Reframing Risk in Aotearoa New Zealand: A Humanising Approach

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Abstract

Risk logics have become increasingly pervasive in Aotearoa New Zealand's criminal justice system. Beck's (1992; 2002) risk society thesis demonstrates how our everyday discourses have become overwhelmed by concern around insecurity, discontent, and uncertainty. The culture of control (Garland 2003), the new penology of penal management (Feeley and Simon 1992), and considering risk through a governmentality and neoliberal lens (O'Malley 2004a; 2015) are utilised to further unpack global conceptualisations of risk. The rise in use of risk assessments demonstrates a prioritisation of standardisation and transparency in decisions on risk, and a move away from human judgment (Eckhouse et al. 2019). In the context of Aotearoa New Zealand, risk policy and practice has had ongoing negative consequences for the Indigenous Māori population. The findings explored in this article derive from sixteen semi-structured interviews with justice and human rights advocates or individuals who work in the criminal justice sector. The narratives relating to risk are divided into three themes: conceptualising risk; risk reinforcing the status quo; and humanising risk. This article introduces a new perspective of 'humanising risk' that contributes to the growing literature on risk practice and policy. Humanising risk proposes a move away from managerial and algorithmic thinking regarding risk, and instead places people in the forefront on decisions about risk. It enables us to see each other as people, rather than as risks to be managed.

Keywords

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Introduction

Studies exploring the emergence and application of the term 'risk' highlight the multiple meanings and assumptions that accompany this concept, and the ways in which risk theories and technologies form a general mode of penal governance and have impacted the practices, discourses, and logics of punishment (Werth 2019). Sociological studies in particular have interrogated the rise of a 'risk society' and its consequences for social relations in late modernity (Beck 1992). This article extends upon both sociological and criminological literatures to explore the deployment of risk in Aotearoa New Zealand, and to interrogate the ways in which categories of social exclusion that have arisen from this deployment can be reframed to give effect to a humanising approach.

To situate the analysis, this article outlines the key literature from prominent risk scholars to explore the emergence of, and rise in, risk logics globally. Several developments are outlined to show the parameters of risk theorisation over the last three decades and the changes to punishment based upon risk assessments (Beck 1992; Feeley and Simon 1992; Garland 2003; Tonry 2019; van Eijk 2020). This literature is supplemented by O'Malley's (2004a; 2004b; 2015) theorising on the importance of governmentality and neoliberalism in understanding the politicisation of risk in the modern period. The key arguments regarding the balancing of risk assessment tools and human judgment are then explored (Adler et al. 2017; McSherry 2020). Together, this literature demonstrates that categorisation has resulted in a discriminatory and dehumanising practice (O'Malley 2008; Simon 1988; Tonry 2019).

Risk is then analysed more closely in the context of Aotearoa New Zealand. The introduction of risk policy and practice is discussed, primarily highlighting the negative consequences of risk conceptualisation for the Māori population. With Aotearoa New Zealand having a population size just above 5 million, it provides a useful case study for exploring ideas around concepts such as risk. Additionally, due to the historical and contemporary influence of colonisation, it is important to focus on the specific consequences for Māori.

The analysis is drawn from themes that emerged from qualitative interviews with key experts in Aotearoa New Zealand that form the preliminary findings of Gordon's doctoral project. When collecting data, interviewees held a range of positions: parole board members, ex-police officers, judges, politicians and members of government (including the Secretary of Justice and the Department of Corrections National Commissioner), victims' advocates, and justice advocates. Whilst Gordon's doctoral project examines broader logics of crime control and safety in Aotearoa New Zealand, this article has the narrower aim of considering how risk is conceptualised by some key stakeholders. The narratives that emerged from these interviews are organised into three themes: the first is conceptualising risk; secondly the way risk reinforces the status quo; and lastly humanising risk. Conceptualising risk demonstrates participants' overwhelming association of risk with data through risk assessment. Risk assessment tools are intended to operate in a way that removes individual judgment, and instead relies on instruments that determine risk in an objective manner. A further finding highlights that conceptualising risk in this way reinforces social hierarchies and power imbalances. Here, the article recognises that the ability to determine what behaviours, attitudes, or people are deemed to be risky holds a significant amount of power.

The purpose of this article is to provide a new conceptualisation of risk through the notion of 'humanising risk.' The concept of 'humanising risk' was coined by the researchers to capture the third emerging theme from participant interviews. The inspiration for this theme came from the interview with Khylee Quince (Parole Board member and Dean of Law at Auckland University of Technology). While not all participants spoke to the specific idea of humanising risk, the theme is representative of participants' preference for an alternative way of approaching risk. Humanising risk speaks to a perspective that challenges contemporary conceptualisations of risk and its accompanying practices. We believe that through this conceptualisation, risk will be less about categorising and responding to people based on risk assessments and algorithms. It aims to move beyond viewing risk in a managerial framework and brings human relationships and rights to the forefront.

Rise of Risk Logics

Through exploring the development of concepts, it is possible to see their emergence and how they become normalised terms and associated with particular meanings. Prior to 1990, the term risk 'had a marginal place in the vocabularies of social thought or cultural commentary and was rarely discussed outside of scientific journals' (Garland 2003: 49). Since then, our everyday discourses have become overwhelmed by concern around insecurity, discontent, and uncertainty. Risk logics have become increasingly pervasive and demonstrate the expansion of our consciousness of risk (Pratt and Anderson 2020).

Ulrich Beck's (1992) 'risk society' thesis is useful to understand the pervasiveness of risk logic in contemporary society. For Beck, risk is defined as '*a systematic way of dealing with hazards and insecurities induced and introduced by modernizations itself*' (Beck 1992: 21, emphasis in original). Risks associated with the uncertainties that have been manufactured by humans are continuously expanding. The main concern is that these risks are portraying temporal, social, and spatial 'de-bounding' (Beck 2002: 41). By this, Beck recognises that contemporary risks have global and intergenerational consequences. A risk society is often defined as 'colonizing the future' (Beck 2002: 40) as it is fixated on predicting, and therefore controlling, future events (Mythen 2004). This desire can be demonstrated through the movement in the 1980s towards a 'culture of control' (Garland 2001), the 'new penology' (Feeley and Simon 1992), and 'risk-crazed governance' (Carlen 2008: 1).

In contrast to Beck, Pat O'Malley (2008) associates the emergence of risk with the development of neo-liberalism. While risk society theorists argue that the amount of risks has exponentially increased, O'Malley (2008) recognises that it is our focus on governing through risk that increases our awareness of risks. Thus, what has changed is the propensity of governments to prioritise risk control and aversion (Pratt 2020). Neo-liberalism encouraged a shift towards individual responsibility for risk control and management (Goddard and Myers 2017; O'Malley 2004a). A consequence of this is that the burden of governing is shifted onto individuals and communities, with many different people being responsible for determining and reducing risk.

Other critics have identified the ways correctional programmes derived from risk paradigms serve to reinforce neo-liberal assumptions wedded to self-management (Carlen 2012; Kendall 2013). These programs suggest that recidivism can be prevented by teaching the individual to become a rational decision maker, and thus position crime as a matter of poor choices. Risk encourages a focus on blaming individuals for their behaviour and riskiness. This is consistent with neo-liberal principles more generally in that they assign responsibility for criminal activity to individuals themselves, who then become responsible for change (Kendall 2013). Such programmes aim at training the offender to manage their own risk of reoffending, or as Carlen (2012) notes, to learn positive thinking around, and contentment with, their lower social position in an unequal society. Criticisms of this approach highlight the willingness to attribute structural inequalities to personal beliefs and inadequacies. As Hannah-Moffat (2005) points out, only those factors considered manageable within correctional resources appear as criminogenic needs:

> Manageable criminogenic problems are those that can be resolved through behavioural or lifestyle changes that are seen as achievable with a positive attitude and being amenable to normalising interventions, programs, or therapists who provide tools for change and teach offenders to think rationally and logically. Structural barriers conveniently disappear. Systemic problems become individual problems or, more aptly, individuals' inadequacies (Hannah-Moffat 2005: 43).

O'Malley (2004a) makes the distinction between disciplinary governance and risk-based governance, with the latter commonly dominating contemporary society. Through risk-based governance, individuals are assigned into risk categories and collectivised through this approach. Thus, the focus of this governance becomes less about individualised cases, and instead aims to control members of a 'risky' group (O'Malley 2004a). Risk-based governance is also forward focused, and therefore the aim is to identify and separate 'risky subjects' (O'Malley 2004b: 334). This demonstrates a shift away from individualised justice (Binns 2020), to increased risk categorisation, prediction, and aversion (O'Malley 2004a).

Risk assessments have become increasingly common to assist in decisions on risk (Pratt and Anderson 2020). This demonstrates a shift away from clinical and human judgment, with the assumption that algorithmic tools are more accurate in predicting risk. Furedi (2002; 2018) explores the way in which 'the culture of fear' has coincided with the move to a reliance on risk assessment tools. When a society is consumed by fear, the favouring of risk assessments highlights the belief 'that humankind does not possess the knowledge that is necessary for the calculation of probable outcomes' (Furedi 2018: 157). Risk assessments are therefore introduced to ensure standardisation and transparency in decisions on risk (Eckhouse et al. 2019).

Tonry (2019) demonstrates the discriminatory consequences of the use of risk assessment tools. Previous criminal history is often considered a risk factor. Due to the overwhelmingly disproportionate rates of police involvement and incarceration for ethnic minorities, this reinforces certain populations' engagement with the justice system. Thus, risk assessment tools lock the justice system into a cycle of repeating previous statistical and data patterns to determine future events (O'Malley 2015). Concerns have also been raised that the risk assessment tools can be biased against marginalised and minority communities and reinforce the social exclusion of the poor and socio-economically deprived (Tonry 2019; van Eijk 2020). This argument is discussed in further detail in relation to Māori below.

Risk assessments are commonly recognised as being value-laden and lacking their proposed neutrality. Brown (2020: 59) argues that assessments of risk are 'embedded in the wider political context which suffuses and shapes the risk assessment process.' Once something is deemed as a risk it has been identified as unwanted, or something that should be avoided. Risk is conceptualised as a 'technology of government' that highlights who has the power to identify certain actions or people as risky (O'Malley 2008: 57). O'Malley (2004a) therefore stresses the importance of recognising the political, social, and cultural conditions that underpin conceptualisations of risk.

The contemporary way in which risk has been discussed can be viewed as a dehumanising process. Simon (1988: 792) argues that risk assessment tools 'unmake people.' That is, people that go through the justice system have their personhood removed and become recognised only by their risk classification. Additionally, algorithmic methods of assessing risk apply generalised information of groups and apply them to individuals. In doing so, their individual circumstances and experiences are disregarded for the sake of group classification (Dagan and Dancig-Rosenberg 2020). This echoes O'Malley's (2008: 66) view of risk, in which it 'strips away identity, and treats individual cases as members of risk categories.'

There are ongoing debates on what the right balance is between reliance on risk assessments tools and human judgment in making decisions on risk (Adler et al. 2017; McSherry 2020). In a recent study it was argued that algorithmic assessments provided more accurate measures of risk compared to human prediction (Lin et al. 2020). In contrast, other authors argue that using technology and algorithms to remove bias in decision making is 'a quest to transcend all that is human: the body, interdependence, compassion, vulnerability, and complexity' (Završnik 2021: 635). Thus, movements to keep 'human-in-the-loop' (Binns 2020: 1) and 'structured professional judgment' (McSherry 2020) have recognised the need to include human judgment alongside risk algorithms.

Risk in Policy and Practice in Aotearoa New Zealand

John Pratt (2013) has observed the ways crime control policies, in the neo-liberal and Anglo settler countries, have over the past three decades from the 1990s gone through a period of penal populism. This has been driven by populist political agendas and media narratives that influence more punitive justice responses, with a focus on retribution and extended containment of offenders in prisons. Within Aotearoa New Zealand, this trend has also seen the development of risk conceptions and what Pratt and Anderson (2016) refer to as 'the rise of the security sanction', and the change in focus from dangerous-

ness to risk. In contrast to retributive punishments and the punitive containment of those deemed dangerous, this refers to policies created to supposedly promote public safety by preventing future crime, and the management and control of risky offenders.

Risk assessments became central in Aotearoa New Zealand's correctional response with the introduction of a framework called Integrated Offender Management (IOM) that was developed and operationalised in the late 1990s to 2000s. Drawn from rehabilitation models used in the Canadian context, the stated aim of IOM is to use psychological assessments and interventions for reducing offending behaviours. This included the development of a criminogenic needs index (CNI) alongside psychological treatments for offenders (Newbold 2007). The adoption of the criminogenic needs approach in Aotearoa New Zealand followed international trends towards managerialism in prisons over prison populations and is characterised by a shift towards actuarial justice and risk calculations. In the assessment of criminogenic needs, the concept of need is fused with that of risk, and an individual's psychological and behavioural characteristics are assessed and monitored for interventions (Hannah-Moffat 2005; 2016). This paradigm works to legitimate and rationalise programs of correctional treatment as strategies for reducing recidivism.

1 Pacific peoples from nations such as Samoa, Tonga, Cook Islands, Niue, Tokelau, and Fiji, who have settled in Aotearoa New Zealand.

We acknowledge that in Aotearoa New Zealand, Māori and Pasifika[1] people are ethnic minority populations who are disproportionately subjected to state crime control measures (see Suaalii-Sauni et. al. 2021). In this discussion we focus mainly on the development of risk assessments and measures, and examine the particular significance for the Indigenous Māori population already affected by the legacy of colonialism. With the loss of traditional lands and the marginalisation of political authority, there has been a longstanding history of state intervention and control over all aspects of social life. This has disrupted Māori social organisation, creating a detrimental history of social inequities related to education, health outcomes, and economic marginalisation (Jackson 1988; Webb 2017). Although a minority at 16% of the general population, Māori are disproportionately affected by state crime control policies and criminal justice interventions such as arrest, conviction, and imprisonment where Māori are over half of inmates in the country's prisons (McIntosh and Workman 2017; Stanley and Mikaere 2018). This disproportionality is more distinct for wāhine (females) and rangatahi (youth) (Stanley and Mikaere 2018). While critical research has identified structural social inequalities, colonisation and systemic racism against Māori in the criminal justice system (Jackson 1988), the state responses in the period from the late 1990s onwards have emphasised individualistic causes of deviance such as risk factors.

A particular issue for Corrections was applying this model of intervention to the Māori inmate population. In 1998, the Psychological Service unit of the Department of Corrections sought to introduce a specific rehabilitation programme for Māori called the 'Bi-cultural Therapy Model.' This had a stated aim to deliver psychological treatments alongside Māori service providers. The following year, 1999, the Department of Corrections launched an evaluation tool and 'Framework to Reduce Māori Offending' (FReMo) aimed at increasing correctional programmes for Māori. At the time, the Department of Corrections (2001: 10) described the incorporation of Māori culture into psychological treatments as a bicultural model.

Specific cultural units called Māori Focus Units in prisons (later renamed Te Tirohanga) were developed to respond to Māori offenders. The Department of Corrections created assessments in 1999 to measure supposed cultural factors thought to be linked to offending behaviour, and termed these Māori Culturally Related Needs or MaCRN's (Maynard et al. 1999). The Department of Corrections (2001: 10) reported that, 'for Māori offenders, there may be a group of culture-related risk factors to do with the status of Māori in a predominantly non-Māori culture. Māori cultural risk factors include lack of cultural identity, negative image of Māoridom, relationship with Whānau, and the presence or absence of whakawhanaungatanga, or a sense of group membership.' A major review of the model by the Waitangi Tribunal (2005) identified issues with the deficit focus of this assessment tool, which was based on presumptive needs. Due to the lack of quantifiable benefits arising from the MaCRN assessment, it was discontinued in 2007. Despite this, Riki Mihaere (2015) has identified that similar assessments continue to be used in New Zealand prisons and is critical of the approach that continues to see cultural identity in deficit terms.

2 Te Tiriti o Waitangi is the Māori language version of the Treaty of Waitangi signed in 1840 by Māori and the British Crown, and is increasingly regarded as a founding document of Aotearoa New Zealand.

This example illustrates that risk calculations effectively position Māori as a particular type of 'cultural' risk subject, with this having narrowly defined needs to be managed by the state professionals within a prison system rather than by the Māori community. In this way, community claims to Māori self-determination over justice responses, as recognised in the Te Tiriti o Waitangi —the Treaty of Waitangi[2]— are diminished, and state discourse defines individuals as dysfunctional (Jackson 1988). These explanations also ignore the wider social and structural inequalities that exist in society, and which impact upon crime and offending. The risk definition for Māori both socially excludes and defines them as the 'other' from the wider society, while denying their political rights as Indigenous people. Alongside this, their human rights are not upheld, as '"risky" individuals are no longer viewed as legitimate recipients of human rights' (Harris and Stanley 2018: 528).

The application of risk paradigms to Indigenous populations is not unique to Aotearoa New Zealand. In Australia for example, Thalia Anthony (2013) also observes that the settler state has relied upon risk conceptions, the notions of a fractured Indigenous cultural identity and characterisations of the dysfunctional Indigenous 'other' who requires state intervention and treatment. Likewise, Chris Cunneen (2020) explores the application of risk practices and the related racialisation process of Indigenous youth in Australia. Drawing comparisons to other ethnic minority youth in England and Wales, he notes that, '[t]hese discourses and practices mask race through appeals to neutrality and scientific legitimacy, while at the same time re-inscribing and thus confirming a link between particular social groupings of marginalised young people and a propensity towards dysfunction and criminality. Risk assessment in particular both masks race in its practices and marks race in its outcomes' (Cunneen 2020: 522). Cunneen (2020) argues that the claims to scientific neutrality mask the effects of racialised inequality on what risk assessments aim to measure as high risk scores. This attempts to render invisible the subjective processes and moral judgements involved in creating and applying frameworks.

This subjective process can also be seen in the deployment and use of algorithms by the New Zealand Police. The New Zealand Government released an Algorithm Charter for Aotearoa New Zealand in 2020, to set standards for the use of algorithms by government agencies. An Expert Panel on Emergent Technologies (2021) reviewing the report into Police practices in this area (Taylor Fry 2021), raised several areas of ethical concern. They identified a lack of adequate governance by the Police in the deployment and use of algorithms, and that allocating algorithms into high, moderate, and low-risk categories was arbitrary and subjective. The Panel were critical of the inadequate attention given to the formulation of the initial classification setting, and to assessing the implications of the interventions that may result from designating individuals according to these different risk categories. A particular concern was identified over the ethics of algorithm use with Māori communities, with the Panel noting a major shortcoming was 'the absence of any specific reference to te ao Māori or commitments under the Treaty of Waitangi, or indeed, any recognition of any considerations distinct to Aotearoa New Zealand' (Expert Panel on Emergent Technologies 2021: 1).

Methodology

The subsequent findings are drawn from sixteen semi-structured qualitative interviews conducted during the 2020 to 2021 period with people that advocate or work in the national criminal justice sector. Interviews were selected over other methods such as questionnaires or focus groups in order to tease out the nuances in participants' perspectives (Magnusson and Marecek 2015). As the project was focused on conceptualisations of certain words, the interview method allowed for the researcher to ask follow-up questions to generate rich narratives. Participants were heavily invested in the content for this project, and so the interview method gave them the opportunity to explore their ideas in rich detail (Terry and Hayfield 2021). In particular, semi-structured interviews were chosen for this project, as this method provides stability, but more importantly flexibility, in the way questions are asked.

Purposive sampling was used to identify participants for this project (Hennink, Hutter, Bailey 2020). Individuals were strategically chosen based on their expertise and public profile related to the project's focus. Most participants had extensive careers in the justice system, and so could talk with intricate knowledge of how it operates. In several circumstances, Gordon's supervisors had existing connections with people that were asked to be interviewed. In these cases, they advertised the project and initiated the recruitment process. For those where there were no established connections, participants were contacted through email, which included an outline of the project, and asked if they would be interested in participating. There were many people that were initially contacted that either did not respond to the interview request, or who declined the invitation due to limited capacity.

Those that were purposely selected to be interviewed held a range of positions: parole board members, ex-police officers, victims' advocates, justice advocates, a judge, a politician, a member of local government, the Secretary of Justice, and the Department of Corrections National Commissioner. These participants had varied experiences and perspectives of the justice system and were selected to capture multiple viewpoints. Most participants involved in this project are widely known in the justice sector. The relevance of interviewing people in public profile roles lies in the fact that these people are often decision-makers and are partially accountable for disseminating information about criminal justice issues to the public. Often these individuals make decisions based on what they think is important to the public and are therefore a useful source of information about conceptualisations of risk. These conversations also discussed issues pertaining to mass incarceration, and participants' thoughts on prison and the potential of alternatives and abolition.

In March 2020 the project was granted ethical approval by the University of Auckland Human Participants Ethics Committee [UAHPEC]. To ensure informed consent, participants were sent a detailed Participant Information Sheet when they were first approached to take part in the interview. Participants were also informed that they had the opportunity to withdraw any of their information from the research, without a reason, up until one month after reviewing their transcript. Additionally, an important feature of this research was that participants were given the option to choose to be named in outputs. Ethical considerations from a Western lens often prioritise confidentiality and anonymity in the research process (Neuman 2003). However, by taking guidance from Kaupapa Māori research, it is recognised that being named in publications may be preferred so that their meaningful contribution is recognised (McIntosh 2011). All participants of this research gave permission to be named in the research alongside their narratives.

Due to the COVID-19 pandemic minimising travel and social contact during the period of the research, the research approach was redesigned (see McLean et al. 2021) and most interviews were done remotely by Zoom. All interviews, with the approval of participants, were audio-recorded. Once the audio recordings were transcribed, they were analysed using reflexive thematic analysis. Reflexive thematic analysis was facilitated through NVivo and was informed by the six-step process outlined by Braun and Clarke (2012; 2021) and more recently explained by Terry and Hayfield (2021). Firstly, familiarisation with the interview material is achieved through researchers' immersion in the data. The next step is coding, which is a process involving the attachment of meaningful labels (codes) to the dataset. Codes capture a specific or single meaning that a researcher has formed from segments of the data (Braun and Clarke 2021). The third step is generating and developing themes, through identifying 'meaning-based patterns' (Terry and Hayfield 2021: 13). Themes, described by Braun and Clark (2021: 340) as 'multi-faceted crystals', are created through combining or clustering codes to portray shared meanings across the dataset. Revising and naming themes are the fourth and fifth steps, which involves refining the themes to ensure they present a coherent message. The final step is producing a narrative that addresses the research questions and provides a compelling story arising from the data (Braun and Clarke 2021; Terry and Hayfield 2021).

This research is underpinned by both interpretive and critical social science perspectives, and constructionist epistemology. Interpretive social science aims to understand the way in which people make sense of the world around them (Davies and Francis 2018). Through this research, it is acknowledged that participants interpret and socially construct the world around them through their own experiences and conditions. Critical social science goes beyond this, and prioritises understanding the historical, political, and social conditions that shape the world (Henn et al. 2006). Based on this epistemological stance, the themes developed for this article had an inductive orientation. That is, they were 'grounded in the data' and were driven by participants' perspectives (Braun and Clarke 2021: 331). It is important to note that through the reflexive thematic analysis process, the researcher brings in their own bias and subjectivity when analysing the data. The researcher plays an active role in theme creation and their subjectivity is viewed as an 'analytic *resource*' (Braun and Clarke 202: 330, emphasis in original). So, while the themes are data-driven, there are also analytical decisions that influence themes.

Conceptualising Risk

The qualitative research explored the different elements and meanings of risk in the interviews. Most participants had a negative response to hearing the word 'risk', with Tania Sawicki Mead, the Director of JustSpeak (a youth-led movement for transformative change in criminal justice), identifying the concept and its connotations as being 'brittle.' Risk is conceptualised as something that can be measured and documented. It can be quantified in a rigid way, and is often done by an outsider making a decision on a person's actions, mental state, and habits. Once that has been done, there is action that can be taken to mitigate or minimise risk. Jess McVicar, National Spokesperson of Sensible Sentencing Trust (Charitable Trust that advocates for victims of serious and violent crimes) recognised that the scope of risk is wide-ranging and is not limited to the justice system:

> I think everything in life has a risk, but there are either risks that you're willing to take to achieve, or there is a risk that you're going to take that could possibly put you in danger. And there's the balance of trying to figure out which one is the good one to take.

Initially risk was identified as a response to a particular action. Rachel Leota, Department of Corrections National Commissioner, acknowledges 'there's a risk of doing, but then there's a risk of not doing.' In relation to criminal justice, risk can be factored into several decisions that are made when an individual moves through the system. Whether a person is apprehended, remanded on bail, given a certain security classification in prison, or released on parole, are all decisions where risk is taken into account. A common interpretation was to relate risk to data and risk assessment. Risk assessments are deemed to be quasi-scientific, data-based, and quantifiable ways in which risk can be measured. The following perspective of Tania Sawicki Mead demonstrates a focus on risk as data:

> I think of risk as algorithm or risk as data, something that is data driven, where I think about the ways in which risk has been reduced to assessments of the likelihood of things based on what has happened in the past, and in a past where people have had very little control over what has happened to them.

The rise in risk assessment simultaneously came with the increase in managerialism within the police and prison system. Through this process, emotions are stripped away and are not encouraged in the decision-making process. Considering the impact of managerialism, the former Head of the Prison Service from 1989 to 1993 and justice reform advocate, Sir Kim Workman, recognises 'we pride ourselves on running our prisons like factories, and we pride ourselves on our police operations being based on military precision.' By this, he refers to refining a person that is going through the justice system to a specific number on a risk scale. Rather than humanising a person through the process, they are categorised into a risk bracket and then responded to accordingly.

Participants were concerned about decisions that are made in the justice system, as the algorithms used to determine risk levels are arbitrary and fundamentally flawed. In an interview from this study, Sir Kim Workman related an example of this subjective process prior to 2007, where prison staff in a faith-based unit decided on who was eligible for work release based on trust and familiarity with the people in prison. There were 16 people in the unit who would regularly go out safely into the community to mow lawns, build playgrounds, and chop firewood. However, in 2007, there was a move to use risk assessment tools to determine whether a person was eligible for work release. They applied the assessments to these sixteen men and only two were deemed eligible for release. This demonstrates how the discrepancy between human judgment and algorithm-based approaches to risk can produce profoundly different outcomes.

The move to prioritising the use of risk assessment was to try and mitigate biases in decisions around who or what is determined to be a risk. Therefore, it is suggested that risk assessment is evidence-based. Risk assessment tools are intended to operate in a way that removes individual judgment, and instead relies on instruments that determine risk in an objective manner. Khylee Quince reflects on the types of information used to support these objective decisions:

> The sets of information that decision-makers are given about a person to make a decision about their risk, to make a decision about where the harm came from. Then you will tend to get sort of hard science answers or, you know, psych reports, whether it's psychological or psychiatric reports, you tend to get, you know, files from government agencies.

Through using risk assessments, human thinking is often suppressed in favour of algorithmic thinking. As Sir Kim Workman recognises, 'the judiciary and others were reluctant to make decisions based on their own judgments and relied instead on these instruments that determine risk in a sort of quasi-scientific manner.' Risk assessments are therefore often recognised for their impassivity. This is due to emotional responses of measuring risk becoming increasingly unfashionable.

When making decisions about risks, Paula Rose, former Police Superintendent who is currently on the Parole Board, identifies two factors that are being considered: likelihood and consequences. Firstly, what the likelihood of repeated behaviour is expected to be. The purpose of this is to identify whether there is evidence of the same, or a similar, risk happening again. The second thing that is considered is what the consequences of the behaviour being repeated in the future are. Many factors go into examining the risk of an action, person, or place: who you are dealing with, what you know of their history, where you are going, and what you are trying to do.

In the justice system, the aversion of risk has become the dominant preoccupation. Risk completely shifts the focus of criminal law and criminal justice to a managerial response. Rather than being concerned with providing effective rehabilitation and reintegration services, the prioritisation is on minimising and eliminating risk. The following excerpt from Sir Kim Workman demonstrates this view:

> And in prison, ever since the psychological division started to up its ante, it has tended to dominate. It has moved away from being available to counselling and support, to people who have mental health issues or drug and alcohol issues, just to being a monitoring agency and it has become so called experts at risk assessment and avoidance.

Data sets have become the foundation of justice policy decisions and priorities. Risk aversion in terms of policy is often an avoidance of complexity and expense. However, it must be recognised that many positive alternatives are both complex and costly.

Tania Sawicki Mead notes that risk assessment is often justified due to its supposed ability to 'scry the future.' It is therefore forward-thinking in its focus and functions to predict the likelihood of an action or behaviour happening in the future. A common belief system in the management of risk is that previous behaviour is the best predictor of future behaviour. However, this can cause controversy when previous criminal behaviour is determined by arrest, conviction, and imprisonment rates. Māori are disproportionately represented in all these categories, which results in their criminal history, and therefore their risk level, being considered as more serious.

Risk Reinforcing the Status Quo

Participants identified that the ability to determine what behaviours, attitudes, or people are deemed to be risky holds a significant amount of power. There is an element of control that is intertwined with the preoccupation with risk. Focusing on risk enables people to be labelled or categorised, and then dealt with in a supposedly value-free manner. When making decisions around risk in the justice space, people's demographic information and what they have done or experienced in the past gets used against them. Chester Borrows, Parole Board member, former Chair of Te Uepū Hāpai i te Ora (the Safe and Effective Justice advisory group) and previous National Party politician, recognises certain factors that influence riskiness:

> If you're young, you're given a higher security classification because you're likely to be impetuous. If you are subject to a deportation order they will give you a higher security classification because of the risk of flight. [...] In order to address risk, you're creating a risk, or maintaining a risk.

The prioritisation of eliminating risk is used to justify enacting control and power over populations. In the context of Aotearoa New Zealand, for Māori over-policing and over-incarceration are embedded into responses to social issues.

Decisions around risk reinforce the status quo. If risk is based on biased data, then it is likely that the results will be disproportionate. Khylee Quince shares the following insights into the cyclical nature of risk:

> The aphorism is that, you know, the best predictor of future behaviour is past behaviour. I don't know that that's necessarily true, if that past behaviour and the past action of actors and systems or agencies and the system is racist, then you're just going to replicate that behaviour in your future policies of policing or imprisonment.

An individual's criminal history does not always paint a full picture. For example, when police lay charges there is the potential that they are charged with a more serious offence than what has occurred. If the past decisions made by those who determine risk are prejudiced and unfair, then present and future decisions regarding risk will also be flawed. There is also limited interest in rectifying the flawed process of determining risk. Tania Sawicki Mead recognises that 'doing things the way that you've always done often can be reassuring even if it comes with terrible outcomes.'

According to Emilie Rākete, press spokesperson of the national social action and prison abolitionist organisation People Against Prisons Aotearoa (PAPA), risk assessment tools can be a method of 'encoding the bias' within justice system processes. These tools are used to determine risky subjects or high-risk locations, which in turn justifies investing more criminal justice resources. Factors that are used to determine risk levels are not often selected by the wider public. Instead, they are generated by powerful individuals who make the decisions about what behaviour is a risk, or who may engage in risky activities. This is demonstrated by the following insights from Tania Sawicki Mead:

> I really think of risk as something that is not actually generated by the collective in the way that it's used now, but generated by individuals or power structures, so you know we talk a lot about what the risk is and who bears the consequences of that risk, and who makes the decisions about who is a risk or may engage in risky activities.

In the justice system in Aotearoa New Zealand, it is predominantly Māori who bear the burden of the consequences of measuring risk in this way. These concerns have been expressed about the deployment of algorithms by the New Zealand Police, and the ways these potentially rely on data generated from biased policing practices in communities, with little attention to the ethical consequences of this approach (Expert Panel 2021; Pennington 2021).

As part of this project, Emilie Rākete identified correctional risk assessment tools and processes as the 'evilest manifestation of what risk looks like.' Rākete argues that the justice system serves an ideological function and reinforces colonial interests. Risk assessment tools are one example of justice policy and practice that is used to justify disproportionate policing and punishment of Māori. In order to maintain their legitimacy, risk is used to

continue the oppression and marginalisation of poor and Māori communities. Risk profiles and data are then used to determine what communities require high police presence or observation.

Two recent examples of this can be seen through the Armed Response Teams (ARTs) trial and the photographing of Māori youth by Police. ARTs were trialled in October 2019 as a response to the 2019 Christchurch terrorist attack, and were trialled in Christchurch, Waikato, and Counties Manukau. These three regions were identified as high-risk locations, which was based on Police data through their Gun Safe programme (New Zealand Police 2021). There was significant pushback from the community in Counties Manukau—a region with a high population of Māori and Pasifika populations—as the trial had disproportionate effects on certain populations (Dunlop 2020). More recently, the New Zealand Police have been scrutinised and criticised by the Children's Commissioner for illegally stopping, questioning and taking photos of youth and children in public places, and placing their personal details and photos in a national Police database (Cardwell and Hurihanganui 2020; Hurihanganui 2021). This practice was predominantly used against Māori, and it is likely that the intelligence and data collected are associated with a subjective practice of profiling people deemed to be risky.

Participants were concerned about the type of information that was used within risk assessment, highlighting a favour of static risk factors over dynamic protective factors. There are consequences of risk assessment tools that factor in things that a person has limited or no control over. When things like socioeconomic deprivation or whether the person's family is associated with gangs are considered in assessments of risk, it can produce unfair outcomes. These factors that are out of an individual's control are then used against them when decisions of risk are made. This demonstrates that risk factors hold a lot more weight than protective factors. Khylee Quince illustrates that 'most of the official information is not about protective factors, it's just about risk. And it's just about the profile of this person's dangerousness, pathology and behaviours.' Identifying protective factors, such as whether an individual has pro-social relationships, can enable a better understanding of an individual's current or future behaviour.

Participants in this research also identified the role that emotions have played in conceptualising risk. Fear was one of the most common emotions correlated with risk. In an interview for this project, Tania Sawicki Mead notes that risk is tied to a 'fear of what might happen, as well as fear in a broader sense of fearing people who break social norms that you adhere to. So, fearing things you don't understand, behaviour you don't understand or don't agree with.' There is often a fear associated with people, actions, or behaviours that are deemed as different or misunderstood. These are then often the markers that become associated with risk. In having a prioritisation of risk aversion, the justice system pivots towards attempting to address fear by controlling and excluding risky people and behaviours.

When discussing the role that emotions play in the justice system, Tim McKinnel, a private investigator, a former police officer and member of the Establishment Advisory Group for the Criminal Cases Review Commission, notes a strong fear drive that shapes responses to crime. McKinnel highlights that a 'fear drive is almost a dehumanising of people.' The narratives depicted in the theme of risk reinforcing the status quo speak to a dehumanising process that is embedded in risk policy and practice. This resonates with the work of Simon (1988) and O'Malley (2008) who recognise that the pathologising of individuals through risk assessment strips them of their humanness. To provide an alternative to this, the notion of 'humanising risk' was conceptualised and is discussed below.

Humanising Risk

It is important to recognise that when making decisions around risk there are humans that bear the consequences of a miscalculation of risk. Khylee Quince notes that having the ability to 'say no to the computer' and override or underride risk data can be very useful. Humanising risk demonstrates a move away from managerial and algorithmic thinking regarding risk, and instead places people in the forefront on decisions about risk. There are two aspects that are considered through the framing of humanising risk. The first is to recognise the people who make subjective decisions around the development and application of risk, with a particular focus on the power associated with their position. The second, and arguably more important one, is to acknowledge the humanness of the people who are identified as risky.

Speaking to the people that make decisions around risk, Khylee Quince highlights the importance of judging people kanohi ki te kanohi (face to face) and ā tinana (in person). A person's physical presence and their ability to engage can offer further insight than a mechanical, algorithm-based risk assessment. Oral evidence, from both an individual and those that know them, can provide an alternative measure of a person's riskiness than what is given through reading a risk assessment profile. Bringing a sense of human connection and an emphasis on relationships is useful to identify whether the risk assessment is an appropriate depiction of a person. In an interview from this study, reflecting on her role on the Parole Board, Khylee Quince notes:

> Our job is to take the material, which is hundreds and hundreds of pages of psychological babble, which comes up, spits out all, you know, all these numbers and all this risk profile, but then you talk to the person, and you test the data. So, this says your risk, your risk areas and your high-risk situations are X, Y, Z. You talk to me about how you've mitigated that risk, or how you plan to mitigate that risk. And then we make a human judgment.

Those that work on the Parole Board are therefore tasked with decisions around risk, but importantly there needs to be more human judgment brought back into it. Qualitative accounts of someone's experience of the justice system and their changes in behaviour can provide more detail than risk assessment tools. As an alternative to using data sets to measure an individual's risk level, it could be possible to draw on the perspective and thoughts of their whānau (family).

Cultural reports are one way of pushing against the narrative of risk and its individualistic focus, and these were implemented under Section 27 of the Sentencing Act 2002 to recognise cultural needs in sentencing. They operate to provide personalised context that helps to humanise the person. They are backwards looking, which tells the whakapapa (genealogy) of a person, and forward looking, by recognising the protective factors that are currently in their lives or need to be reinforced to produce positive outcomes.

Risk assessment is a process of identifying factors (usually through a negative or deficit lens) that increase an individual person's propensity to engage in harmful behaviour. By having such a narrow focus, it often ignores the protective factors in a person's life, and the things that make them contribute meaningfully to their community. Recognition of protective factors and identification of what is contributing positively in a person's life is useful. They may not have a wide variety of protective factors in their life currently, but it is important to be solutions-focused and work towards identifying what may be helpful in a path towards desistance.

Tania Sawicki Mead recognises that to be transformative, risk policy and practices need to be 'grounded in emotions that help us see each other and forgive each other and feel for each other and have empathy. I think it's very hard to hold onto the empathy while you are feeling fear, and anger obviously, and guilt.' Having empathy for other people allows

for humanness and human rights to be recognised and upheld. In her book *The Politics of the Human*, Anne Phillips demonstrates concern for humanitarianism movements that fail to ignore existing differences between people and hierarchies embedded within that. Instead, differences between humans should be celebrated in our search for equality:

> We are not human *instead of* but *as* . . . women, men, black, white, gay, lesbian, heterosexual, and so on. In refusing the idea that these are alternative self-descriptions, the politics of the human pushes beyond an imagined equality towards strategies for tackling the (usually structural) causes of current inequality (2015: 133, emphasis in original).

Equality, through challenging structural hierarchies, becomes a core concern for movements that recognise people as humans. Humanising risk therefore enables us to see each other as people, rather than as risks to be managed.

As part of this research, Efeso Collins, an Auckland City Councillor for the Manukau Ward, acknowledged that risk policies and practices that reinforce social exclusion are ineffective. Instead, it is crucial that respectful and compassionate relationships are established and maintained. In his words:

> I think it's the way we manage the risk, and some people just talk about risk and say we need more cops, arm them and build more prisons. Or there's people like me who acknowledge there's a risk, but I'm more interested in how we build an inclusive society, so that we all know each other.

Collins works alongside youth that have had experiences within the criminal justice system. He noted that these people have 'the capacity to love, and to nurture, and to reach out, and to encourage, and to be great, and we are wasting that talent because society hasn't got the time to walk alongside them.' Relationship building is crucial in making transformative changes in the justice system in Aotearoa New Zealand. This is supplemented by McNeill's (2009: 23) vision of tackling crime, which 'requires that we nurture the collective efficacy of communities' and 'that we are also all part of the solution. In order for communities to be safer, they need to be stronger – together.' An emphasis on fostering community networks and encouraging pro-social relationships is argued to produce better outcomes than current risk conceptualisations (McNeill 2009).

To move towards humanising risk in Aotearoa New Zealand it is crucial that the Crown upholds its responsibilities under Te Tiriti o Waitangi (Treaty of Waitangi). Tania Sawicki Mead recognises this in the following passage:

> Māori never gave permission for the Crown to take people and to put them into prisons. And the harm that is done to that relationship, and to those communities, and those whānau by a failed system, is harmful in and of itself, and also is part of...the wider issues around Māori sovereignty.

Humanising risk relates to the recognition of social histories of place and how wider dimensions of social class, gender, and ethnicity become entangled in the crime control apparatus. This must include an acknowledgement of colonisation, and the related effects of removing rights from Indigenous people. A humanising approach could seek to engage and restore these rights, rather than entrenching a status quo of denying them.

Concluding Thoughts

Risk is associated with a fear of the unknown, or uncertainty and unreliability of people and their behaviours. In a world where our societies are becoming increasingly divided and diverse, there is an associated heightened sense of risk (Beck 1992). The literature on risk has demonstrated how the deployment of risk, both globally and within Aotearoa New Zealand, has resulted in lack of humanity and human judgment (O'Malley 2008; Simon 1988).

As seen in the narratives of the participants in this research, risk is conceptualised in a mostly negative manner. This is due to risk assessment tools being employed to quantify, predict, and control certain populations. Through this process, risk reinforces the status quo, and maintains power imbalances and inequality. The way in which risk manifests itself in Aotearoa New Zealand leads to the stripping of individuals' humanity, human rights, and identity. An alternative framework for risk is the notion of humanising risk. This perspective speaks to restoring the humanness of the people that go through the justice system.

By humanising risk, we can work towards decision-making based on empathy, love, and care for those around us. This involves building a more inclusive society, and getting to know the people in our community, in the hopes that this moves us closer to a world where we are not fixated on policing and punishment as a response to social issues. This article has demonstrated how the perspective on humanising risk contributes to contemporary literature in the field of risk. However, there is more that needs to be explored in terms of how this conceptualisation can influence risk policy and practice. Future research in this field could explore how risk can be humanised in specific ways.

Acknowledgements

Funding Information

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