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Lecture

Dangerous Mistakes

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The shortening of the periods of detention for treatment, deterrence or retribution have made a live issue of whether (or when) it is justifiable to detain violent and sexual offenders solely for the protection of others. Anti-protectionist arguments have made 'dangerousness' a dirty word, but are based either on actuarial statistics of doubtful relevance or on confused moral reasoning. A typology of 'dangerousness' is tentatively offered, and the impossibility of adequately supervising some dangerous offenders in the community is emphasised. That said, offenders detained solely for the sake of others are entitled to more than merely 'humane containment'.

The best memorial to Henry Maudsley which I have read is by the late Peter Scott (1960). It records Maudsley's virtues without adulation and his shortcomings without condemnation. In some ways, Maudsley was rather backward looking: in a generation which was beginning to appreciate Darwin, he clung instead to Morel's notion of degeneracy – as of course did Lombroso, but Darwin's writings were more accessible to Maudsley. On the other hand, in a culture which was preoccupied with the crimes of the poor, Maudsley saw that 'white-collar' crime should be taken equally seriously – a point of view which did not gain real acceptance until well into the 20th century.

On the restraint of offenders in order to protect others, Maudsley took rather an extreme view. He was pessimistic about the effectiveness of attempts to treat adult recidivists, whether mentally disordered or not: he was in no way responsible for the excessive therapeutic optimism which later swept northern Europe and the United States. His pessimism led him to favour a sort of permanent segregation for chronic offenders, which is very much at odds with current attitudes.

Actuarial statistics

This paper is concerned with only two of the hazards of life: violence and sexual harm. They are not in the first rank so far as actuaries are concerned. They account for far fewer deaths, injuries and ruined lives than does the motor car, for instance. But attitudes to hazards are important: the notion of being attacked is much more worrying than the thought of falling victim to a road accident, or to some noxious feature of the environment. Actuaries may tell us that assaults are much less probable, but somehow this fails to reassure. Part of the reason must be that we think of attackers as selecting us as their targets, whereas accidents and other harms are unselective agents which we think we can usually dodge with a certain amount of care.

Actuarial estimates are used by governments to try to reassure citizens about crime. There is an important difference between actuarial and actual probabilities. No doubt the actuarial probability that city dwellers in a certain age group will be mugged in their lifetime is very small: but it is very much larger if they live in certain districts, and are in the habit of venturing out of doors at late hours. An individual's actual risk is not something that can be readily quanitified, but it is more real – and sometimes greater – than any actuarial statistic, which probably lies in no man's land.

The same point needs to be made in an inverted way about the individuals who are regarded as dangers because of what they have done, and who are in mental hospitals, in prisons, or under what is optimistically called 'supervision' in what is euphemistically called 'the community'. We are given statistics which are intended to reassure us about the likelihood that they will repeat the harm they have done. The motivation behind the statistics may be humanitarian or it may be economic. It does not, however, compel us to accept the statistics themselves entirely at their face value. Most of them are based on rather short follow-ups, which are long enough to answer such questions as 'Do men re-offend oftener than women?', but are not long enough to answer the question 'How many rapists ever re-offend?'. As Gibbens (1976) showed, a long follow-up is the only sound basis for an answer to that sort of question.

We may be told that adults suffering from mental disorder are no more likely to commit serious violence than other adults are; but this is another misleading actuarial statement. Even if it is accurate in a sense – and researchers seem to disagree about this – it

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is couched in terms of average probabilities. Now if the average were the mode – that is, the most frequently occurring value – it would be a meaningful statistic. But since mentally disordered people are diagnostically heterogeneous, the average almost certainly lies in a gap between diagnostic groups, some of them having probabilities lower than the average, others having higher probabilities, but few, if any, coinciding with the average. The same, of course, is true of people who are not mentally disordered, except that we use other ways of subdividing them into categories.

Nevertheless, let me play the actuarial game for a moment. In 1973 the Butler Committee were given the following findings by the Home Office (unpublished paper): 334 men who had been discharged from hospital orders in 1971 were followed up for two years, and their reconvictions were compared with those of nearly 3000 men who left prison in the same year after serving short sentences. The percentages convicted of violent or sexual offences within that short follow-up were as follows:

(a) ex-patients who had previously been convicted of violent or sexual offences: 17%
(b) ex-prisoners who had previously been convicted of violent or sexual offences: 22%

The figures are not reassuring, being much higher than those of other groups in the sample, which did not exceed 7%. If in order to be reconvicted of a violent or sexual offence within such a short follow-up the offender had to commit an offence, be identified, found, arrested, brought to court, and sometimes committed to a higher court for trial, these offenders must have been re-offending well within two years. If the follow-up had been five years, the percentages would have been higher still.

This reinforces what was said a long time ago by William Kvaraceus. "Nothing predicts behaviour like behaviour". This, however, is where another humanitarian, anti-protectionist argument begins. It points out that previous behaviour may be the most powerful predictor, but it is not powerful enough to be a reliable predictor. In criminological terms, less than 50% of men who have committed violent crimes will be proved to have committed further violent crimes. This is not a universal truth: my studies of three large samples have shown that if an offender has four or more convictions for violence the probability that he will acquire another is well over 50%. But men with four or more violent convictions are in a minority. So far as the rest are concerned the anti-protectionist premise has to be granted: their probability of re-offending is less than 50%. So, the argument goes, a policy which detains them in order to protect others makes more mistakes than a policy which releases them as soon as the law allows.

Anti-protectionism

The fallacy – I call it the 'arithmetical fallacy' to distinguish it from the actuarial fallacy – is obvious. The argument counts only mistakes, giving equal weight to one which involves mistaken detention and one that leads to an avoidable casualty. Both kinds are regrettable, but regrettability is all they have in common, and any attempt to weigh them on the same scales is wrong-headed.

The Swedish Council for Crime Prevention (1978), however, has offered an anti-protectionist argument that goes further still, and would apply even to situations in which a policy of detention would involve fewer mistakes than a policy of release. To detain someone simply for the protection of others, they argued, is to punish him for a crime he has not committed and may never commit. The rhetoric is more impressive than the reasoning. The key word in the argument is 'punishment', with its retributive connotation. It assumes that every sort of detention must be punitive, and it implies that you should never restrain or even inconvenience anyone for fear of what he might do if there is the slightest chance that he will not do it. For example, a man who has assaulted his wife should not be ordered to stay away from her in case he does so again, because that would be punishing him for what he may not do. It implies that any order of a court must be regarded as retributive punishment, and judged accordingly: even a hospital order.

A similar, but more sophisticated, argument was put forward at the Broadmoor Symposium on dangerousness convened by the late John Hamilton in the early 1980s. Since it seems to avoid the notions of desert and punishment, it must be seriously considered. It invites us to compare our attitudes to two imaginary groups. For the sake of simplicity, both groups consist of three men, and in both cases we have good actuarial reasons for believing that one of each trio will commit serious violence if free to do so, but no means of knowing which of the three it will be. One of the groups consists of men convicted of violence, but none of the other trio have been convicted. The awkward question is why we should feel justified in detaining the convicted trio for a long period solely for the protection of others when we would not feel justified in so detaining the unconvicted trio.

The soundest answer was provided by the Floud Committee on Dangerousness and Criminal Justice (1981). The vast majority of citizens in our society do not commit serious harm, and are regarded as having a right to what can be called "the presumption of harmlessness". From time to time, people who are presumed harmless turn out not to be, but until they do there is not much we have the right to do about

them, apart from taking sensible precautions that do not involve interfering with them. For both practical and moral reasons we have to put up with what can be called "the general risk of harm". But when a person has been proved to have inflicted serious harm on someone else, the presumption of harmlessness no longer applies, and we are entitled to make him a target of our precautions. This does not oblige us to lock him up if the risk he seems to represent is negligible; but it does give us the right to do so if it seems more than negligible. Nor is it a question of what he deserves: his mental state may be such that what he did is totally excusable, but our precautions are not meant to give him his deserts.

I have cited these anti-protectionist arguments in order to emphasise their popularity in the 1970s and 1980s. What brought them to the surface was the shortening of sentences and the shortening of the periods considered necessary for the treatment of most mental illnesses. In an era in which offenders were detained for long periods because it seemed necessary to deter, to treat, or to give them what they deserved, the question of whether the protection of others was a proper reason was rather academic, except where a few lifers and some 'special hospital' patients were concerned. Even while judges were shortening determinate sentences it was noticeable that they hardly ever used the special extended sentences which the law expressly allowed when an offender's record indicated that the public needed protection from him. Occasionally a life sentence would be used rather than the normal determinate sentence, if psychiatrists said that the offender was mentally unstable; but that was rare, and sometimes overturned on appeal. Meanwhile psychiatrists were more frequently discharging the mentally ill after quite short stays in hospital. The result was that precautionary detention became a live issue, and academic anti-protectionists found receptive audiences.

The other operative factor was the misinterpretation of follow-ups. I have already pointed out that most of them were far too short, but even long follow-ups had concealed pitfalls. A commonplace observation was that very few people who had committed homicide did it again. This is true, but the proper scientific question was "What percentage of people who commit violent offences that were or might have been fatal later committed violent offences that were or might have been fatal?". I have never seen an attempt to answer this question, but it might well be a much larger percentage.

The result was that 'dangerousness' became a dirty word. I can even detect the deliberate avoidance of the word in one of the Royal College of Psychiatrists' documents, the 1989 *Guidelines for Good Medical Practice in Discharge and After-Care Procedures*. I have no criticism of what the *Guidelines* actually recommend: I merely notice that patients who would in earlier decades have been referred to as 'dangerous' are now concealed in the category 'vulnerable' patients.

Psychiatric reluctance to call a patient 'dangerous' can be traced at least as far back as the late Peter Scott, who may well have been the first to remark that 'dangerous' is a dangerous label. He used to emphasise that many patients are risks to others only if they find themselves in certain situations – for example heated quarrels – or certain conditions such as after prolonged drinking. He was, however, wise enough not to claim this is true of all patients.

A tentative typology

We need a 'typology of dangerousness'. It might perhaps comprise four types. The first type is the individual who harms others only if sheer bad luck brings him/her into a situation of provocation or sexual temptation. One might make distinctions here, according to the degree of provocation or temptation which is sufficient. The second type is the individual who gets into such situations not by chance but by following inclinations. Examples are men who, having killed or seriously injured women with whom they have been cohabiting, seek similar relationships after they have been discharged, or child molesters who find jobs as school caretakers or in youth clubs. We are more competent than we were at preventing child molesters from finding jobs of this kind, but supervisors still find it very difficult to control supervisees who repeatedly enter into close emotional relationships with adults, as my experience on the Parole Board confirms.

These first two types can fairly be called only 'conditionally dangerous'. The third, however, consists of individuals who are consciously on the look-out for opportunities. One might call them 'opportunity-seekers'. The fourth type is the 'opportunity-maker', who does more than look for his opportunities. I am not suggesting that there is a sharp distinction between these two kinds of behaviour; a frustrated opportunity-seeker might decide to make an opportunity, or vice versa. My point is that individuals who behave in these ways cannot be dismissed as merely conditionally dangerous. They are unconditionally dangerous. And in case anyone thinks that opportunity-makers are members of a rare minority, let me quote from Wyre (1986), who has specialised in the treatment of sexual offenders:

> "Sexual attacks seem spontaneous but most have been planned at least in some respects. . . . Often the attacker has had previous experience. Even before an attack is

consciously planned it is slowly formulated in the flawed sexual imagination of the assailant. . . ."

There can be no list of signs or symptoms which will assign patients or prisoners to one of these types, but I can offer two thoughts. One is Kvaraceus' slogan: "Nothing predicts behaviour like behaviour"; and he meant the behaviour of the individual, not of an actuarial group. In more precise terms, actuarial information about the behaviour of a group to which the individual can be assigned by virtue of relevant variables is likely to have less predictive power than information about the individual's own past conduct. My second offering is a quotation from Maudsley himself (1888):

> "What is required now is full and exact investigation and faithful record of cases . . . by painstaking and searching inquiries into their hereditary antecedents, their mental and bodily characters, the conditions of their training, and the exact circumstances of their crimes. . . ."

You may think it presumptuous to emphasise the importance of history-taking, but there are points which need to be made about history-taking in criminal cases. For example, the information about what Maudsley called "the exact circumstances of crimes" is not always available from reports of the trial. I recall one case in which all that the clerk of a magistrates' court told the psychiatrist was that the accused had "taken a knife to frighten his wife", when in fact he had tried to stab her with it. The wife's account would have been more informative. (The patient was soon allowed day leave, went home and killed her.) Witnesses often are not allowed to say all they know at a trial, and social inquiry reports are often influenced more by what the offender says than by what others say about him. The same is true of previous relevant behaviour. Official information about previous offences often takes the form of the police record: "assault, one year's imprisonment, suspended for two years", or "indecent assault: two years' probation". These may well understate the actual offence or attempted offence, because the prosecution could not, or chose not to, support a more serious charge, such as attempted murder or attempted rape. The result is sometimes called 'undercharging', and it means that taking convictions involving violence or sex at face value may seriously underestimate dangerousness.

Undercharging may explain something that I have noticed in the case of indecent exposers. By tracing the careers of a large sample of hospital-order cases in the 1960s backwards and forwards, through police records, Mrs McCabe and I found that not all indecent exposers were the harmless specialists they are so often said to be (Walker & McCabe, 1973): nearly half had convictions for other sexual offences. On comparing our finding with those of other researchers we realised that they were much the same. Bluglass' (1980) study of a West Midlands sample suggests that it is the aggressive exposers who are the most likely to progress to more serious offences. It seems that indecent exposers benefit from the "presumption of harmlessness' to an extent that is by no means always justifiable.

There is only one more point to make about previous behaviour, and it is almost too obvious to make. Previous convictions may not – often do not – draw attention to all that an offender has done. This is almost as true of violent or sexual offences as it is of shoplifting or bad driving. In the first place, our acquittal rates are rather high. Gibbens (1976) found that acquitted rapists often acquired subsequent convictions for rape. Unfortunately – at least for psychiatric purposes – the official police records do not include acquittals. Nor do they include incidents which, for one reason or another, never reached a criminal court. The offender himself could tell you about them, but probably will not.

Yet suppose that you are convinced that the prisoner or patient really has done nothing similar before. There may still be reason for concern lest the offending should be repeated in the future. From Parole Board experience, I can mention some of the indications for repetition. An obvious example is the case in which the violence was committed after heavy drinking. The offender may well be only 'conditionally dangerous', but when he is discharged it will be very difficult to be sure that he will not drift back into heavy drinking. Supervision in the community may be of use in such cases, and is covered later in this paper.

Weapon-carrying is a more complex matter. Obviously a man who has stabbed someone and is found to have been an habitual knife-carrier is at least 'conditionally dangerous'. But when a young man from what is euphemistically called 'an inner-city background' says that he carries a knife simply for his own protection, and is not suspected of being a member of a street gang, I am inclined to believe him. It may mean that if driven to defend himself or his girlfriend he will inflict serious injury, but it does not necessarily mean that he will initiate violence. I am more worried by men who own firearms (or crossbows) for psychological rather than practical reasons. They may be members of rifle or pistol clubs: but that is not reassuring. I would particularly want to know whether they have unofficial stocks of ammunition at home.

More interesting, perhaps, are indications with which clinicians are familiar. Obvious examples are jealous or persecutory delusions. Taylor (1985), whose studies of schizophrenic violence are well

known, states that she would also list 'delusions of passivity'. If I, a non-clinician, might venture an addition, it would be 'delusions of provocation'. For example, a man who has attacked a stranger sometimes gives the somewhat abnormal explanation that "he was staring at me". It is not always easy to ascertain whether in fact the stranger was deliberately doing this or whether the assailant is pathologically sensitive. Either way, a man who responds with violence to being stared at cannot be presumed harmless.

Patients and prisoners sometimes offer justifications for what they have done. Their justifications are often merely attempts, after their crime, to restore their self-respect, or the respect of others. Paedophiles, for example, often claim that their victims made the first approaches. Whether the offender felt justified when he committed his crime, or merely succeeded in justifying it later, I suggest that he may be more likely to re-offend than one who does not justify it. I am not talking about obviously deluded justifications like orders from God or the Devil, but simply about a conviction that what one has done was right.

More than one contributor to Hamilton's Broadmoor Symposium (1982) expressed special concern about men who are arrogantly sure of the rightness of whatever they do. Most worrying is the offender who seems unable to empathise with his victims, regarding them simply as instruments or obstacles. One can observe this attitude not only in some mentally disordered patients, but also in some prisoners, and even in some law-abiding citizens whom we merely call ambitious or single-minded; but when it is observed in a violent or sexual offender it must be a ground for extra concern.

What I have been leading up to is a general point about predicting further harmful behaviour. If anyone still hopes that follow-up studies will tell us by how much the presence of a certain indicator increases the risk, I can safely say that it will be a long time before that is achieved. It could be achieved only by large samples, painstaking interviews of both offenders and other people involved, and lengthy follow-ups. The most that can be expected from small-scale research is the occasional negative finding, for example, that something which has been regarded as a predictor is in fact not, or at least not in some types of case. This might save some offender-patients from being detained for as long as they would otherwise.

Yet even if large-scale, meticulous research did succeed in identifying more predictors, this would have its dangers. There would be a tendency to assume that every predictor, when present, increases the risk. Yet predictors may overlap. Very careful analysis is needed to establish whether predictor X adds to the predictive power of predictor Y. It will be a long time before we can do without clinical 'hunch' and individual history.

A special point needs to be made about the offender whose hate or sexual interest seems to be focused on a particular victim, or on a person who takes the place of a former victim. The following case history illustrates more than one point.

> S was a man whose first wife divorced him because of his violence. He soon married again, and strangled his second wife. Having served ten years of a life sentence for this crime, he was released on licence. After settling down to run a small business he married a third time. His third wife soon left him to live with her mother, unfortunately not far enough away. One night he was found prowling round their home with an air-pistol. When he was brought to court for this the judge said that he was reluctant to send him back to prison because he had already spent so many years there. The supervising probation officer clearly doubted his ability to control S if he were to be left at liberty, but the judge said that it was a risk he was prepared to take. The wife was not asked if it was a risk she was prepared to take. Within a few weeks S had broken into her home, and shot her, her sister and himself with a firearm. At no time were prison doctors able to give him a psychiatric label, yet clearly he was a dangerously abnormal individual, whose abnormality manifested itself only in his marital relationships.

The most important question which this story raised was "Who has the right to say 'It's a risk I am prepared to take?'".

Another point which this anecdote illustrates, although perhaps in a rather extreme way, is the difficulty of supervision in the community. There are cases in which reoffending is preceded by a gradual deterioration in the offender's condition or behaviour, for example as a result of repeated heavy drinking, failure to take prescribed drugs, or even failure to keep appointments. In such cases an alert supervisor can, with no more than a telephone call, recommend swift intervention. Sometimes an offender's family or hostel can be enlisted by the supervisor, and will report signs which call for action. Women who are entering into long-term relationships with wife-attackers can and should, be told their histories, if necessary by the supervisor. But supervision can never amount to surveillance; and the offenders whom I have called 'opportunity-makers' or 'opportunity-seekers' are safe only under a degree of surveillance which it is hardly possible to provide. It might be better if the term 'supervision', which gives an exaggerated impression of effectiveness, were abandoned in favour of some word such as 'monitoring'. A 'monitor' is merely a person who warns *when he notices.*

Even monitoring a dangerous ex-inmate raises delicate ethical problems. The monitor himself must, of course, be given all the relevant information about the ex-inmate's history; but how much should be passed on to an employer, a hostel warden, a landlady, or a cohabitee? The more the monitor can induce the ex-inmate to tell him about his present way of life and problems, the better. But the more the man confides in him the more qualms he may have in using this information to recommend recalling him to hospital or prison. My two tentative suggestions are these. The relationship between a professional carer and someone who has been given into his charge by law, and for the protection of others, is not a voluntary relationship, and so does not carry the same moral obligations or constraints. The compulsory patient's or ex-patient's interests should not over-ride the interests of others. My second point is that if any professional carer feels that he cannot make this distinction, he should refuse the responsibility. This sounds uncompromising; but I do not see how a compromise could be truly ethical.

Conclusions

I am not trying to put the clock back: simply suggesting that there are people who have made it go a little fast. Their arguments are partly actuarial, partly moral: but neither sort stands up to close examination. We do not have, and are not likely to have in the foreseeable future, prediction tables that will tell us who can be released with little risk to others. Nor can we assume that any substantial risk will be greatly reduced by supervision in the community. Clinical judgement must continue to be the basis for recommendations.

At the same time, the detained offender is entitled to consideration. If he has reached a stage at which treatment no longer offers hope of rendering him harmless, if it can no longer be argued that he deserves further deprivation of liberty, in short if the protection of others is the sole reason for not releasing him, then in a sense he deserves something by way of compensation for being sacrificed to the interests of others. That compensation, I suggest, must lie in the quality of his life inside. In plain terms, what I am suggesting is that we have a moral duty to make the conditions of incarceration as tolerable as possible. There is an official phrase, 'humane containment', which is sometimes used by the Prison Service. But it seems to me that while 'humane containment' may be all that we owe, or can give, to people serving determinate sentences, what we owe to people who are being detained for the sake of others is something better. The Council of Europe's (1983) recommendation is "a pleasant environment", which sets a higher standard. Admittedly it is a standard which few secure institutions in Britain can claim to attain; and shortage of resources may make attainment a long-term goal. But it should be the goal: 'humane containment' is not quite good enough.

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