RISK ASSESSMENT ROUNDTABLE

VANDERBILT UNIVERSITY LAW SCHOOL

Attending: Kiel Brennan-Marquez (U. Conn. Law); Sarah Desmarais (N.C. State Psychology); Kat Geddes (NYU Law); Sharad Goel (Harvard School of Public Policy); Melissa Hamilton (U. Surrey Law); Hannah Laqueur (UC Davis Medical); Evan Lowder (George Mason Criminology); Sandra Mayson (U. Pa. Law); Ngozi Okidegbe (B.U. Law); Itay Ravid (Villanova Law); Chris Slobogin (Vanderbilt Law); Ric Simmons (OSU Law).

MONDAY, AUGUST 22 (SIMS ROOM)

2:15 – 3:15: Rationale: What Risk Algorithms Can Do for the Criminal Justice System

Assuming risk assessment instruments do what they purport to do, could they have a real impact on the criminal legal system? Or will they be co-opted? Are they more likely to reduce, in a sensible way, the number of people subject to pre-trial detention or are there better alternatives (e.g., prohibiting pretrial detention on the basis of risk, or prohibiting it for all but the most serious crimes)? In the sentencing setting, are risk algorithms more likely than other feasible reforms (e.g., shortening sentences; decriminalization; prison alternatives such as restorative justice) to reduce prison populations in a politically palatable way? Do they assess what the public is really concerned about? Most generally, is risk a legitimate consideration in the criminal legal system?

3:15 – 3:30: Break

3:30 – 4:30: Fit: Why and When Data about Groups are Relevant to Individuals

Are instruments based on group data "relevant" to individual risk? Assuming so, what are the implications of the legality principle for risk assessment? What should the law demand from risk assessment instruments in the pretrial and sentencing contexts in terms of the probability, outcome, duration and intervention variables? Should the law expressly/quantitatively define high risk, medium risk and low risk (cf. the PATTERN)? To what extent should the law require specific evidence of the risk-reducing impact of particular interventions?

4:30 – 4:45: Break

4:45 – 5:45 Validity: Figuring Out When Risk Algorithms are Sufficiently Accurate

Should *Daubert* apply in the pretrial and sentencing contexts? Do risk assessment instruments assist legal decision-makers in evaluating risk or are laypeople, armed with criminal history and the like, able to perform just as well? What validity measures should the law require (PPV, AUC, what I call CBR, etc.)? How should experts explain these concepts to the courts? What should the law require with respect to how local, granular, and current an instrument's validation data should be? What entity or entities (other than the courts) should be charged with evaluating validity? How should reliability (as opposed to validity) be gauged? Does it make sense to give presumptive effect to the results of well-validated algorithms?

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7:00 – 9:30. Drinks and Dinner at Giovanni's (second floor), 909 20th Ave. South (behind the Aertson)

TUESDAY, AUGUST 23 (BASS BERRY SIMS ROOM, second floor at head of stairs)

9:00 – 9:30 Breakfast

9:30 – 10:30 Fairness. Avoiding Unjust Algorithms

How should we measure unfairness in risk assessment instruments—unequal false positive/false negative rates; differing PPVs, AUCs, CBRs, or something else? Does racial, gender or class disparity implicate the equal protection clause? Would it be legally permissible to have different algorithms for different races/genders? In what other ways can developers try to reduce disparities? Is it legally/ ethically permissible to use risk factors that are not associated with criminally blameworthy conduct? Is it legally/morally permissible to use algorithms in non-adversarial proceedings? To what extent should the law demand that algorithms include dynamic risk factors that make it easier for the subject to change risk scores? How much transparency should the law demand of algorithm developers? Is it legally/morally permissible to use the results of a risk assessment instrument that was developed through machine learning? What role should the community play in answering these questions?

10:30 – 10:45: Break

10:45 – 11:45 Structure. Limiting Retributivism and Individual Prevention

Assuming risk assessment instruments can be developed that meet fit, validity and fairness requirements, how should they be used by the legal system? Should pretrial detention be prohibited unless an individual is considered high risk based on a risk score? With respect to sentencing, how should risk interact with retributive and deterrence goals? Should risk be considered only at the front end (as provided by the new Model Penal Code), or should it be considered periodically as a release criterion, or should its relevance be limited solely to determining the type of disposition imposed on an offender? Would it be politically and retributively feasible to make release presumptive at the end of a minimum sentence that is based on desert considerations, unless the state can show the individual is high risk? What role, if any, should parole boards play and how should they be constituted, with what rights accorded offenders at parole hearings? Given the prevalence of plea bargaining, how should risk assessment results be incorporated into the negotiation process?

11:45 – 12:00: Break. Get lunch and return to conference room.

12:00 – 1:00 Moving Forward. The Need for Experimentation

So what do we think? Is risk assessment, using algorithms, worth pursuing? If so, what are the next best steps? What legal guidelines should developers be given? How should experimentation proceed? What entities should conduct it? If risk algorithms were made a formal part of the system, what would enabling legislation look like? Or would this all be done administratively?