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A risky business: An examination of Irish probation officers' attitudes towards risk assessment

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Abstract This article examines recent research on risk assessment and probation practice in Ireland and relates the findings to the ongoing debate regarding risk management practices in probation. The piece discusses current theoretical arguments on the influence of risk in criminal justice and outlines the impact of risk discourse on probation practice in Ireland and England and Wales. Using a mix of qualitative and quantitative methods, Irish probation officers' attitudes are examined in order to highlight key issues facing probation officers when making risk decisions. These findings are compared and contrasted to other research results from England and Wales. All the conclusions identify both positive and negative consequences of adopting risk tools and point to the continued salience of clinical judgment over actuarial methods of risk assessment. It is argued that the research highlights the role of 'resistance' by criminal justice professionals in mediating the effects of the 'new penology' at the level of implementation. The idea of resistance holds particular relevance for probation practice in Ireland where professional discretion is maintained within the National Standards framework. Despite this, to date there has been an uncritical approach taken to risk assessment which may ignore the dangers of risk inflation/deflation and the need to take into account local factors in assessing risk of reoffending.

Keywords Ireland, practitioners, probation, resistance, risk assessment

Background: Risk and criminal justice

Beginning in the 1990s, a literature has emerged on the 'rise of risk' (Fitzgibbon, 2004; Garland, 2001; Hudson, 2003; Kemshall, 2003; O'Malley, 2001) on criminal justice policy and practice. This literature was informed by Beck's (1992) seminal work on the 'risk society' and the technological risks arising from late modernity but has gradually come to be associated with neo-liberal politics (O'Malley, 2008; Ericson, 2007). Extending the debate further, Feeley and Simon (1992, 1994) argued in a series of highly influential articles that a 'new penology' was in the ascendance with a new actuarial logic at its core. Unlike the 'old penology' with its overarching aims of individual welfare and rehabilitation, the new penology is concerned with techniques for identifying, classifying and managing groups (rather than individuals). It is manifested in a new discourse that emphasizes risk and probability rather than diagnosis or moralistic judgment of offenders. In this new paradigm, community sanctions are not rehabilitative but managerial in their objectives. In other words, 'they function as methods of control over low risk offenders for whom the more secure forms of custody are judged too expensive or unnecessary' (Feeley and Simon, 1992: 461). Statistical calculation of risk is prioritized to assist in the management and control of offending populations, thus paving the way for risk assessment to take root within criminal justice practice.

Recently, however, a more circumspect approach is discernible in the criminological literature. Commentators have argued (not, it is submitted, without justification) that the authors have focused on the aberrational or extreme owing to their concentration on states such as California (see, for example, Hughes, 2008). It is questionable whether the home of the notorious three strikes law and successive repressive criminal laws can be characterized as typical of US criminal justice policy, never mind global developments. Further, it is questionable to what degree the emphasis on efficient, low-cost disposals accurately reflects contemporary developments. In some jurisdictions such as the UK the emphasis on risk has meant that offenders have been subjected to up-tariffing and more expensive forms of custody than actually necessary. Finally, commentators have drawn attention to the continuities as well as the discontinuities in contemporary criminal justice and have sought to emphasize the role of professionals in mediating what they perceive to be the excesses of the actuarial approach (Gelsthorpe, 2005; Matthews, 2002). Thus, as Hutchinson (2006: 457) writes, 'in order to respond to neo-liberal attacks on the modernist aspects of penality and on welfare governance more generally, practitioners within the criminal justice system can and do meld new demands with existing propensities and practices ... what this entails in many cases is a transformation in correctional and rehabilitative principles and practices, rather than their complete displacement'. As is recognized in the area of police reform (Newburn, 2007), change is less likely to occur unless there is a shift in both the *habitus* (cultural dispositions) of criminal justice professionals *and* the rules of the game (Chan, 1997). The former is unlikely to radically transform overnight and may only gradually change over a period of several years.

Risk and probation practice

In the UK, actuarialism is most closely associated with the probation service given its traditional concern with decisions regarding offenders and risk. In England and Wales the role of the probation officer has been radically transformed since the 1980s, most notably with the introduction of National Standards in 1992 which imposed standardized practice at the level of supervision of individual offenders. Ireland has come late in the day to developments such as risk assessment and 'what works' principles (Healy and O'Donnell, 2005) but critically probation officers have retained a greater degree of autonomy in the application of risk tools. The differences between the two jurisdictions are explored in more detail below.

Developments in England and Wales

The probation service has been under scrutiny, and some would say attack, for a number of years (Farrant, 2006; Horsfield, 2003; Oldfield, 2002). The main emphasis has been the shift away from a service whose ethos was 'advise assist and befriend' towards a contemporary correctional and offender management service whose primary focus is the punishment and monitoring of the offenders with an emphasis on public protection (Home Office, 2004; Oldfield, 2002). Throughout the 1990s there was an increasing emphasis on utilizing the probation service to promote pubic safety (Raynor and Vanstone, 2002) with the introduction of mandatory standardized risk assessments when preparing pre-sentence reports gradually displacing the traditional case work approach.

Despite these important shifts, some commentators have found evidence of growing dissent among practitioners in Britain (including Scotland and Northern Ireland) with the preoccupation with offender risk. Echoing the arguments of Hutchinson (2006) outlined above, Robinson notes that 'a growing number of studies are pointing to the continuing salience of clinical as opposed to actuarial decision making in the penal context' (Robinson, 2002: 19). She argues that while risk-based approaches are encouraged and actuarial approaches are 'aspiring', there is evidence of growing resistance to a 'govern by numbers' approach to penal policy. Consequently, she asserts that the individualized approaches to probation policy persist (Robinson, 2002). Recent research into probation officers' perspectives on their work revealed that recruits still enter the profession to work with people, that they believe in rehabilitation and find targets and central management practices are in conflict with the purpose of their work (Annison et al., 2008).

Other research emphasizes the way in which individualistic approaches involving one-to-one counselling with offenders continue to be prioritized by probation staff. Robinson and Burnett (2007), for example, state that there is support for some moves such as end-to-end management of offenders introduced via notions of offender management but continued distrust and scepticism as to whether in reality it will lead to even less face-to-face contact with offenders for qualified and skilled staff. The reclamation of the importance of listening, a trusting relationship between practitioners and offenders also echoes the desires of what the offenders find helpful and useful to promote their reintegration (Barry, 2007).

Developments in Ireland

The pace of change in probation has been much slower in Ireland than in England and Wales though it has not been unaffected by transformations in criminal justice elsewhere. Somewhat remarkably, the 1907 Probation Act still provides the statutory framework for probation practice in Ireland and it explicitly identifies the duties of the probation officer as 'advise assist and befriend'. The fact that the 1907 Act has not been revised in over a century speaks to the inertia which appears endemic to Irish criminal justice policy (O'Donnell, 2008), a characteristic which holds both advantages and disadvantages. While it has hindered necessary reform in Ireland (see, for example, criticisms expressed by the Expert Group on the Probation and Welfare Service, 1999), in other ways it has been beneficial. Ireland has been fortunate, for instance, in that there has been little or no loss of faith in rehabilitation following the publication of Martinson's (1974) research in the 1970s (Kilcommins et al., 2004). While the probation service website now states that 'the work of the Probation Service has as its primary focus on public safety', rehabilitation remains at the centre of probation work (Irish Probation Service, 2007) and the service remains wedded to its traditional social care or social work base. Unlike England and Wales, therefore, the introduction of 'what works' principles in 2004 marked a change only in the manner of implementation of its traditional rehabilitative goals. Risk assessment tools accompanied this development based on the recognition that the probation service needed to adopt an evidenced based approach to working with offenders. There was little suggestion at the time that its social work ethos was being replaced by risk management/public protection principles. Indeed, in announcing the new risk assessment tool, the Level of Service Inventory-Revised (LSI-R), the Principal Officer of the probation service, Sean Lowry, noted that it could help to reduce the number of offenders sent to prison in Ireland and bring the prison/community sanction ratio closer to the European average (*Irish Examiner*, 2004) (Ireland already has a low prison population in international terms of 85 per 100,000 population.)

As already noted, Irish probation officers retain greater discretion in deciding whether to apply risk tools or not. National Standards regarding supervision of offenders were issued in 2008 but are more flexible than the English and Welsh equivalent in a number of regards. First, officers may override the invitation to calculate a risk score although they are then required to document reasons for their decision on the offender's electronic file. Similarly, the standards permit departures from the conclusions reached by LSI-R where professional judgment was at odds with the outcome of the standard tool, for example, where the risk score was high simply because an offender has a significant criminal record. Overall, clinical judgment appears paramount and this appears to be largely due to the strong arguments made for its retention by probation officers themselves.

The research study

A small research study was undertaken in Dublin which examined probation officers' attitudes towards risk assessment. In order to enhance the validity of the research a

mix of qualitative and quantitative methods was employed, namely, focus groups and questionnaires. Two focus groups attended by fifteen probation officers in total were held in Dublin probation offices in May 2008. These were guided group discussions with the researcher prompting discussion on risk assessment and asking the group to highlight the advantages and disadvantages of standardized tools. This information was used to inform the content of the questionnaire which provided probation officers who were unable to attend the focus groups with an opportunity to participate anonymously in the research. The questionnaire design was self administered and was delivered to 69 officers working in adult community teams in Dublin city excluding county Dublin and its bordering counties. Thirty-eight of the questionnaires were returned; the response rate was 55 per cent.

Probation officers working in a prison setting and exclusively with sex offenders were deliberately excluded from the sample. Prison probation work remains largely welfare oriented and therefore probation officers are less likely to use standardized risk tools frequently. Probation work with sex offenders is also specialist and generic risk tools are not applied in sex offender cases. Despite the limitations of the study in terms of its size and exclusive Dublin-focus, it was hoped to shed some light on Irish probation officers' attitudes towards risk assessment with a view to identifying the advantages and disadvantages of risk tools from a probation officer's perspective. In Ireland, there is currently a lack of research regarding risk assessment and no research has been carried out on the consequences of risk tools for probation officers, offenders and the community. In light of the dearth of information in this area it was hoped that the findings would provide important data on probation officers' views on risk, which could contribute to a framework for good practice in risk assessment

Actuarial versus clinical: Assessment by numbers?

While the small scale of the study means that it would be unwise to generalize about the views of Irish probation officers in general, the surprising degree of consensus to emerge on key issues lends support to the validity of the findings. One of the most significant findings of the study was a strong commitment by probation officers to retaining clinical judgment when making decisions about risk. Eighty-two per cent (n = 31) of the Irish probation officers surveyed disagreed or strongly disagreed with the statement: 'standardised risk tools reduce opportunities for probation officers to use clinical/professional judgment' demonstrating a continued reliance on individual judgment. Tellingly, when asked to identify the disadvantages of the LSI-R tool, 74 per cent (n = 11) of those who attended the focus groups cited the failure of the tool to assess offenders on an individualized basis. Indeed, an underlying resistance to the idea of using risk tools for certain aspects of probation practice is discernible. A sizeable minority of questionnaire respondents (42 per cent; n = 16) indicated that these tools were not useful when measuring the progress of an offender, with one respondent indicating that there may be an overemphasis on static factors.

Much greater support was shown for risk tools as a means of shoring up or confirming professional views rather than supplanting them. Nearly all of those

interviewed (95 per cent; *n* = 36) agreed that these tools instilled greater confidence in making decisions about risk and 75 per cent (*n* = 28) indicated that they increased uniformity. Eighty-two per cent (*n* = 31) felt that they achieved the appropriate balance between the risk tool and their professional views. Even then, a guarded approach to the use of risk instruments can be detected. Only half of the respondents (*n* = 19) expressed support for the statement that: 'standardized risk tools confirm or support their professional judgment about an offender's risk level'. While some felt that their judgment and the risk score generally matched, others jealously defended their right to depart from the instrument:

> These tools are available to standardize our practice. However, they are not the exclusive authority on risk and should not be seen as one size fits all. If I don't agree with the result of the tool, I have the autonomy to express my professional opinion which may contradict the risk tool.

It appears that standardized risk tools are used mainly to formalize, guide and support clinical judgment as opposed to dictating clinical judgment. This finding resonates with Robinson's (2002) research discussed above which indicated a growing unease among English probation officers about adopting a purely actuarial approach and a residual commitment to individualized assessment. Irish basic grade probation officers display a similarly wary approach and, while officers are alive to the advantages of the tools in encouraging a more structured approach, they largely reject 'assessment by numbers'.

Risky or defensible decisions?

Another interesting finding to emerge from the study is that 89 per cent (*n* = 33) of questionnaire respondents agree that they frequently complete risk assessment tools using self-reported information. This is likely due to the ongoing struggle by probation officers to obtain information from the Gardaí (police), the Courts Service and other agencies working with offenders. The finding is concerning as it suggests that the practice of relying on self-reported information is commonplace. Risk decisions are unlikely to be defensible (that is, backed up with empirically based evidence) if the probation service allows this practice to continue. As outlined by Monahan (1981), risk assessment is at best good guesswork, and therefore gathering information from a number of sources is integral to making defensible decisions. This model must be supported by criminal justice agencies by making information available to the risk assessor. In the absence of information, probation officers are vulnerable to public accusations of failure when risk decisions transpire to be flawed due to under or over prediction.

A similar reluctance on behalf of agencies to share offender information was present in recent research into parole risk assessments undertaken in England and Wales (Fitzgibbon, 2008b). There are several problems with this situation. Aside from the possibility that offenders may offer information that incriminates them further, it also calls into serious question the concept of criminogenic needs used in many risk instruments. One of the major attractions of risk tools is that they

hold up the promise of objectivity. Yet, this is highly contingent on the quality of the information provided. As one respondent noted, the risk tool 'is only as good as the professional administering it. The accuracy of the information received ... will impact the risk score'. This raises a broader question as to the fallibility of risk prediction and to what extent it can actually assist in public protection (Fitzgibbon, 2007, 2008a). Kemshall (1996) argues that probation services should not make promises of protecting the public at all as they cannot realistically keep this promise. In any event, it is clear that accountability is severely compromised when decisions are made in an information vacuum. The probation service in both Ireland and England and Wales needs to develop service level agreements with key players in the criminal justice system to unlock barriers to information so that those tasked with making decisions about an offender's risk within short time frames are not placed in positions of failure.

Quality control

A pivotal issue arising from both the focus groups discussions and the questionnaire findings was concern at the somewhat uncritical approach taken by the probation service to the tool's performance. To date, the risk assessment tool has not been evaluated and there has been little critical reflection on the extent to which it was suited to conditions *in Ireland*. As one officer noted, 'these risk tools were brought from another jurisdiction and tinkered with. There has been no evaluation of the tool and little guidance following training'. Significantly, the limitations of the tool in terms of its cultural insensitivity were identified by 66 per cent of those who attended the focus groups as a problem with the risk tool. It is interesting to compare these findings to the results of a Scottish study of risk assessment tools by McIvor and Kemshall (2002). In that study one of the drawbacks of the LSI-R identified by social workers was the absence of validation against a Scottish sample and one social work respondent also observed that the significance of the resulting score might vary widely between rural and urban areas.

This is an important point and one which merits further research. Is it really appropriate to take risk assessment tools developed for use in a large jurisdiction in North America and apply them to small jurisdictions with only one or two large cities? As Maurotto and Hannah-Moffat (2006) have observed, new studies on LSI-R have begun to question its geographical portability such that validation studies in Canada's neighbouring jurisdiction, the United States, have produced less positive results (for an overview see Dowdy et al., 2002). This places an even greater question mark over its transportability to a small jurisdiction on the fringes of Western Europe. Surely generic risk tools should not be used to govern culturally distinct populations without prior – and substantial – consideration of local conditions? It is unreasonable to expect probation officers to continually adjust their interpretation of criteria when applying them to local offenders.

Equally significant is the failure to monitor decisions made using the standardized risk tools. When asked whether the probation service had adequate mechanisms for quality control in relation to risk tools, a strong majority (78 per cent) disagreed.

Respondents again sought to emphasize that, despite the promise of objectivity held up by the tools, they remained susceptible to human error:

> These tools are not monitored closely. I have seen lots of risk assessment forms incorrectly completed, these tools do not complete themselves, it's the officers who add up the score and make the tool what it is.

A related issue was the level of training offered to probation officers on the subject of risk assessment. When asked if they believed the training in risk assessment was adequate, two-thirds (67 per cent; $n = 25$) of questionnaire respondents answered 'no'. It was felt that current training did not provide probation officers with an understanding of the complex nature of risk, its definitions and variability. These findings are cause for concern, given that lack of monitoring and inadequate training increase the likelihood of the inappropriate categorization of offenders and therefore, the potential for risk inflation or deflation. The consequences of risk inflation are twofold. Firstly, the offender may be considered unsuitable for a community sanction due to the higher risk level and therefore the risk of receiving a custodial sanction increases. Secondly, if found suitable for a community sanction, the higher risk category may require the offender to undergo supervision by the probation officer who may have to impose limitations on behaviour. In contrast, risk deflation may result in offenders with multiple needs being diverted from probation supervision. Diverting offenders who require services also compromises a core mission of the probation service.

Those charged with responsibility for quality control should be aware that these tools can be mishandled in times of stress and time constraints, particularly when training and monitoring are inadequate. Strong concerns have been expressed in the recent past concerning high caseloads and under resourcing in Irish probation and it is likely that the situation has not improved dramatically (Expert Group on the Probation and Welfare Service, 1998, 1999). In this regard, Fitzgibbon's (2007) research strikes a cautionary note. She found that inexperienced, poorly resourced staff can mishandle risk tools which results in inappropriate categorization of offenders and the consignment of sections of society to the category of either dangerous or risky. Other research in England indicates that risk assessment tools were missing or incomplete in a significant percentage of case files (e.g. in parole dossiers 40 per cent were missing or of a particularly poor quality) (Fitzgibbon, 2008b).

Discussion

This study reveals a number of core issues facing the probation service in Ireland as it attempts to mould itself increasingly as an assessment and offender management agency. As discussed above, the story of Irish probation differs quite considerably from the story in England and Wales and it perhaps has more in common with the Scottish criminal justice social work services. It is arguable that in both Ireland and Scotland traditional welfare practices, rather than being eclipsed, have been relegitimated through the new discourses of risk and protection (Kilcommins et al., 2004; McIvor and McNeill, 2007). Further, there is a continued commitment

to penal reductionism in both jurisdictions (Kilcommins et al., 2004; McIvor and McNeill, 2007). Yet, over the past four years, the service has undergone a process of change. The focus on risk assessment and the diversion of low risk offenders as well as the concentration of resources on moderate to high risk offenders, have seen international developments intrude on national probation practice. In this context, it is important that the probation service should not fall prey to complacency about risk assessment and should learn from mistakes made elsewhere.

The implications of the research for Irish probation practice are multi-fold. First, and most significantly, the strong commitment to retaining clinical judgment when determining an offender's risk of re-offending mirrors the findings of research in other jurisdictions (Lynch, 1998, 2000; Robinson, 2002; Robinson and McNeill, 2004). It would appear that probation officers continue to assess offender risk on an individualized basis, using risk tools in conjunction with their professional intuition and judgment. This serves as a reminder that risk assessment strategies associated with the 'new penology' are negotiated and mediated by human agents, all the more so where these agents are left with a significant degree of autonomy (Cheliotis, 2006). Indeed, given that Scottish practitioners also retain a considerable degree of autonomy in decision making, it is most interesting that Scottish research has also revealed a residual commitment among criminal justice social workers to the 'softer' objectives of social inclusion and anti-custodialism, despite the overarching emphasis on public protection (Robinson and McNeill, 2004).

Second, it is clear that these officers are willing to employ their critical faculties and engage in critical thinking about the tools they have been asked to use. Their concerns about the cultural appropriateness, lack of flexibility and other limitations of the risk tool all demonstrate a healthy scepticism of standardized assessment. While this cultural *habitus* is unlikely to change overnight, it will only survive where it continues to be fostered within the organization itself. New probation officers who have never experienced practice conducted solely on the basis of one-to-one counselling may not be so quick to run with their professional instinct. Gelsthorpe (2007) recalls one classroom discussion with senior prison and probation practitioners where they expressed dismay that new probation officers rely almost entirely on policy documents and national standards at the expense of professional judgment.

This leads on to the issue of training. Kemshall (1996, 2003) argues that probation officers should be offered generic training in risk assessment separate from training in how to apply standard risk tools. Such training would assist officers to develop a fuller understanding of the concept of risk and its social construction as well as its place in penal policy. It would also help to ensure the core skills of the practitioner are maintained in an environment which is increasingly focused on punishment and management of offending. It is important, as Gelsthorpe (2007) has written, that the individual probation officer should be empowered to act ethically, not simply legally.

Finally, it should be noted that in order to enhance the credibility of the Irish probation service, it must demonstrate a commitment to improving administrative systems that increase access to information for front line risk assessors so that defensible and appropriate decisions can be made which meet the needs of the offender and address the concerns of the wider community.

Conclusion

To conclude, the Irish story holds out some hope for contemporary probation practice in that it has to date opted for a balanced approach which seeks to pursue both rehabilitative and public protection goals. Most importantly, Ireland currently does not face the extreme situation of England and Wales in that discretion is maintained within the national standards operated by the service, thus preserving some diversity of approach. However, as a small nation situated between two powerful neighbours, it is particularly susceptible to Anglo-Saxon trends in criminal justice (O'Donnell and O'Sullivan, 2003) and may be strongly influenced by them. The uncritical and perhaps even complacent attitude demonstrated to date concerning the implementation of risk assessment tools in this jurisdiction is evidence that inadequate attention may be being paid to risk inflation/deflation and particularly to local factors. As Harris (1995: 207) has observed:

> ... probation is not a 'thing' to be taken or left but a set of ideas and possibilities to be used creatively and strategically to solve local problems of criminal justice ... a framework into which locally feasible and desirable solutions may be fitted.

In this and the other regards outlined above, it is clear that vigilance is required to ensure that the Irish probation service maintains its integrity and credibility.

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