

# *The 'Focal Concerns' of Parole Board Decision-Making: A Thematic Analysis*

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## *Abstract*

Following the high-profile murder of Jill Meagher in Victoria in 2012, parole is once again a provocative topic in Australia. While there is a developed scholarly literature on decision-making in other criminal justice areas, less attention has been paid to parole board decision-making. The study discussed in this article begins to address this gap in the literature through a thematic analysis of publicly available parole release decisions made by the Prisoners Review Board of Western Australia in 2013. Specifically, this study tests the viability of the focal concerns perspective as a conceptual framework for understanding parole board decision-making. Its analysis reveals that focal concerns relating to offender blameworthiness, community protection and practical constraints are evident in parole release decisions, albeit in a modified form from sentencing research to reflect the back-end process of parole. In particular, decisions consistently project a strong sense of offender change. This article presents the study and discusses implications of these findings with respect to the use of the focal concerns perspective in parole research.

**Keywords:** parole – parole boards – focal concerns – blameworthiness – community protection – offender change – Western Australia

## **Introduction**

The institution of parole in Australian states and territories was brought under scrutiny following two highly publicised incidents involving offenders on parole: the rape and murder of Jill Meagher by Adrian Bayley in 2012, and the assault and attempted rape of a woman by convicted murderer Terrence Leary in 2013. These events generated significant public outcry across Australia, resulting in extensive reviews of the parole systems in Victoria (Callinan 2013) and New South Wales (New South Wales Law Reform Commission 2013), and the announcement of plans to abolish parole entirely in Queensland (Viellaris and Ironside 2013). Historically, attention has focused on parole in various jurisdictions following high-profile incidents (see, for example, Harding 2006). These events typically result in a presumed public

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dissatisfaction with this element of the criminal justice system, followed by a rush to legislate in response (Hinds 2005; Roberts et al 2002). Despite the controversy surrounding parole, little scholarly attention has focused on parole board decision-making. This may be due, in part, to a scarcity of information resulting from the widespread reluctance of Australian parole boards to publicly release the reasons for their decisions (Naylor and Schmidt 2010).

A unique and timely opportunity arose to address this gap in the literature when the Prisoners Review Board of Western Australia (the 'PRBWA') took the unusual step of publishing on its website 'all decisions to release offenders on parole, as well as all decisions to cancel parole' (PRBWA 2013:1). Beginning in 2007, the PRBWA recognised there 'was a tendency to attract adverse media coverage, when a decision made by the Parole Board appeared flawed' (PRBWA 2007:4), but claimed that, in most instances, this criticism was unwarranted (PRBWA 2007). Accordingly, the PRBWA aimed to establish 'a policy of transparency and accountability' (PRBWA 2008:9) by providing the public with an opportunity to better understand how and why parole decisions are made (PRBWA 2007).

So, what conceptual framework should be used to inform this research on parole board decision-making? Huebner and Bynum's (2006) research was the first empirical examination of parole board decision-making using the focal concerns perspective of Steffensmeier et al (1998). This perspective provides a basis for examining the three primary factors thought to influence judges' sentencing decisions: offender blameworthiness, community protection, and practical constraints and consequences of the decision. Huebner and Bynum (2006) argued that there are similarities between the factors considered by judges and those considered by parole boards in decision-making, with researchers having observed parole boards balancing such factors (Carroll 1978; Glaser 1985; Huebner and Bynum 2006).

Huebner and Bynum's (2006) research returned a number of interesting findings with respect to parole board decision-making in the United States ('US'). These findings are discussed in detail below. This article also presents and analyses the findings of an Australian study examining whether the same set of focal concerns is recognisable in the decisions of Australian parole boards. Before turning to an explanation of the methods and findings, a brief overview of the existing research on factors that influence parole board decision-making is provided, followed by a summary of the current literature related to focal concerns with respect to both parole and criminal justice system decision-making more broadly.

## **Factors influencing parole board decision-making**

The existing body of literature examining parole board decision-making has largely returned conflicting findings with respect to the factors that significantly impact parole decisions and the weight that is attributed to those factors by parole boards (Mooney and Daffern 2014). While some parole decisions appear to hinge on static factors, such as offence characteristics, others focus on dynamic factors that assess an offender's likelihood for future offending. The usefulness of the existing literature is, therefore, limited.

In his review of the empirical research on this topic, Caplan (2007) identified that the most significant factors impacting parole decisions were institutional behaviour, incarceration length, crime severity, criminal history, mental illness, and victim input. A survey of members of the Association of Paroling Authorities International also revealed that crime severity and criminal history, together with offence type, were the most influential factors on the parole release decision (Kinnevy and Caplan 2008). The importance of a prisoner's institutional behaviour to the parole decision causes disagreement among researchers. While Carroll et al

(1982:210) reported that a prisoner's behaviour in prison was 'the single most important variable ... predicting the release decision', a later study concluded that institutional behaviour (as measured by the total number of disciplinarys received by a prisoner) had no significant impact on the parole decision (Morgan and Smith 2005a). While a second variable measuring how many months since the last disciplinary had been received was more influential to the parole outcome, this variable also failed to reach statistical significance. Instead, Morgan and Smith's (2005a) analysis revealed that the total number of felony convictions, the sentence length, and recommendations given by the senior parole officer and warden were the most significant predictors of parole release decisions, accounting for nearly 47 per cent of the variation in the decisions to grant or refuse parole (Morgan and Smith 2005a).

Research examining the impact of victim participation on parole board decision-making has also returned mixed findings. While Morgan and Smith (2005b) reported that a victim's input at parole hearings was highly predictive of parole outcomes (second only to a senior officer's recommendation), more recent research concluded that negative victim input was not a significant predictor of parole release (Caplan 2010). There have also been conflicting findings with respect to the importance of an offender's participation in prison treatment programs. While some researchers have found treatment participation to be unrelated to parole outcomes (for example, Mooney and Daffern 2014; Morgan and Smith 2005a), others have suggested that, although treatment participation may not be a strong predictor for parole release decisions, a lack of participation is an influential factor in parole refusals (Lindsey and Miller 2011).

In the only Australian study conducted to date, Mooney and Daffern (2014) examined parole release decisions made by the Adult Parole Board in Victoria for 146 violent male offenders. Their initial analysis revealed that four variables significantly predicted the parole release decision: the number of aggressive disciplinary incidents recorded during the offender's period of imprisonment; the offender's score on the Violence Risk Scale ('VRS'); the Community Corrections Officer's ('CCO's') recommendation as to the offender's suitability for parole; and whether the offender had secured post-release accommodation. A subsequent multivariate analysis of these four variables revealed that the offender's VRS score and the CCO's recommendation remained significant predictors of the parole release decision. Further, contrary to the findings of some US research (see, for example, Caplan 2007; Morgan and Smith 2005a), factors relating to an offender's criminal history (including the number of prior convictions) and the current sentence length were not found to be significant to the parole decision. Taken together, Mooney and Daffern (2014:440) suggest this indicates that the most significant factors to the parole release decision are those relating to 'post-sentencing variables' that assess the offender's risk for future violence, as opposed to static risk factors like the offender's previous criminal history. Further research is needed to confirm whether these findings are also true of parole board decision-making in other Australian jurisdictions.

## **What is the focal concerns perspective?**

Steffensmeier (1980) first articulated the focal concerns conceptual framework for understanding judicial decision-making in research examining the effect of gender on criminal justice outcomes and sentencing decisions. He suggested that the more lenient treatment of female offenders in criminal sentencing could be explained by five interrelated factors: chivalry, naiveté, practicality, offenders' perceived future criminality, and perceptions of

dangerousness. Steffensmeier et al (1993) later elaborated on these findings in their examination of the effect of gender on sentencing decisions, which also reported that judges' sentencing decisions were driven by considerations of practicality. However, their analysis revealed the presence of a second focal concern: the assessment of an offender's culpability or 'blameworthiness', as demonstrated by the offender's apparent remorse, prior criminal record, and involvement in the offence (Steffensmeier et al 1993).

In 1988, Steffensmeier et al argued that judges' sentencing decisions are influenced by three key focal concerns: offender blameworthiness, community protection, and practical constraints and consequences. Offender blameworthiness is underpinned by retributivist philosophy and is reflected in sentencing research that has demonstrated judges' reliance on factors such as offenders' culpability, the seriousness of the offence, the degree of injury caused, and the offender's prior criminal history (Bond and Jeffries 2009; Steffensmeier et al 1998), but also by factors that mitigate offenders' culpability, such as offenders' prior victimisation or substance abuse (Huebner and Bynum 2006; Jeffries and Bond 2010).

Community protection, on the other hand, is motivated by a consequentialist or forward-looking philosophy that emphasises the need to deter future offending, to incapacitate and, ultimately, to reduce the risk to the community. Community protection is commonly reflected in judicial decisions that highlight the risk of future violence, the nature and degree of seriousness of the offence, the extent of criminal history, and the typical package of offender characteristics associated with higher chances of reoffending, including education, employment, relationship status and drug use (Steffensmeier et al 1998; see also Bond and Jeffries 2009; Bond et al 2011).

Steffensmeier et al's (1998) third focal concern is the framework of practical constraints and consequences within which judges must work. These can include organisational constraints that shape working relationships and keep the work of courts flowing — well-documented in the large literature on the courtroom work group (see, for example, Dixon 1995; Eisenstein and Jacob 1977; Ulmer 1997). They can also include constraints related to the suitability or 'practical consequences' of particular sentences for particular offenders (Bond et al 2011; Steffensmeier et al 1998). Finally, Steffensmeier et al (1998) point to the influence of the broader community and political contexts on judicial decision-making and, in particular, the possible influence that decisions can have on the reputation of the court (see, for example, Eisenstein et al 1988).

At first glance, the three focal concerns each appear to be well defined and conceptually distinct. However, the interplay between them can become complex as a result of judges being provided limited or incomplete information about offenders and their cases (Steffensmeier et al 1998). Lacking 'comprehensive and reliable information on certain components within these three focal concerns' (Bond et al 2011:275), judges tend to develop a type of 'perceptual shorthand' to assist them in making sentencing decisions (Steffensmeier et al 1998; Ulmer et al 2007). This shorthand allows judges to 'make situational imputations about defendants' character' and likely future behaviour (Steffensmeier and Demuth 2006:246), thereby allowing stereotypes relating to offenders' race or ethnicity, gender and age to permeate their sentencing decisions (Bond and Jeffries 2012; Steffensmeier and Demuth 2001). Thus, 'reliance on the three focal concerns is said to be universal, but the meaning, emphasis and interpretation of them is local' (Ulmer and Johnson 2004:142).

While the limits of the focal concerns perspective as a well-honed 'theory' of criminal justice decision-making have been questioned (see Hartley et al 2007), researchers have most effectively applied this perspective in the realm of sentencing research as a 'a very logical and effective way in which to test sentencing outcomes' (Hartley et al 2007:73). More work needs

to be undertaken to test the limits of the perspective as an organising tool for decision-making in areas of the criminal justice system beyond sentencing and in contexts beyond the US — where much of the focal concerns sentencing research has been applied (see, for example, Kurlychek and Johnson 2004; Spohn and Beichner 2000; Spohn and Holleran 2000; Steffensmeier and Demuth 2000, 2001, 2006; Ulmer and Johnson 2004) — and, to a more limited extent, in Australia (Bond and Jeffries 2009, 2011a, 2011b; Jeffries and Bond 2010) and elsewhere (Weinrath 2007).

This article now turns to some of the major themes that have arisen from literature exploring criminal justice decision-making using the focal concerns perspective.

### **The focal concerns perspective and criminal justice decision-making**

Huebner and Bynum (2006) examined the relationship between two focal concerns, offender blameworthiness and community protection, and the timing of parole release for male sex offenders. They reported that while measures of offender blameworthiness were of little consequence to the parole release decision, community protection considerations played an integral role in parole board decision-making and significantly affected the timing of parole release. Specifically, the potential risk associated with an offender's release from prison weighed heavily on parole board members, as they felt they were the 'sole gatekeeper between the prison and community' (Huebner and Bynum 2006:963). The study concluded that the salience of community protection considerations was likely the result of their sample comprising particularly objectionable offenders — male sex offenders: 'There has been substantial public scrutiny over the release of sex offenders to the community, predominantly for individuals who have assaulted young children. ... [T]his community concern appears to have permeated the parole decision process' (Huebner and Bynum 2006:978–9). This conclusion is questionable, since studies have shown that sex offenders have significantly lower rates of recidivism than other types of offenders (Bench and Allen 2013; Langan and Levin 2002). Thus, presumably they present *less* risk to the community — a fact likely to be known by parole boards (Soothill 2010). The emphasis on community protection by the parole board identified by Huebner and Bynum (2006) could, however, be explained by the more general shift toward risk aversion in crime control policy that has permeated Western democratic societies in recent decades (Garland 2001; Simon 2007). Parole, as the back-end criminal justice stage interfacing most with the community, has been particularly affected by the greater emphasis on risk (Padfield and Maruna 2006; Petersilia 2003; Simon 1993).

Huebner and Bynum's (2006) work underscores the need for further investigations into the focal concerns of parole board decision-making for at least three reasons. First, their research was based on an American sample, and the extent to which the findings are applicable to other contexts is left open to question. In fact, Lacey (2012) makes the case for American exceptionalism in crime control and punishment strategies, arguing that it is not possible to assume that punitiveness and risk will have the same importance elsewhere as it does in the US. Second, their research raises a further question about possible variation in focal concerns across offender types — for example, does a violent offender raise different concerns than a non-violent offender who may have equally high chances of reoffending? And, third, as Huebner and Bynum's (2006) sample comprised solely of male offenders, research is needed to explore the relationship between the focal concerns and parole decisions for female offenders.

Since Huebner and Bynum's (2006) initial expansion of the focal concerns framework to parole research, Lin et al (2010) have also applied this perspective to their research on parole

revocation decisions. Their analysis revealed evidence of all three focal concerns in parole board decisions to re-imprison parole violators. In particular, they reported that certain categories of offenders (sex offenders and 'serious' or 'violent' offenders) were treated more harshly in revocation decisions and therefore may be perceived by parole authorities to be more blameworthy or more of a public safety concern than other types of offenders. Further, they found evidence of the practical constraints and consequences focal concern, whereby the likelihood of re-imprisonment for parole violations decreased as prison occupancy rates increased (Lin et al 2010).

Although no other studies have yet extended the focal concerns perspective directly to parole decision-making, important insights can be gained from research where this framework has been applied to decision-making in other criminal justice system contexts. In a study of probation officers — responsible for supervising offenders in the community, rather than making crucial decisions about offenders' release from prison — Harris (2009) found that two focal concerns guided officers both in their assessment of offenders and as a means of informing attributions that explained offenders' behaviour. First, probation officers used offenders' apparent level of sophistication in committing the offence as a measure of their culpability. That is, the more sophisticated the offence, the more culpable an offender was considered to be. Second, probation officers focused on notions of risk and community protection by characterising offenders in terms of their perceived dangerousness.

In one of the few focal concerns studies conducted in Australia, Bond and Jeffries (2009) undertook a narrative analysis of judges' sentencing remarks in South Australian criminal cases to determine whether offenders' sentencing stories (as told by the sentencing judge) differed in terms of the focal concerns for Indigenous and non-Indigenous offenders. Their analysis revealed evidence of all three focal concerns, including that an offender's employment status and strong familial ties (measures of community protection) were portrayed as important in assessing an offender's risk of recidivism. Employment status and familial ties were also found to significantly impact the length of imprisonment handed down to criminal defendants in Western Australia in a later study (Bond and Jeffries 2011a). In a separate study, again in Western Australia, Bond and Jeffries (2011b) reported that judges' decisions to incarcerate offenders were most strongly influenced by community protection considerations, while decisions as to sentence length were most strongly affected by measures of offender blameworthiness.

Holtfreter's (2013) research underscores the need to consider the type of offending in focal concerns research. She reported that community protection considerations mattered little in judges' sentencing decisions of white-collar offenders in the US; rather, measures of an offender's blameworthiness most significantly influenced incarceration decisions, with the odds of incarceration increasing by 85 per cent for highly culpable offenders and 415 per cent for offenders with prior fraud-related charges or convictions.

Studies aimed at other areas of the criminal justice system provide some basis for identifying which of the focal concerns may emerge from the PRBWA's parole release decisions. They also leave open further opportunities for an expanded investigation in a number of ways. While they suggest that measures of offender blameworthiness and community protection will emerge more prominently than the practical constraints and consequences focal concern, the literature has returned conflicting results as to the relative importance of these two focal concerns to legal decision-making.

In addition, no consistent approach has yet been applied to the allocation of measures said to be indicative of each focal concern. For instance, while Steffensmeier et al (1998) considered an offender's criminal history to indicate offender blameworthiness, Bond and

Jeffries (2011b) associated this measure with community protection. The interrelatedness of some variables was a key criticism of this approach as ‘there is no guide for where variables should be used within a given concept and how much variance a concept explains is accounted for by each variable’ (Hartley et al 2007:63).

Further, because parole boards, judges and probation officers make decisions under vastly different circumstances, their decisions will be influenced to varying extents by each of the focal concerns (Leiber et al 2011). Parole boards (unlike some other decision-makers) usually have a ‘wealth of detailed information about offenders’ (Hannah-Moffat 2004:360). However, they also tend to have only a limited amount of time in which to consider that information (Gobeil and Serin 2009). For instance, a former member of Victoria’s Adult Parole Board estimated that eight minutes were spent, on average, deliberating each parole case (ABC News 2013; Bartels 2013). Care must be taken, therefore, when drawing analogies between the decisions made by parole boards and those made by other legal decision-makers.

Finally, because parole boards represent the final barrier between offenders and the community, they are likely to feel significant pressure to ensure their decisions are correct (Huebner and Bynum 2006). Accordingly, they may adopt a more conservative or risk-averse approach than other decision-makers (Clear and Gallagher 1985; Glaser 1985; Leiber et al 2011).

## **The current study**

A number of important gaps in the existing literature on parole board decision-making and the application of the focal concerns perspective to contexts outside of sentencing research and the US have so far been identified. The current study aims to address these gaps by extending the focal concerns perspective to Australian parole board decision-making. In doing so, this study assesses the applicability of the focal concerns perspective to parole board decision-making and identifies whether concerns relating to offender blameworthiness, community protection, and practical constraints and consequences are evident in Australian parole release decisions.

### ***Method***

This study presents a thematic analysis (see, for example, Attride-Stirling 2001; Braun and Clarke 2006; Guest et al 2012) of parole release decisions that were made publicly available by the PRBWA on its website (PRBWA 2015). Each decision included the date of the decision, the offender’s name (with the exception of some sex offenders), the offence(s) for which the offender was convicted, the terms of imprisonment, the conditions of the parole order and, in some cases, factual information relating to the circumstances of the offence(s). In addition, all decisions included a qualitative text field outlining the key reasons that led the PRBWA to conclude that the release of a particular offender would not present an unacceptable risk to the safety of the community. This information was provided in bullet form and contained a relatively consistent level of detail across all decisions.

The study’s sampling strategy involved downloading all of the parole release decisions made in 2013 that were available on the PRBWA’s website over a four-month period, from 6 November 2013 to 10 March 2014. This strategy was formulated for a number of reasons. Most importantly, it examined parole decisions made shortly following the high-profile cases involving Adrian Bayley and Terrence Leary, as the effect of incidents like these often reverberate beyond the jurisdiction where they occurred (Bartels 2013). Further, it captured a

large enough sample of decisions to ensure a convergence of themes could be identified and analytical generalisations made (Onwuegbuzie and Collins 2007). Lastly, it avoided any significant changes to the composition of the PRBWA and ensured that all decisions were made in a similar social and political context.

This strategy resulted in a sample of 375 parole release decisions dated between 21 May 2013 and 20 December 2013. Each decision averaged between one to two pages in length, resulting in approximately 400 pages of qualitative data. Decisions involving male offenders made up the majority of the sample (85 per cent,  $n=320$ ), with the remaining 15 per cent of decisions involving female offenders ( $n=55$ ). Of the male offenders in the sample, 51 per cent were non-violent offenders ( $n=163$ ), 38 per cent violent offenders ( $n=122$ ), and 11 per cent sexual offenders ( $n=35$ ). Conversely, 73 per cent of the female offenders were non-violent offenders ( $n = 40$ ) and 27 per cent violent offenders ( $n=15$ ). There were no female sex offenders in the sample. On average, offenders had served 30 months' imprisonment at the time they were granted parole. Reporting on national prisoner characteristics by the Australian Bureau of Statistics (2013) indicates that the offender and offence characteristics in the sample were not skewed.

The purpose of this study was to identify which, if any, of the three focal concerns identified by Steffensmeier et al (1998) were also evident in parole decisions. Accordingly, the analytical strategy identified, analysed and reported themes that emerged from the PRBWA's decisions using the thematic analysis method (Braun and Clarke 2006). A deductive, or 'hypothesis-driven', approach was chosen for this study because it allowed identification of specific themes relating to offender blameworthiness, community protection, and practical constraints and consequences and, thus, determination of how the focal concerns perspective operated on this particular sample of parole release decisions (Braun and Clarke 2006; Guest et al 2012). The intention was not to provide a definitive answer regarding the applicability of the focal concerns perspective to parole board decision-making, but rather to provide a further test of this perspective beyond the work of Huebner and Bynum (2006) and in a context outside of the US.

By dissecting the text into smaller sections and focusing on the qualitative text fields that described the 'reasons for release', the key themes in the decisions were identified and organised into basic, organising, and global themes per Attride-Stirling's (2001) 'thematic networking' approach. The themes identified through this process are described in detail below.

## **Results**

Using the focal concerns perspective as an organising tool to examine parole board decision-making, this study undertook a thematic analysis of the PRBWA's parole release decisions. It explored whether and how the three focal concerns identified by Steffensmeier et al (1998) in sentencing research were also evident in parole decisions. This analysis indicated that, in some ways, the traditionally conceived focal concerns were evident in the parole decisions; however, there were also some notable differences.

### **'Offender blameworthiness' through minimisation of an offending past**

Earlier research on judges' focal concerns suggests that offender blameworthiness involves an assessment of an offender's culpability on the basis of factors including the seriousness of the offence, the degree of injury caused, and the offender's prior criminal history (Bond and Jeffries 2009; Steffensmeier et al 1998). In the context of the PRBWA's parole decisions, it was the absence — rather than the presence — of blameworthiness that was often explicitly



connected to reasons for release. This was most evident in justifications that emphasised a minimal or non-violent history and/or gaps in an offending career as factors supporting the offenders' likely good performance on parole. These statements served to highlight the minimal nature of the offences. For example:

[His] criminal history does not include convictions for violence (Male offender, 25 July 2013).

Her Court history indicates gap in her offending which may indicate an ability to lead a law abiding lifestyle (Female offender, 5 November 2013).

In some instances, the PRBWA also downplayed an offender's culpability by describing mitigating circumstances. For example, in a case involving an offender who had been charged with driving without a valid driver's licence, the PRBWA noted that the 'current conviction ... was not aggravated by alcohol or drug use' (Male offender, 10 September 2013). Further, in a case involving a female offender who had been charged with stealing and fraud offences, the PRBWA acknowledged the 'absence of any violence or drug related offending behaviour' (Female offender, 5 June 2013).

Much more than was the case in the sentencing focal concerns research findings, the PRBWA invoked blameworthiness (or its absence) as a way of minimising a sense of risk to the community. Thus, these data suggest a much less clear demarcation between blameworthiness and the second focal concern, community protection, than has been suggested by sentencing research.

### **'Community protection' through emphasis on offender change and safeguards**

As a focal concern in sentencing research, 'community protection' has been included as an emphasis on the risk of reoffending, the causes of recidivism, and any characteristics of an offender that might affect his or her ability to lead a pro-social life (Jeffries and Bond 2010; Steffensmeier et al 1998). Much like the parole release decisions examined by Huebner and Bynum (2006), the decisions in this study could be read as being permeated by notions of community safety and risk. Beyond the sense of minimisation of blame discussed above, this was apparent in a number of ways.

Decisions often underscored a sense of *changed identity* in offenders that would make them safer members of the community. For example, voluntary participation in prison-based programs (demonstrating a motivation to change), or completion of compulsory treatment programs with reported gains, were frequently mentioned:

[She showed] a reported motivation to improve her future life prospects, evidenced by her engagement in substance abuse and trauma counselling, participation in the Cognitive Skills Program on a voluntary basis and undertaking some employment related training, as reported in the Community Corrections Officer Report dated 30 May 2013 (Female offender, 19 June 2013).

His positive participation in a substance abuse programme and acknowledgement of the need to further engage in substance abuse counselling. The Pathways Program completion report dated 9 May 2013 details he displayed a clear understanding of the association between alcohol or drug use and his offending (Male offender, 11 July 2013).

Decisions were also often framed in positive language when referring to an offender's participation in these prison programs as indication of an offender's acceptance of responsibility for offending and increased appreciation for how the offender's attitude and choices affect his or her risk of recidivism. This image of the offender as a newly changed person was also apparent in references to the 'salutary effect' — or life changing impact — of the prison sentence and parole supervision for first time offenders.

Community protection was also evident in the decisions via the presentation of offenders as certifiably low risk to the community through reference to low scores on risk assessment tool results, for example: 'A psychological report dated 5 May 2013, states that he is assessed as being at a low risk of re-offending in a violent manner in the future and the current offence is viewed as an aberration' (Male offender, 22 August 2013). Similarly, decisions often presented the offender as a suitable risk 'this time' because of documented evidence of successful compliance with previous supervision orders in the community: '[She has complied with] five of six previous community based dispositions' (Female offender, 17 July 2013).

A third version of community protection as a focal concern was the consistent emphasis on the release plan as a strategy for ensuring a safe outcome. Parole conditions imposed clear restrictions on offenders' behaviour in the community, including mandatory urine testing, exclusion from various locations (for example, licensed premises), and required counselling, among others.

The salience of community protection as a focal concern is not unexpected given the twofold policy aim of parole: to maximise an offender's prospects of successfully reintegrating back into society and to reduce any risk to the safety of the community associated with the offender's release using techniques of surveillance and risk management. Nonetheless, a close reading of the decisions released in Western Australia revealed that the PRBWA strongly framed decisions as a rational and warranted choice to release changed offenders safely to the community. As Hannah-Moffat (2004:380) has argued, this way of framing release decisions 'mitigates risk and enables the board to reassemble information and construct an offender as suitable for release, even in the presence of contrary facts'.

### **'Practical constraints and consequences' and the emphasis on political climate**

The third focal concern identified in sentencing research, practical constraints and consequences of the decision, involves 'system-wide' considerations like prison overcrowding, the financial burden associated with housing offenders, the social costs of imprisoning certain types of offenders, and the political climate surrounding responses to crime (Bond and Jeffries 2009; Jeffries and Bond 2010; Steffensmeier et al 1998). As was the case for the previous two focal concerns, a reading of the decisions in this study suggest some modification to this focal concern is also required for the back-end process of parole.

Specifically, no manifest evidence was found in the PRBWA's decisions of the types of practical constraints to which judges may refer in sentencing decisions. This finding is notable, particularly with regard to decisions involving female offenders, as it might be expected that a parole board, like other bureaucratic decision-makers, would emphasise a female offender's familial and social responsibilities when justifying its decision to grant parole (Kruttschnitt 2010). This finding is also contrary to the findings of Bond and Jeffries (2009), who reported that Australian judges were mindful of the practical consequences associated with imprisoning certain types of offenders (in that case, Indigenous offenders) due to the broader social effect that imprisonment would have on the wider community. For this reason, it was expected that the PRBWA might have relied upon a female offender's caregiver responsibilities to justify the granting of supervised release.

Despite the lack of express reference to the practical constraints and consequences of the parole decision, it could be argued that the presentation of the parole decisions to the public is, in and of itself, a response by the PRBWA to the political climate surrounding parole in Australia in recent years. In particular, the messages of public safety and minimal risk that are consistently emphasised in the decisions suggest the PRBWA's appreciation of the need to be

risk-averse in its decision-making. The focus on positive messages about parole also suggests that the PRBWA may be attempting to manage or alleviate any concerns held by the public about the release of offenders back to the community.

## Discussion

This study revealed that the focal concerns traditionally conceived by Steffensmeier et al (1998) in sentencing research were also evident, to a degree, in the PRBWA's parole release decisions. However, the PRBWA's interpretation and application of each of the focal concerns differed in a number of important respects from the literature examining focal concerns in decision-making at the front end of the criminal justice system. Most notably, while measures of offender blameworthiness were identified in the PRBWA's decisions, the emphasis of this focal concern for parole release decisions related to the minimisation of an offender's culpability and the presentation of offenders as both suitable and ready for supervised release from prison. For instance, the non-violent nature of an offence and an offender's minimal criminal history were often highlighted in the decisions to emphasise the offender's suitability for parole and to minimise the sense of risk to the community associated with the offender's release from prison.

The use of offender blameworthiness as a risk minimisation tool is not surprising given that, by the time the parole decisions were published by the PRBWA, the offenders in question had likely already been released back to the community. Accordingly, highlighting features of an offender or his or her case file that could evoke a negative reaction from the public would undermine the PRBWA's risk management strategy. However, this focus on risk and community safety indicates a much closer resemblance between this focal concern and that of community protection than has previously been suggested in the sentencing literature.

The community protection focal concern was most prominent in the PRBWA's decisions, adding weight to Huebner and Bynum's (2006) suggestion that concerns over risk and community safety have dominated parole decision-making. In particular, the decisions were largely framed by risk and safety, with offenders reassembled in the decision narratives as having undergone significant change and now being 'suitable for release' (Hannah-Moffat 2004:380). This was often achieved through an emphasis on the 'life-changing' impact that a term of imprisonment had on offenders and, more significantly, the 'changed identity' of offenders through treatment programs that made them safer members of the community.

The third focal concern, practical constraints and consequences, was also apparent in the decisions, albeit in a different form than expected. While no explicit reference to this focal concern was identified in the decisions, it was arguable that the PRBWA's practice of publishing its parole decisions was, in itself, an attempt to manage the practical consequences associated with the release of potentially dangerous offenders. In particular, publishing the decisions in a manner that promoted specific and positive messages about parole intimated that the PRBWA was attempting to control the dialogue or 'story' surrounding its parole decision-making practices. Thus, the publication of parole release decisions for the purpose of managing the potential consequences or public fallout following the release of offenders back to the community may constitute a new measure of this focal concern.

## Implications for future research

Overall, the findings of this study have several important theoretical implications for future research, particularly with regard to the use of the focal concerns perspective with parole research. The study has confirmed the findings of Huebner and Bynum (2006) that the focal concerns identified by Steffensmeier et al (1998) as influencing sentencing decisions can also appear manifestly in parole release decisions — with community protection, risk and safety being key concerns that have clearly permeated parole board decision-making.

In addition, this study demonstrates that the application and interpretation of the focal concerns by decision-makers may shift during various phases of the criminal justice process. Like Bond and Jeffries (2009), the results showed that measures of offender blameworthiness could be used to reduce or minimise, as opposed to increase, an offender's culpability for the offence for which he or she was convicted. Moreover, the results extend the work of Bond and Jeffries (2009) from the sentencing stage at the front end of the criminal justice system to the back end and parole release decision-making.

The findings also suggest that the consideration of the focal concerns by parole boards varied depending upon the offender's gender. For instance, the community protection focal concern involves an assessment of the risk an offender would pose to the safety of the community if the offender reoffended (Steffensmeier et al 1998). Research has shown, however, that risk assessments are influenced by gendered constructions of risk (Hannah-Moffat 2004) and that male offenders are considered to be 'riskier' than female offenders (Boritch 1997 as cited in Hannah-Moffat and Shaw 2001; Erez 1992; Hannah-Moffat 2006). As a result, parole boards are likely to place more emphasis on community protection considerations in decisions involving male offenders than those involving female offenders. Further, because male offenders are often perceived to be more blameworthy for their offending than their female counterparts (Rodriguez et al 2006), the offender blameworthiness focal concern may also feature more heavily in parole decisions for male offenders. However, as Hannah-Moffat and Yule (2011:150) recognised, 'more empirical and conceptual analyses of the "back door practices of release" to elucidate the application of parole boards' discretionary power' is required to gain a better understanding of the effect of gender on the application and interpretation of the focal concerns.

Finally, this study confirms the importance of considering the broader context in which parole release decisions are made in order to better understand how and why certain focal concerns may emerge more prominently than others. For instance, the salience of the community protection focal concern to parole decisions in this study may have been the result of a number of different factors, including the penological shift experienced in many Western countries that has resulted in increased emphasis on the identification and management of risk in the correctional system (Simon 2007; Garland 2001). It is also recognised, however, that because the decisions in the sample were made shortly following the highly publicised murder of Jill Meagher, the unprecedented scrutiny surrounding parole in Australia that followed may have led parole authorities to become more mindful of risk and community safety. Only by recognising the potential impact of factors like these can researchers accurately explain why certain focal concerns may feature more prominently in parole decisions than others.

## Conclusion

This research has explored a newly available, and as yet unexamined, source of information about parole release decisions at a particularly turbulent moment for parole in Australia. It is the first exploratory investigation into parole decision-making through the lens of the focal concerns perspective in Australia. However, it is important to recognise the limitations of this study and the resultant avenues for future research.

The decisions examined in this study represent a condensed version of the PRBWA's parole hearings and contain only selected information from offenders' case files and about the PRBWA's deliberations. The decisions are unlikely, therefore, to represent all factors that were considered by the PRBWA when assessing an offender's suitability for parole release or to provide comprehensive reasons for the PRBWA's decision. Despite this, the decisions do reflect the PRBWA's official record of the risk assessment undertaken by its members, the ultimate outcome of the parole hearing, and the PRBWA's justifications for its decision. Thus, the decisions are useful in their own right as they help us to better understand how parole release decisions are framed by parole boards and what factors are emphasised in decisions to release offenders on parole.

Taking into account Lacey's (2012) argument that strategies of crime control and punishment are likely to vary both inter- and intra-jurisdictionally, this study highlights the need for further research in Australia on the interpretation and application of the focal concerns. Such research could begin, for instance, with an examination of the parole decisions published by the Parole Board of Tasmania on its website, which date back to 2002.

Finally, the information released by an institution to the public represents only one perspective of parole board decision-making (albeit an important one). Accordingly, it is important for researchers to seek alternative perspectives and to continue to examine parole board decision-making through a variety of research methods. For instance, in future, researchers might conduct interviews or surveys of parole board members or seek permission to attend and observe parole board hearings. Such research is necessary to ensure that more information about parole decision-making is available and that Australian parole processes do not remain 'closed and unaccountable' as they mostly are today (Naylor and Schmidt 2010:437).

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