnins 2003:325). However, research primarily from Canada strongly suggested that the same methods and assessment tools

could be adapted to suit juvenile offenders, leading to the development of the Youth Level of Service/Case Management Inventory (YLS/CMI) (Thompson & Putnins 2003:328). The Department of Juvenile Justice commissioned an adaptation of the YLS/CMI and implemented the YLSI/CMI Australian Adaptation (YLS/CMI-AA) across the department. From 2002 it was mandatory for all young people who received either a community based supervision order or control order to be assessed using the YLS/CMI-AA to determine their level of risk of general recidivism and subsequent level of intervention (Thompson & Putnins 2003:328).

The YLS/CMI-AA assesses the level of risk by looking at the amount and type of risk factors that are inherent in each individual by using statistical methods to plot them against others to create groupings of risk. These risk factors are classified as 'static' or 'dynamic'. Static risk factors relate to those that can't be changed, for example, gender, age, ethnicity, offending history and other historical or background factors (Thompson 2003:329). Dynamic risk factors are those which can be altered through intervention and include; family/living circumstances, education/employment, peer relationships, substance use, recreation, personality/behaviour and attitudes/orientation (Thompson 2003:237). These dynamic risk factors are then turned into 'criminogenic needs'. In other words, these 'needs' must be met if there is to be any reduction in recidivism.

The YLS/CMI-AA pays attention to 'protective factors', characteristics of the young person or their situation which may block 'pathways to delinquency' (Thompson & Putnins 2003:326). Protective factors are assessed around individual disposition and competencies, family environment and external support systems. However, the protective factors figure with much less importance in the YLS/CMI-AA than risk factors, with only four questions around these areas.

Thus the YLS/CMI-AA assigns a level of risk of recidivism (either low, medium or high) but also the type and level of intervention which they should receive. The development of these risk assessments has been greatly influenced by the work of Andrews and Bonta and their influential text, 'The Psychology of Criminal Conduct' published in 1998. They argue that the 'risk principle' dictates that there should be a correlation between the level of risk and the amount of intervention an individual receives. For example, an individual with a high level of risk should receive intensive intervention whilst a low risk individual should receive less (Ward & Stewart 2003:127). Whilst the primary rationale for this is to avoid 'contamination' of individuals with lower levels of risk, it also has clear cost saving benefits (Thompson & Putnins 2003:326).

At this stage it is important to note that the implementation of the YLS/CMI-AA is only in the early stages. Currently, YLS/CMI-AA risk categorisations do not register in Background Reports to the Children's Court which give client information and suggest caseplan options (although a less formal discourse of risk is certainly pervasive). However, if the experience of Canada and the United States (Pate 2002:166) is any guide, it would appear likely that the YLS/CMI-AA and its associated methods will figure more prominently in the way juvenile offenders interact with the Juvenile justice system.

## **The Fiction of Objectivity and the Construction of Risk**

Perhaps the most striking feature of the literature around risk assessment is the absolute confidence in these actuarial methods to deliver more objective, standardised and efficient results. Proponents of risk assessments are decidedly critical of the lack of uniformity and use of discretion in assessment processes that do not offer a statistical basis. Janes Bonta goes as far as to call these methods 'legally, ethically, and practically unacceptable' (Bonta

cited in Kempf-Leonard & Peterson 2000:79). There is certainly some merit in critiquing discretionary power in relation to juvenile offenders, however, it seems that they have not turned this critical gaze upon their own work.

While 'the language of risk gives the impression of being objective, calculable and scientific' (Hannah-Moffat 1999:80) there is still a great deal of scope for practitioners to apply these risk assessment instruments in a very subjective way, calling upon their own moral judgements (Pate 2002:170). Some items in the YLS/CMI-AA are based in observable fact, such as prior and current offending history, whilst others ask the practitioner to make quite clinical and moral judgement about a young person and their situation. This critique does not seek to argue that such clinical and subjective assessment is necessarily a negative effect, however, it does problematise the supposed objectivity of risk assessments.

Nonetheless, proponents of risk assessments argue that risk factors are objective categories and argue that research around the validity of tools such as the YLS/CMI-AA supports this proposition (Thompson & Putnins 2003:325). This preoccupation with actuarial methods takes certain social categories for granted and fails to acknowledge the socially, politically and historically contingent categories of risk. By returning to the way risk factors, which provide the basis for a level of risk classification, are developed in instruments such as the YLS/CMI-AA, we can see that they are inherently linked to societal norms (Hannah-Moffat 1999:88). Critiques from theorists such as Foucault have led us to question the way norms come about. That is, norms are inherently caught up in a power/knowledge complex which seeks to 'fabricate' what is 'delinquent' to create what is then 'normal'. Thus the normalisation process reflects the way power interests of the dominant groups in society and become institutionalised through discourses that permeate the way society works (Foucault 1977).

Cunneen and White offer a pertinent example of this, critiquing the way 'absent father, large family, long term parental unemployment' (Cunneen & White 2002:88) are constituted as significant risk factors without examining the social, economic and political context that brings these issues to the fore. Consequently:

we are left with an apparently scientific picture that children from middle class, home-owning nuclear family of the dominant culture are quintessentially law-abiding, and that all those who do not fit this stereotype are potentially delinquent (Cunneen & White 2002:88).

The YLS/CMI-AA can be critiqued along similar lines. For instance, one item specifically asks, 'could the young person make better use of their time?' This implies that young people who are not employed, not attending school, who do not participate in any formal recreational activities are somehow not making the 'correct' use of their time and by implication are at risk of becoming involved in offending behaviour. This understanding fails to conceptualise the structural influences on young people, such as the lack of employment opportunities and other suitable vocational or education programs (Cunneen & White 2002:152). This approach begins to reduce understandings of young people to the individual choices that they make, rather than considering these actions within the complex web of social, political and economic influences in their lives.

Structural considerations are implicit within all risk technologies yet there is a conscious effort on the part of those who advocate for risk assessments such as the YLSI/CMI-AA to obscure them from our understandings of offenders. Andrews and Bonta warn:

Do not get trapped in arguments with primary prevention advocates who believe that a society-wide focus on unemployment, sexism or racism will eliminate crime' (cited in Kendall 2002:188).

By removing any mention of these aspects from risk assessment there is a conscious effort to depoliticise the creation of risk and privilege an 'objective' assessment of risk. Thus, it is not surprising that there is no specific reference to ethnicity, gender or race in the YLS/CMI-AA, although researchers are at pains to show that their risk instrument is equally valid for all of these different groups (Thompson 2002:7).

One way of explaining why the YLS/CMI-AA and related risk technologies have such a high validity rate, is that they reflect the processes of criminalisation. This is particularly evident for young people from Indigenous Australian backgrounds because risk of recidivism is intrinsically linked to the assessment of prior and current offences (which makes up the most items in the YLS/CMI-AA) (Jones et al 2002:189). A body of research has shown that Indigenous young people are more likely to have a more extensive criminal history and one that begins at a much earlier age (Cunneen & White 2002:161, Chen, Matruggio, Weatherburn & Hua 2005). This can be attributed to the lower level of diversionary options utilised for Indigenous young people by Police, in favour of more punitive measures that ultimately lead to a criminal record (Cunneen & White 2002:170).

Indigenous young people already have the so called objective risk assessment stacked against them. The processes that result in higher levels of risk, do not acknowledge the specific history of colonisation and dispossession of Indigenous Australians and the associated structural barriers they face. By cloaking risk in more general terms and without reference to the above mentioned aspects, assessments run the risk of perpetuating discourses that pathologise Indigenous young people and continue policies of removal but under the guise of the justice system. High risk individuals are more likely to receive intensive supervision within the community and less likely to access programs such as early release from custody.

Another obvious structural gap in our understanding of YLS/CMI-AA, is the way it relates to issues of gender. While it is unclear at this stage what the specific impact will be for girls within juvenile justice, feminist research focused around female adult offending populations raises some concern. Firstly, criticism is levelled at risk assessment technologies for not developing a separate assessment which addresses the needs and realities of women's situations (Hannah-Moffat & Shaw 2001:7). Certainly, this has some bearing on the application of the YLS/CMI-AA to understand issues such as sexual abuse and victimisation which correlate more significantly with female than male involvement in the juvenile justice system (Cunneen & White 2002:228).

Conversely, they also point out the dangers of this approach, arguing that risk assessment with females becomes not only a measure of risk of reoffending but also 'risk to oneself' (Carlen 2002:227). Carlen argues that the discourse of risk is justified:

if a women's needs were such that she was at increased risk of committing crime in the future she should go to prison because, being needy, she posed a risk; and by going to prison she could have her needs addressed and her risk diminished (2002:231).

This creates a slippage between risk and need which ultimately results in the criminalisation of a range of welfare, personal, social or structural needs. Once again, this raises the issue of obscuring the structural and material dynamics of offending behaviour (Carlen 2002:230). This also conforms to an historical understanding of gendered interventions within juvenile justice which have adopted paternalistic modes of intervention to 'protect girls'.

## Implications for Intervention: Beyond Risk Assessment to 'What Works'

The YLS/CMI-AA is not proscriptive in the interventions to manage risk, however, it is inherently linked to models of intervention that stem from the traditions of cognitive behaviouralism (Kendall 2002:189). This connection stems from the influential literature which argues that it has established guidelines for effective practice with offenders. There has been a significant shift in the way offending behaviour is dealt with since Martinson's much quoted research in the 1970's. Out of the 'nothing works' research came the 'what works' research, pioneered by Don Andrews and others in Canada (Kendall 2002:189). Using statistical evaluation and meta analysis, they came to the conclusion that certain interventions could actually reduce recidivism. Following this line of enquiry, McGuire and Priestly were able to glean a number of principles that are common to intervention strategies with offenders that work:

- A cognitive behavioural orientation.
- The risk principle — the level of intervention should match the level of risk presented.
- The need principle — intervention should only target criminogenic needs, i.e. those needs that are statistically linked to recidivism.
- The responsivity principle — that any programs should match the participants learning styles.
- Program integrity — strict adherence to the program manual for the purposes of standardisation and evaluation.

Despite the 'what works' literature reaching near doctrinal status in probation, corrections and juvenile justice agencies in Australia, Canada, United States and Britain (Gorman 2001), there have been questions raised about its validity. Researchers using meta analysis have all used recidivism as the marker of a successful program or intervention with offenders. This is a simplistic way of looking at outcomes. Merrington and Stanley suggest:

success can be measured in a variety of ways which may include complying with a period of supervision, improvements in attitude and motivation, undertaking training or finding a job, controlling use of drugs and improved relationships (Merrington & Stanley 2000:273).

It also fails to recognise improvement, for instance, offenders may have decreased the frequency of their offences or committed less serious offences. These more contingent measure of success, opposed to the black and white recidivism rates tell us more about the realities of the lives of offenders and what really works in providing appropriate intervention.

Feminist authors have also criticised the narrow focus of meta analysis, suggesting that the dependence on quantitative rather than qualitative research methods fails to listen the narratives and experiences of women (Kendall 2002:191). Feminist researchers have over the years conducted a number of studies to show that there are significant differences in what leads women to commit crime and the types of crime they commit. Without a sensitive approach to difference, research is unable to distinguish between male and female pathways to crime and adjust interventions accordingly. Similarly the experiences of difference are also ignored for non white offenders. Simply applying research without considering these factors is a 'one size fits all' approach at best and ethnocentrism at worst.

In the quest for the universal explanation, the specificity of marginalised groups within offending populations is lost. Kendall argues that meta analysis is:

informed by an epistemology rooted in traditional notions of the scientific method which devalues subjectivity, assumes a linear causality and emphasises universality (Kendall 2002:191).

The 'what works' literature has failed to engage with individuals whose lives will ultimately be affected by these new research and policy directions. Like risk assessment, the 'what works' literature presumes objectivity and universality by relying purely on quantitative methods and ignoring the potentially messy contextual issues that qualitative research brings.

Aside from epistemological concerns, questions about the 'what works' literature can be raised around its research design and validity. Gorman notes that the majority of research studies that are used in meta analysis are in fact studies of juvenile offenders in United States in the 1950s and 1960s (Gorman 2001:5). It could be argued that these studies do not reflect contemporary society and trends in managing offending behaviour. Furthermore, most of the studies fail to track participants for a long enough period of time to realistically gauge the effectiveness of reducing recidivism in the long term.

The now almost incontrovertible principle that programmes must have a cognitive behavioural basis if they are to be successful in reducing recidivism also suffers from the same methodological flaws. The more favourable results for cognitive behavioural studies may be accounted for through:

arbitrary, and certainly unchallengeable, grouping of data under a generic behavioural classification whilst data on insight-orientated treatments (eg. individual counselling, family counselling, group counselling) is recorded under separate headings (Gorman 2001:5).

Thus, if all of these insight-based interventions were grouped together, the relative advantages of cognitive behavioural programs may not be so clear. Hannah-Moffat argues that research and evaluations that are not quantitative are simply excluded from meta analysis (Hannah-Moffat in Kendall 2002:191). Similarly, meta analysis can obviously only work by synthesising research that has already been done. It is not surprising given the greater resources and more scientific orientation of psychology that there are more 'scientific evaluations' conducted on programs that fit this paradigm (Bhui 2001:637). There is a wealth of work done by social workers and others outside the discipline of psychology that is not included within these meta analysis (Bhui 2001:638). Thus the picture painted by meta analysis is highly selective, privileging exclusive discourses of psychology.

All of these questions suggest that we should approach the results of meta analysis with caution as they are partial at best. Even some of the authors of these studies heed caution:

Under these circumstances, it is best not to single out any one, or even a few treatment types that yield larger effects and assume that those specific approaches are superior (Lipsey 1995:73).

Similarly, the figures gleaned from meta analysis raise more questions than answers. Perhaps to be expected, there is a huge variation in the rates of reconviction following evidence based or 'what works' principles. Lipsey's study suggests that there may be 20-40% reduction in reconviction following principles of effective practice, United States studies found a 16% reduction in reconviction rates, whilst the Home Office of the United Kingdom predicts only a 4% reduction (Merrington & Stanley 2000:273). There are no



available studies focusing specifically on Australian data. With all of these inconsistencies and uncertainties in mind, the question must be asked how these results have come to be seen by government agencies, academics and some practitioners as so persuasive?

## **Cognitive Behaviouralism and Reasoning and Rehabilitation**

Whatever questions remain around the validity of 'what works' it has been cited in establishing the 'renaissance of rehabilitation' (Hollin 2002:159). However, it will be seen that the models of rehabilitation that have come to the fore bear little similarity to traditional models of rehabilitation and are best explained by other social and political theories. An examination of cognitive behaviouralism and in particular the Reasoning and Rehabilitation Program, will facilitate this discussion. R&R was purchased for implementation with juvenile offenders in NSW in 2003. It is widely held that the R&R program is a taste of things come in the way of cognitive behavioural interventions for juveniles offenders in NSW.

Cognitive behaviouralism is based upon the psychological theories of social learning, cognitive therapy and behaviourism (Kendall 2002:187). Out of these three related areas arose cognitive behaviouralism, which sought to marry these principles in an attempt to construct a more broad ranging therapy. Essentially, it seeks to understand 'complex dynamic relationships between thoughts, feelings and behaviour' (McGuire in Kendall 2002:187). Cognitive behaviouralism, offers an explanation of offending behaviour that posits 'cognitive deficits or distortions' and 'thinking errors' as the causes of crime. For instance, a juvenile offender commits a break and enter as they have thoughts that justify such behaviour and also lack problem solving skills to find other ways to obtain money. Therefore to reduce the risk of reoffending, the task is to teach offenders 'how to think' in prosocial ways. As well as teaching offenders thinking skills there is a strong social learning link in the form of prosocial modelling. Prosocial modelling argues that workers such as youth officers and juvenile justice officers should demonstrate behaviour that conforms to societal expectations. By seeing this behaviour and that it can bring rewards (such as employment, staying out of trouble etc) they are more likely to emulate this behaviour instead of negative or offending behaviour.

The R&R Program is one of the first developed and researched cognitive behavioural programs for offenders. Robert Ross and Elizabeth Fabiano commenced their research around cognitive behavioural programs in 1966 and published the first program manual of R&R in 1986. Since then it has been delivered in a number of countries including Canada, United States, United Kingdom, Australia, New Zealand, Estonia, Spain, Venezuela, Sweden and Denmark. Ross claims that the success of the R&R Program rests on the number of positive evaluations suggesting that it reduces recidivism in a number of offending populations (Ross & Hilborn 2003).

Whilst the evaluations of the R&R Programs may fall into the same traps as the 'what works' literature more generally, it is clear that the R&R Program has been a very lucrative financial endeavour. The success of the R&R Program has paved the way for a succession of similar programs. Gorman ascribes the success of Ross and his colleagues to:

the charisma and marketing expertise of ... entrepreneurs such as Ross... for re-packaging what may be generally unimpressive research outcomes and presenting them in a more favourable light (Gorman 2001:6).

This justifiably cynical critique highlights the triumph of style over substance and indicates a commodification of rehabilitation into something that is marketed at government departments seeking something that will help lift their image as 'doing something about crime'.

Perhaps a less well known aspect in the historical development of the R&R Program is the professional history of Robert Ross. In the 1970's Ross was working as a psychologist at the Grandview Training School for Girls in Ontario. In 1976 an investigation was conducted into the practices at the school, eventually leading to its closure. Ross, along with eight other former employees have since been charged with sexual, physical and emotional abuse against the inmates at Grandview Training School. Ross was acquitted of some charges, some were withdrawn whilst eleven were stayed. The Ontario government has given a formal apology to the ex-inmates in 1999 (Kendall 2002:192). Although the claims of abuse levelled at Ross remain unsubstantiated it highlights the power of marketing to keep such things out of the public domain.

R&R 2 is an 18 hour program, to be delivered in 12 sessions, designed for 13-16 year olds with anti social or offending behaviour. It essentially holds that most offending is a consequence of 'automatic, unskilled thinking' which leads to poor behaviour. The automatic thinking of juvenile offenders is likely to 'reflect antisocial attitudes, beliefs and values' (Ross & Hilborn 2002:14). Thus the aim of the program is to replace 'automatic thinking' with 'skilled thinking' which encompasses prosocial thoughts and problem solving skills (Ross & Hilborn 2002). By the end of the program participants should have turned 'automatic thinking' into 'automatic skilled thinking' and consequently automatic skilled behaviour and feeling. To prevent recidivism, participants are taught:

- Problem solving.
- Consequential thinking.
- Social skills.
- Balance — balancing thoughts, feelings and actions.
- Emotional competence — recognising and managing emotions.
- Values- learning prosocial values.
- Conflict resolution.
- Rational thinking.

To deliver the program, workers are trained and given a manual which has a script that they may follow. Program integrity is stressed, thus reducing the individual worker's ability to creatively deliver the material to the group. All participants are to undergo risk assessment prior to commencing the program. Despite R&R's claims of being responsive to individual learning styles, the program is very similar to a school situation. It is suggested that participants sit at desks, facing the 'trainer' who will then get them to do exercises in their workbooks. Homework is also a crucial aspect of the program. The program is clear that it is not 'therapy' and directly forbids that participants are able to talk about their individual offences or offending behaviour. The group 'trainer' also has a role in demonstrating prosocial modelling and 'correcting' group participants who demonstrate any anti social values or behaviour

### **Reasoning and Rehabilitation: Reasonable Assumptions?**

Just as risk assessments are created within a political and social context, so too are cognitive behavioural programs such as R&R. Perhaps the most powerful assumption of this approach is a denial of structural inequalities and a focus solely on the individual. The individual is constructed as responsible for their offending behaviour, stemming from their poor cognitive skills.

To return to the example of the juvenile offender who commits a break and enter, the cognitive behavioural approach of R&R denies the structural dynamics which may have impacted on the crime. For instance, the young person may be poor; they may have needed the money for food; they may have needed money for drugs; they may have been bored as there are no recreational resources in their neighbourhood; they may have been pressured by peers; they may have been under the influence of drugs or alcohol and so on. Whilst none of these dynamics excuse the offence, they do provide a context which points to interventions which may actually prevent further offending. It seems implausible that learning 'skilled thinking' will provide an offender with any great tangible benefit. Problems such as poverty, substance use and abuse will not simply disappear if a juvenile offender is taught to think differently. In fact, Lipsey has found that programs with an employment focus actually had the highest overall positive effect on reducing recidivism (Vanstone 2000:178).

R&R and cognitive behavioural programs only aim to look at criminogenic needs, that is needs that are believed to impact on criminal behaviour. Whilst this denies structural disadvantages which impact on individuals, it also ignores a number of needs which are not classified as criminogenic. Examples of needs that are not considered to be criminogenic include self esteem and identity issues, sexual or other forms of abuse and grief and loss issues. Programs such as R&R seek to teach individuals to control and their thoughts and feelings but do not actually engage with any of these issues. This may have very damaging consequences, especially for girls given the high levels of victimisation that feature in their personal histories. To deny the link between victimisation, or worse to actively ignore it in interventions, not only denies the realities of young women's lives and their offending but runs the risk of perpetuating silences around abuse. Similarly, grief and loss is a major factor in many Indigenous Australians' lives. The assumption that young people should just learn to think about these things differently and control their feelings is superficial and lacking empathy.

The issue of minority groups such as girls, Indigenous Australians and Culturally and Linguistically Diverse young people begs the question of who decides what is 'skilled thinking'? It is important to deconstruct the values around 'skilled thinking' to expose the power interests behind them. Feminists have argued that models such as R&R are primarily written by men and thus reflect their perspectives (Kendall 2002:193). Any attempts to modify programs such as R&R for diverse client groups have been superficial at best Kendall observes that adaptations for female client groups have simply drawn on sexist stereotypes; 'changing "he" to "she" and seemingly more relevant examples employed to illustrate concepts ... the person's occupation is secretary instead of builder' (Kendall:196). Not only are these modifications simplistic and superficial, but they also illustrate the gendered assumptions behind programs such as R&R.

Once the supposedly neutral, scientific basis of cognitive behaviouralism is challenged we are left with a profoundly political method of social control which seeks to maintain dominant discourses and societal norms (Brown 2002:165). Thinking errors or cognitive distortions, 'quickly becomes any statement the therapist does not like, might not understand, chooses not to engage with, regards as associated with offending' (Brown 2002:166).

These judgements may not be based on research findings, instead they are more likely to reflect the individual workers own moral framework. In the same vein that risk assessment is constructed along moral lines, so too are cognitive behavioural programs such as R&R. However, whilst they remain cloaked in a discourse of neutrality and objectivity there is little room for reflective practice or critical analysis to deconstruct assumptions.

Cognitive behaviouralism constructs cognitive deficits, thinking errors and irresponsibility as pathology. By drawing on individual pathology, we create a discourse which 'emphasises the otherness of individuals who become marginalised' (Kendall 2002:194). By creating social distance and emphasising the inherently 'other' nature of offenders 'the curtailment of their rights, their containment and the programmatic interventions are thus legitimated' (Kendall 2002:198). This otherness can lead to dangerous punitive outcomes which challenge the traditional basis of rehabilitation.

Programs such as R&R argue that cognitive pathology of offenders can be overcome, but only if they take an active part in challenging their thinking errors and develop the skills which R&R offers them. Offenders, despite their poor cognitive skills are constructed as having free will, choice and responsibility for their situation. This shift is described as 'responsibilisation' (Burchell 1996) and 'prudentialism' by Pat O'Malley (1992). O'Malley links this to neoliberalism as it, 'throws back upon the individual the responsibility for managing risk' (O'Malley in Kelly 2001:107).

How just or realistic is it for society to expect juvenile offenders to take on such responsibility? In the context of juvenile justice practice this has particularly dangerous implications. For the most part, those that come into contact with the system do not have the resources at their disposal to manage the risks within society due to the material circumstances of their lives.

This emphasis on individual responsibility, without an accompanying appreciation of social justice and the barriers to taking responsibility, may lead to more punitive uses of cognitive behavioural programs such as R&R. Brown, in reference to cognitive behavioural programs with sex offenders and violent offenders, notes that resistance to programs can severely limit an offender's opportunity to access parole (Brown 2002:169). If individuals do not conform to the identity that cognitive behavioural programs ascribe, they are seen as doubly deviant and 'high risk' (Brown 2002:169).

Non-compliance with programs such as R&R is not necessarily indicative of a higher level of risk or dangerousness and should not warrant punitive responses. For instance, program factors in R&R, such as the didactic, school like atmosphere complete with homework, may impede clients who have a poor educational history. Their 'resistance' may not be indicative of dangerousness. Instead, it might show shortcomings of the program or workers to effectively engage with clients. However, Brown suggests that an assumption of cognitive behavioural programs is that, 'no responsibility can be sheeted home to the therapist, for they are absolved of responsibility by their new-age role as life change *facilitators*' (Brown 2002:166).

This reinforces the responsibilisation of offenders and highlights the retraction of an holistic, transformative rehabilitation process. It also signals a shift of responsibility from the state to the individual, consistent with wider neoliberal themes.

Finally, cognitive behaviourism and R&R represent a shift in models of rehabilitation. Rather than a welfarist approach which seeks to primarily enhance the lives of offenders within an holistic context, cognitive behaviourism utilises a model of rehabilitation, 'where the primary aim of rehabilitating offenders is to avoid harm to the community rather than improve their quality of life' (Ward & Stewart 2002:126).

Arguably, whilst the offender is the target of intervention, the actual aim is protecting society rather than to 'make the offender feel better about himself (sic)' (Brown 2002:170). This flies in the face of a history of welfare-focused intervention based on the notion of empowerment and development of individuals and their communities.

## **Skilled Thinking but what about skilled practitioners?**

The emphasis on risk assessment and cognitive behavioural programs led by the 'what works' literature is arguably reorientating the role of those who work in the criminal justice system. In juvenile justice and adult corrections, workers are 'ceasing to be social work counsellors and are becoming risk management technicians' (Garland 1995:191). At the same time, workers are being presented with manuals for programs like R&R, complete with a script of what to say during the sessions. Program integrity is becoming more important than innovation as practitioners are extolled the virtues of the 'what works' principles.

In Britain, there is now growing disquiet about the effects of 'what works' literature on workers. The long tradition of social work, rooted in principles of social justice is being eroded by program integrity and swallowed by the doctrine of 'what works'. Gorman notes resistance to cognitive behaviourism and risk assessment, 'however considered or healthy, is being framed as near heretical, Luddite resistance to the prevailing orthodoxy' (2001:7).

He goes on to argue that it is no accident that most R&R and other cognitive behavioural programs are run by unqualified staff who do not have the same level of professional and ethical training (Gorman 2001:7). Standardisation, accreditation and program integrity are winning out over innovation and creative practice. Bhui notes that the:

implication is that the managerialist, target-driven nature of present probation practice has little time for the realities of complex human motivation or for a proper appreciation of difficult social circumstances (Bhui 2004:195).

While it is encouraging that government departments are finally thinking about integrating research, policy and practice, the approach is arguably 'insufficiently imaginative and complex to do away with the bad without losing the good' (Bhui 2001:638).

Aside from issues around deprofessionalisation of juvenile justice, Brown raises some serious concerns around the way the assumptions of cognitive behaviourism are played out in practice. Contrary to more traditional counselling or program interventions based on trust and respect, cognitive behavioural programs dictate that 'facilitators should not operate on a trust or confidence basis with the offender' (Brown 2002:170). Especially for juvenile offenders who may come from backgrounds where they have not had safe, trusting relationships, surely any intervention should aim to build trusting working relationship which will empower the young person? While Brown partially attributes this to the political context of intervention, he also suggests that the 'technocratic theorising and debate over what works' (2002:170) is obscuring the minute, day to day power relations which are impeding practice. There is, now more than ever, the need for reflective professional practitioners who are willing to look below the surface to make constructive suggestions for truly effective practice.

## **Obscuring Alternatives**

Juvenile justice works with a diverse client group. There should also be a diverse range of alternatives to deal with offending behaviour. The danger of the 'what works' principles and concern with risk assessment is that it stifles such diversity. This paper has already highlighted instances of hostility towards those that seek to address structural issues or may question the application of cognitive behaviourism. At the level of discourse, risk and cognitive behaviourism dominate, reflecting the interests of the powerful. At the level of finances, risk and cognitive behaviourism win out again, with governments investing a huge amount of money in these approaches at the exclusion of others.

There are a great number of innovative approaches to working with juvenile offenders that are outside the current buzz of cognitive behaviourism and risk. There is not scope to detail all of these initiatives but a very small sample will give a taste for the diversity on offer. One very worthy example that has been obscured in the ascendancy of 'what works' is an attempt to collaborate with Indigenous Australians. Unlike other Australian jurisdictions, there are currently no specific court based programs that work with Aboriginal juvenile offenders in NSW. Although NSW has a Circle Sentencing scheme for adult offenders in Nowra and Dubbo no such resource is available to Aboriginal juvenile offenders (Potas 2003:3). Evaluations of circle sentencing and other Indigenous courts have been overwhelmingly successful in reducing recidivism and working towards social justice for Aboriginal communities (Potas 2003:51).

Aboriginal Justice Groups such as the Kowanyama Justice Group in Queensland have also achieved very positive results by increasing self-determination and delivering culturally appropriate sanctions to juvenile offenders. Since the pilot in 1993 in Kowanyama and Palm Island, juvenile court appearances have decreased by two thirds and there has also been a decrease in the overall number of offences (Cunneen & White 2002:180). Despite these promising results and the alarming level of Aboriginal overrepresentation in the NSW Juvenile justice system, few similar initiatives are being actively pursued in NSW at this stage.

Attempts to work with communities are also outside of the risk, cognitive behavioural framework. A more community minded approach would attempt to locate both offending and victimisation in communities. Such a process ultimately recognises that those who offend are also most likely to belong to communities where victimisation is high. Rather than individual pathologising, a 'community safety' model is put forward (Smith & Vanstone 2002:821). This requires a broadening of the role of institutions such as Juvenile justice and Probation services to not only do individual work with offenders but also community development work in crime prevention and early intervention. It is promising that local government and the NSW Attorney Generals Department are increasingly developing crime prevention strategies for communities, especially dealing with young people. However, whilst workers within Juvenile justice are being directed towards risk and cognitive behavioural programs, their ability to seriously engage with this area is limited.

Returning to an individual level, there are a range of interventions with young people that are arguably more positive and respectful than a cognitive behavioural and risk approach. As an example, I will consider narrative therapy. Michael White and David Epstein developed narrative therapy in Australia and New Zealand in the 1990s. Coincidentally, this was around the same time that the 'what works' literature also began to emerge. Narrative therapy is an approach to individual, group, family and community work which is based on postmodern ideas. Akin to discourse theory, it suggests that people's lives are profoundly effected by the stories or narratives that they develop (Morgan 2000:5). These narratives are constructed through interaction with other people and social intuitions such as gender, race and class (Morgan 2000:9). Narrative therapy is therefore not only concerned with the individual but their place within the world. It is political and seeks to deconstruct the meanings and problematic narratives that people develop. Ultimately, within this fluid understanding of identity and meaning, it seeks to help people develop more positive narratives about their lives by discovering 'unique outcomes' (Morgan 2000:51). Problems are externalised, so that the 'problems the problem' rather than the 'person is the problem' (Morgan 2000:17). This avoids the traps of labelling and pathologising. It is a respectful approach which sees the individual as the 'expert' in their life.

Narrative therapy does not sit comfortably with cognitive behaviourism or risk. Some workers that practice within a narrative framework have developed measures of client's strengths rather than a measure of risk. Narrative approaches are well suited to juvenile justice clients as they offer an empowering, strength-based alternative which also speaks to the structural impacts in their lives. However, there has been little evaluation done to measure effectiveness in a quantitative way. A recent evaluation with female juvenile offenders in the United States did show positive and in-depth results (Kelley, Blankenburg & McRoberts 2002) but this sort of research is not the norm. Whilst research money is limited and it is a big enough battle to get narrative based programs actually running, narrative approaches will probably remain relatively obscure compared to monolithic influence of cognitive behaviourism.

### **Actuarial Justice for Juveniles?**

Finally, to return to the proposition at the beginning of the paper to assess the extent that actuarial justice has permeated Juvenile Justice. On the face of it, the introduction of actuarial methods such as the YLS/CMI-AA to assess, categorise and manage risk would seem to suggest that actuarial justice is well on its way to displacing models of welfarism or justice. There is a convincing case that on some levels, risk is definitely an organising factor in juvenile justice and influences the intervention that young people receive. Its use as a method to rationalise the costs of providing juvenile justice services also seems to conform to the current policy and practice atmosphere.

However, a closer inspection suggests that there is definitely more at play in the field of juvenile justice than simply actuarial justice considerations. While risk technologies techniques such as the YLS/CMI-AA do conform to actuarial ideas, some of their consequences are in stark contrast to actuarial principles. As previously discussed, the YLS/CMI-AA does assign individual risk ratings by positioning them within a statistically enumerated position that is more dependant on correlation to a group rather than individual assessment. But contrary to Simon and Feeley's argument that the emphasis shifts away from the individual in this technique, it could be argued that the use of risk assessment such as the YLS/CMI-AA makes the individual more visible. Background and structural factors are dismissed in favour of those that seek to source pathology or 'criminogenic needs' within in the individual (Carlen 2002:227).

What is then done with these ratings of risk in Juvenile justice is also of importance to measure them against actuarial justice principles. If Simon and Feeley are to be believed, the task for those working in Juvenile justice is then to manage rather than try to transform or rehabilitate. To a certain degree, this shift away from the transformative project can be seen in the extent to which Juvenile justice agencies have refined their focus around the individual rather than the social structures and welfare needs which impact on their behaviour. However, the ascendancy of the 'what works' principles as seen in the R&R program show that the rehabilitative imperative has not left the field of Juvenile Justice, instead it has changed in keeping with the current political and social climate.

Whilst there is not scope to go into great detail, it is also worth recognising that restorative justice, a relatively recent but powerful development within juvenile justice, appears to run counter to this trend. Restorative justice, in the form of Youth Justice Conferences facilitated by the Department of Juvenile Justice, has been successful in diverting large numbers of young people, resulting in large savings for government. Its emphasis on young people taking responsibility for their actions, apologising and making amends for harm can also be read as part of a broader responsabilisation of young people. However, outcome plans of Youth Justice Conferences often encompass rehabilitative or community integration goals, thus supporting the transformative aspect of Juvenile Justice.

These dynamics challenge the vision of actuarial justice put forward by Simon and Feeley and highlight an apparent contradiction between the discourses of risk and cognitive behaviouralism and other innovations in juvenile justice. One explanation for the rise of cognitive behaviouralism is a reflection on 'a wider program of neoliberal governance that seeks to discipline and responsabilise the offender' (Hannah-Moffat 1999:88). Alternatively, this disjuncture can be read as an example of what O'Malley describes as 'volatile and contradictory punishment' (O'Malley 1999). Linked to analysis of modern political coalitions between the neoliberals and neoconservatives, O'Malley characterises the field of punishment as one of uncertainty given this often tenuous alliance (O'Malley 1999:185).

Both of these explanations are valuable as they recognise the inherently political and value driven domain of juvenile justice. There may be efforts to use risk assessment or cognitive behavioural programs to standardise a technocratic approach to juvenile offending behaviour, but at the end of the day punishment is a complex social institution, which cannot be analysed 'as simple utilitarian value' (Garland 1990:288). Juvenile justice is an area which arouses strong responses for people. It is unlikely that actuarial justice will ultimately challenge this although it may inform pockets of policy and practice.

## Conclusion

This essay has argued that actuarial justice techniques and risk discourses offer us only a partial understanding of the way contemporary juvenile justice operates. However, it is not an approach to be underestimated as Kempf-Leonard and Peterson argue that it seems to hold something for everyone:

Advocates of just deserts and deterrence may be impressed by techniques that assure that justice is imposed more swiftly and certainly. Those promoting fairness and due process may be satisfied by promised reductions in disparity. Even treatment proponents may find some satisfaction in case management techniques that link services to particular categories of youth (Kempf-Leonard & Peterson 2000:85).

Similarly, we should not underestimate the power of slick marketing that has bolstered the 'what works' literature. It is for this very reason, that attempts to unpack the discourses of risk are so valuable. It is clear that actuarial justice and risk discourses more generally are intimately linked with issues around neoliberalism. More specifically technologies such the YLS/CMI-AA and its program counterpart in the R&R operate within this mode by positing the responsabilisation of young people and failing to address the structural barriers which intersect with their involvement with the juvenile justice system.

This discussion has shown that far from offering a more objective or efficient use of control, risk assessments and 'what works' interventions such as R&R remain dependant on normative discourses to construct categories of risk, thus reflecting the interests of powerful groups in society. It would also appear that the YLS/CMI-AA and associated 'what works' interventions would have disproportionate impact on Indigenous Australians and may contribute to veiled paternalistic notions towards young women. While the area of research has not been developed, this paper goes some way to introduce some of the risks of risk technologies and 'thinking errors' of 'what works' and cognitive behaviouralism to forge a critique of an area that remains largely unquestioned in the juvenile justice field in Australia.



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