



Viewpoint

Walls and laws: Structural barriers to forensic psychiatric research

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Forensic psychiatry can be defined in a broader and a narrower sense. According to the broader definition, forensic psychiatry concerns the entire intersection between psychiatry and the law – which would render much of psychiatry ‘forensic psychiatry’. According to a narrow definition, which I use in this paper, it concerns the intersection between psychiatry and *criminal law* [1]. The central research question in forensic psychiatry thus defined regards the relationship between psychopathology and criminal behaviour. This means that much research focuses on evaluations of legal insanity, prison mental health, assessments of risk of recidivism, and on interventions aimed at reducing the risk of future criminal behaviour in offenders with a mental illness.

Just like any other subspecialty of psychiatry, forensic psychiatry should be based on solid scientific evidence as much as possible. Meanwhile, there are significant barriers to forensic psychiatric research [2,3] that, I argue, can basically be subsumed under the headings *walls* and *laws*. The nature of these impediments is such that they constitute structural hurdles to doing research, thus hindering much needed progress in this area of psychiatry. Even though I will suggest some possible solutions, this contribution is basically intended as an enticement to think about such solutions.

1. Walls

Walls stand in the way of forensic psychiatric research. The term ‘walls’ not only refers to the concrete bricks, gates, fences, and doors themselves but also to compulsory daily routines and safety measures in prisons and other correctional facilities. For a researcher, just to bring a laptop inside the prison wall is an enormous challenge – as is taking an inmate out of prison. Locked doors and security scans with strict, time-consuming procedures have to be passed, time after time. In addition, in many facilities, it is the justice system that pulls the strings: participants in a forensic psychiatric study may suddenly be moved from one facility to

another – possibly hundreds of miles away. Such transportation may clearly lead to immediate dropout from a study. In general, it is considerably more difficult for a researcher to have access to a patient in a forensic setting than in a regular mental health context. Consequently, reaching a sufficient *n* will be harder: it may be much harder to obtain results on 10 forensic psychiatric patients than on 100 non-forensic patients. Even though it will not always be required to perform research in the forensic population that is actually incarcerated (for example because forensic patients are also treated in outpatient facilities), the prison population and those admitted to forensic mental hospitals clearly constitute a core interest group in forensic psychiatry.

Furthermore, walls refer to the fact that people are kept in situations *against their will* – otherwise these walls would serve no purpose. The fact that people are in situations against their will, should make us watchful that the ethics of doing research is respected, and that subjects are not coerced to participate in studies [4]. In general, offenders constitute a vulnerable research population [5,6], and ethics committees may well take this extra vulnerability into account [2]. As Edens et al. put it: “A major ethical concern in research with prisoners (and others under the supervision of the criminal justice system) is the potential for abuse due to coercive influences (and, to a lesser degree, undue incentives) that may adversely affect offenders’ capacity to give voluntary consent to research participation.” [7]. This means that there is a significant *extra* concern for ethical committees – and therefore researchers – regarding studies in forensic psychiatric settings, which may complicate research in forensic psychiatric populations. Meanwhile, as Huang et al. state, “participating in science and enjoying benefits from the advancement of science are human rights” [6].

2. Laws

Secondly, laws constitute a barrier. I will distinguish between three ways in which this happens. Firstly, the law may just prescribe a specific type of intervention (e.g., a prison sentence), and it may also prescribe its duration. This entails that *randomization* in forensic populations may only be possible to a very limited extent [8]. Since randomized controlled trials constitute an extremely valuable research paradigm in psychiatry, it is clear that this type of restriction is a serious hindrance, at least for intervention studies in forensic mental health.

Secondly, there are profound *differences* between the laws and regulations across jurisdictions, in particular those regarding defendants and prisoners with mental illnesses. This results in

dissimilar facilities for and categories of forensic psychiatric patients across legal systems and countries. Therefore, if a specific group of forensic patients is studied, e.g., in the Netherlands, it may be very hard to translate the findings to the US legal system, with its own provisions, sanctions and categories of patients. For example, there are many differences between jurisdictions concerning legal insanity [9]. Some legal systems even abolished the insanity defense, such as Sweden. Consequently, research findings on legal insanity obtained in one jurisdiction may be difficult to interpret for other jurisdictions. In general, the many differences between legal systems make forensic research less relevant for an international readership (and therefore, possibly, for a high impact international journal).

Third, since the criminal justice system responds particularly to harm that has been inflicted on others, working with those in the criminal justice system is also likely to come with some extra dangers for the researchers in terms of becoming a victim themselves. This does not mean that working in this context is always very dangerous, but it means that often at least *some efforts* have to be made to minimize the danger, which will have impact on the researchers.

3. Solutions

All psychiatric research settings have their own challenges. Yet, the hurdles related to laws and walls, are, in my view, so structural and profound that they are reason for serious concern – even if not all forensic psychiatric research is to the same extent confronted with these impediments. It is not far-fetched to expect that if no countermeasures are taken, forensic psychiatric research is in a difficult position – which means a serious problem for those depending on forensic psychiatric services. These are, first of all, forensic patients, but, clearly, in the end, it is society as well; apart from promoting mental health and recovery, one of the aims of forensic psychiatry is the prevention of future harm. Acknowledging the disadvantageous situation for forensic psychiatric research is a starting point.

Are there any solutions? In my view, there are at least some promising strategies. First, it could be helpful to focus on relevant DSM and ICD categories – rather than on legal categories – and to focus on broad groups, e.g., violence or sex offenders, rather than using narrow legal definitions of types of offences. The reason that this may be effective is that it enables researchers to overcome the specific characteristics of jurisdictions: the DSM and ICD classifications are used in many countries and they provide an international terminology for health care research. Broad categories of forensic offender populations may also increase the chance that findings are useful in other countries and jurisdictions. Second, to make use of databases containing information that is already there; by using these databases in epidemiological studies, walls are basically circumvented [2]. Yet, clearly, there are limitations related to such studies as well: first, suitable databases are not always available. Second, these studies usually concern types of aggression and psychopathology, rather than forensic psychiatric interventions [2] because, in general, intervention studies cannot be based on such databases. Third, it may be useful to strive for international research cooperation; in that case, the research is likely to focus on the similarities between legal systems

(what they share), rather than on aspects that may be different between legal systems. Fourth, 'out-of-the-box' type of solutions may be needed. An example is provided by psychopathy-researcher Kent Kiehl, who started using a mobile fMRI truck to drive inside prisons in order to scan the inmates. He decided to do so after he encountered considerable problems getting the inmates to fMRI centres outside prison due to security measures [10]. Since money is also a factor here, increasing research funding for forensic mental health is – as always – of major importance [3]. Finally, it could also be that those who are involved in reviewing papers describing findings in forensic psychiatric research could bear in mind some of the difficulties researchers are likely to have been struggling with in order to obtain the results. Still, the threshold of quality should not be lowered – that would certainly not be beneficial to forensic psychiatry – so this could be part of the solution at best. These are just some suggestions. This contribution is mainly meant as an incitement to come up with other – and better – ones.

Disclosure of interest

The author declares that he has no competing interest.

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