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THREE NARRATIVES OF RISK: CORRECTIONS, CRITIQUE AND CONTEXT

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Abstract: Attempts to measure and control risk have become a central concern in criminal justice. Critics have pointed out how the use of risk assessments can conflict with proportionality, and have also argued that it can increase the general level of punitiveness and social disadvantage. Developers and supporters of risk assessment have pointed to advantages, such as the support it offers for rehabilitative measures. This chapter discusses the development of risk assessment in British criminal justice practice and argues that its consequences, both positive and negative, have depended not simply on the use of risk-related practices but on the policies they have been deployed to serve.

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Introduction: risk in society and criminal justice

Many social commentators agree that the citizens of contemporary Western countries live in a 'risk society' (Beck 1992), characterised by a preoccupation with risks, dangers and threats and constant attempts to control or reduce them. Many reasons have been advanced for this, including a loss of faith in the scientific progress which was one of the central promises of modernity; the decay of overarching social and political theories which offered grand models for the organisation of society; a loss of confidence in the capacities and sometimes the integrity of 'experts' and professionals, and perhaps most importantly a sense of exposure to social and economic changes outside our control through the globalisation of finance and industry. Other changes have included the decline of manufacturing industries (which migrate to countries offering cheaper labour), increased personal mobility and changes in family structure. As individualistic consumers and units of flexible labour we are increasingly detached from traditional sources of identity and meaning such as stable communities, multi-generational extended families, and long-term involvement with traditional crafts or industries. Beck argues that 'risks, as opposed to older dangers, are consequences which relate to the threatening force of modernisation and to its globalisation of doubt' (Beck 1992, 21). This is not the place for a detailed discussion of these theories, but all the causes mentioned above are likely to be playing a part in the emergence of concern about risk as a major feature of our culture and everyday life. Criminologists have also commented on this: the late Jock Young wrote about the 'vertigo of late modernity' (2007), others point to ontological insecurity and lack of trust in traditional sources of authority, and Garland describes how a sense of threat helps to produce a punitive 'culture of control' (2001).

Whilst there is always a risk of over-generalisation in such theorising, and it is still the case that offending is controlled more by valued relationships and community ties than by any formal systems (Braithwaite 1989) and that different countries vary greatly in the extent of punitiveness in their criminal justice systems (Christie, N. 2004), it is also true that some societies, including some of the most powerful nations, show many features of a 'culture of control'. A pervasive sense of risk and insecurity offers an explanation for some of criminology's paradoxical findings, such as public beliefs that crime is getting worse at times when it is in fact falling (Roberts and Hough 2002), and increasing use of imprisonment when community-based penalties are becoming more effective in reducing further offending (Hollis 2007). Politicians' belief that only more severe punishment can win public support has shown itself in Britain in an unprecedented amount of criminal justice legislation and a dramatic increase in the prison population, from 60,131 at the start of the 'New Labour' governments in May 1997 to 85,902 at the time of writing.

Criminologists, then, should not be surprised at the emergence of new risk-related concerns and practices in criminal justice (Kemshall 2003). In the criminal justice system of England and Wales we have seen the emergence of a general concern about risk, the progressive modification of sentencing practice to reflect perceptions of risk, and the development of complex evidence-based risk assessment techniques which increasingly shape and even dominate the practice of criminal justice agencies. Because of the central role played by the Probation Service in the assessment of offenders, both prior to sentence (through 'pre-sentence reports') and after imprisonment through the provision of risk assessments in relation to the discretionary release of prisoners, this chapter concentrates particularly on the risk-

related practice of probation officers. Much of the discussion focuses on England and Wales, which share the same criminal justice legislation and systems, and in which both prisons and probation services are centrally managed from the Ministry of Justice in London. By way of contrast and to illustrate a different pattern of development for risk-related thinking, some data are also introduced from the small independent jurisdiction of the British Channel Island of Jersey. The chapter goes on to identify and outline two contrasting accounts or narratives of the impact of risk assessment on criminal justice, and proposes a third, more realistic, way of understanding the strengths and weaknesses of risk-informed practice.

Incorporating risk in British criminal justice

The sentencing of offenders in Britain traditionally seeks to combine several different aims, including retribution, deterrence, rehabilitation, and public protection through incapacitation. Different elements appear to take priority at different times and in relation to different categories of offender, and occasionally there are clear shifts in policy or legislation intended to alter the emphasis and purposes of sentencing. For example, long before risk became a dominant theme of policy there was a lively debate in Britain about how far the sentencing of young offenders should be based on the seriousness of the offence (proportionality, or the ‘just deserts’ model) and how far it should reflect the level of intervention needed in order to meet the young person’s needs and provide rehabilitation. In England and Wales the Children and Young Person’s Act of 1969 created a needs-based sentencing system with an emphasis on supervision by social workers and residential care, but in practice this resulted in much higher levels of coercive intervention and much more incarceration (Thorpe et al. 1980) and led to a demand from progressive lawyers and some social

workers for a movement 'back to justice'. Similarly in the adult jurisdiction, concerns about perceived unfairness in discretionary release and about offenders receiving longer sentences in order to facilitate 'treatment' resulted in very strong advocacy of 'just deserts' models (for example by Hood, 1974), using arguments very similar to those advanced by 'back to justice' campaigners in the USA (for example, the American Friends Service Committee, 1971). It is important to recognise that these early advocates of proportionality believed that its general adoption would probably *reduce* the general level of severity in the sentencing system, because they aimed to eliminate the practice of passing more severe sentences in an attempt to provide more treatment for 'welfare' needs: they were particularly concerned about people who received longer sentences or more intervention on apparent 'welfare' grounds than would have been justified by the seriousness of the offence. There were, for example, cases in which young people committed the same offence, but the more socially disadvantaged offender would receive the longer sentence in order to give social workers an opportunity to supervise and intervene. Hood argued that a justice-based system would be 'fairer, not necessarily less effective, possibly less, not more punitive and appeal to that sense of social justice on which any acceptable system of social control must be founded' (1974, 7).

Increasingly principles of 'just deserts' were incorporated in legislation on both sides of the Atlantic Ocean, although often with disappointing results as a more punitive climate resulted in much higher levels of imprisonment than were suggested by advocates of proportionality such as Von Hirsch (1976) and Hood. Although these early controversies tended to be seen as arguments between a 'welfare' principle (based on 'needs') and a 'justice' principle (based on proportionality), many of the

same arguments were later revived due to a perceived conflict between principles of proportionality and risk. To state this in its simplest form, does justice require that people should be sentenced only in relation to the crimes they have actually committed, or should sentencers also take into account possible or probable future crimes, and seek to protect the public from them through longer periods of detention? Critics of 'welfare' models were quick to see similar problems arising from sentencing on the basis of future risk (for example, Von Hirsch, 1986), and debates about proportionality, which had been current long before the widespread use of risk assessment techniques, became part of a critique of the new methods.

In England and Wales the 1991 Criminal Justice Act marked the high point of proportionality in sentencing: the main determinant of the severity of the sentence was to be the seriousness of the current offence. The Act also intended to bring about a general reduction in the severity of sentencing, and did so quite successfully for a few months until modified by politicians who did not want to appear 'soft on crime'. However, the same Act also marked the beginning of a new approach to risk in criminal justice by creating the possibility of special extended sentences for offenders judged to be dangerous (primarily violent and sexual offenders). Probation officers and others in criminal justice began to talk and write about the 'risk management approach'; the National Standards for probation officers' reports indicated that they were now expected to comment on risk, and by 1995 probation officers were required to include a specific section in their reports entitled 'risk to the public of re-offending' (Home Office 1992, 1995). Meanwhile criminologists on both sides of the Atlantic were commenting on the emergence of risk as a central concern: Feeley and Simon (1992 and 1994) in the USA produced their theory of 'actuarial justice', in which they

saw measures of coercive control being applied to whole sections of society on the basis of perceived or measured risk, with little regard for traditional notions of justice or even guilt: what mattered was belonging to a risky group rather than having actually been convicted of offences. In Britain, Kemshall was beginning to work on a series of studies of the management of dangerous people by the criminal justice system (Kemshall 1998), in which the probation officer was beginning to take over the risk assessment role formerly occupied by the psychiatrist or the psychologist.

At this early stage in England and Wales two major problems were already evident, The first was that probation officers had no reliable methods available for assessing risk, beyond their own individual and subjective judgement. The second was that they were really being asked, under the heading of ‘risk’, to address two rather different problems. One was the risk of re-offending presented by the ordinary recidivist offender, responsible for his or her share of the high volume property crimes (mainly thefts and burglaries) which make up most of the crime figures. The other was what is often described as ‘risk of harm’ or ‘dangerousness’, which relates to those offenders (far fewer in number) who may commit serious violent or sexual offences resulting in major personal trauma or even death. These are relatively rare events but cause severe harm and are the focus of much public anxiety, and also of public anger at the criminal justice authorities if they are committed by people who are under supervision or have recently been released from prison. For the high-volume perpetrators of routine crime, the point of risk assessment was to match levels of intervention to risk, since Canadian research had already provided strong support for the ‘risk principle’ that rehabilitative measures were more useful for offenders with a high or medium risk of re-offending than for those with little risk, who might even be made worse by

intervention (Andrews et al. 1990). For those who presented a significant risk of harm, assuming that they could be identified, the point of risk assessment was more to inform measures of public protection and risk management: the precise probability of the offence (which is difficult to estimate in the case of rare events) is perhaps less important than the development and implementation of a risk management plan to prevent it. However, in the early 1990s probation officers in Britain (and in most other places) lacked evidence-based methods for approaching either of these problems.

Three generations of risk assessment

The Canadian criminologist and psychologist James Bonta, who has been a leading figure in the international development of risk assessment methods for criminal justice, has described ‘three generations’ of risk assessment (Bonta and Wormith 2007). The ‘first generation’ is individual professional judgment, which tends to be subjective, non-standardised and unreliable in predicting re-offending: some professionals will be good at this, but overall it is the least reliable approach. The ‘second generation’ refers to actuarial instruments developed by identifying correlates of reconviction in large samples of offenders’ criminal records, usually using statistical techniques of logistic regression to generate lists of weighted risk factors which can be used to estimate the probability of re-offending (or, more accurately, reconviction) for individual offenders. Typically these will produce a probability score indicating the percentage risk of reconviction in a specific follow-up period such as two years. Such methods have the advantage that they can use criminal history data stored in central databases and do not require personal contact with the offender, so that risk assessments can be carried out quickly using computer programmes. They can also achieve useful levels of reliability (around 70% correct

prediction is regarded as a good performance in this field). However, because they are based only on 'static' risk factors which cannot be changed by intervention (such as sex, age and previous criminal history) they do not point to factors which can be changed in order to reduce the risk.

This disadvantage led to the development of 'third generation' risk assessment methods, also known as 'risk-need' assessments, which use a range of information about the offender, including personal interviews, to identify social or personal needs which are known from research to be associated with a higher risk of offending.

These are usually 'dynamic' risk factors, meaning that they can in principle be modified (examples are educational achievement, employment status, attitudes and beliefs). These dynamic factors, also known as 'criminogenic needs', are combined with static factors to produce overall risk scores, but in addition they can point to targets for change: in other words, to rehabilitative intervention which can lower the risk of reconviction by reducing dynamic risk factors. Several such instruments are now in use in various countries, including the LSI-R (Level of Service Inventory Revised) developed by Bonta with Don Andrews in Canada (Andrews and Bonta 1995). A 'fourth generation' has recently emerged with various enhancements, including specific case management guidance based on the risk and need assessment (for example Andrews, Bonta and Wormith 2004), but this has yet to impact on practice in most jurisdictions.

The introduction and effects of risk management methods

Risk assessment practice in England and Wales has followed roughly this generational sequence of development. Work on the development of an actuarial

reconviction predictor started in the early 1990s: a statistical analysis of the criminal records of 13,711 offenders was used to develop the first national reconviction predictor for use in probation services in England and Wales (Copas 1992). This predictor, based on age, sex, previous convictions, sentencing history and current offence ('static' risk factors) was the immediate ancestor of OGRS, the Offender Group Reconviction Scale, which is still used and regularly updated (Home Office 1996, Taylor 1999). As an actuarial instrument based on centrally recorded data it has proved reliable and practical, but as it includes no information on risk factors which correctional agencies might try to change ('dynamic' risk factors) it cannot be used to assess need or to plan or evaluate supervision.

A report from the Probation Inspectors on 'Dealing with Dangerous People' (Her Majesty's Inspectorate of Probation 1995) identified a number of problems in probation officers' approaches to risk assessment, and the following year saw the publication of a Home Office research review (Kemshall 1996), an assessment, case management and evaluation instrument (ACE) developed by the Oxford Probation Studies Unit (Roberts et al. 1996), and the introduction to several probation areas of the LSI-R. In the following year the Home Office published an evaluation of some simple assessment scales for probation officers which were not particularly effective (Aubrey and Hough 1997), and in 1998, following a number of pilot studies, the Home Office responded to the widespread adoption of LSI-R and ACE by commissioning an evaluation of both which was published two years later (Raynor et al. 2000). This study showed that both instruments, and particularly LSI-R, could provide reasonably reliable risk assessments when used by probation officers: they were slightly less accurate than the OGRS (65.4% correct prediction with LSI-R in

the Home Office study compared to 67.1% with OGRS) but helped officers to identify needs which supervision could address.

Following this study, the Home Office in London started work on its own risk-need assessment system known as OASys (OASys Development Team 2001), which became the standard system throughout England and Wales by 2006. OASys was a complex and sophisticated instrument which aimed to produce an assessment of dangerousness or risk of harm in addition to a risk score for reconviction, but its introduction was slow and difficult: probation officers initially found it difficult and very time-consuming to use (Mair et al. 2006) and the official evaluation reports concerning its accuracy and reliability remained unpublished for several years. When eventually published they showed that OASys could achieve a level of reliability in predicting reconviction which was comparable with LSI-R or very slightly better, but not quite as accurate as OGRS (Debidin 2009). For risk of harm, there was less evidence of accurate prediction, but this was to be expected because of the known difficulties of predicting statistically rare events. More important, perhaps, is the fact that it aims to focus the officer's mind on risk of harm in all cases, so that possible dangers should be less likely to be overlooked. However, this kind of beneficial impact on practice is harder to achieve when an assessment system is not welcomed by many probation officers, who find themselves spending more and more of their time at the computer rather than in contact with offenders. It is interesting that neighbouring jurisdictions (Scotland, Ireland, the Channel Islands) have chosen to use the simpler LSI-R or its derivative LS/CMI, in spite of energetic marketing of OASys by its developers (Raynor 2007a). The latest embarrassment for proponents of OASys is that following the planned privatisation in 2015 of 70% of the work of the

Probation Service in England and Wales, the new private operators will not be required to use OASys.

In fairness, it should also be recognised that OASys was introduced at a time of major reorganisation in the Probation Service of England and Wales, much of which was unpopular with practitioners. Probation services which had previously been locally organised and locally accountable were centralised under national management in 2001, and this coincided with a sharp increase in regulation and managerialism which reduced the discretion and autonomy of individual probation officers: for example, OASys computer software was developed to tell probation officers what proposals should be made in a pre-sentence report following particular assessment scores, and software was developed which could produce actual text for the report directly from the OASys assessment (Gelsthorpe, Raynor and Robinson 2010). The introduction of cognitive-behavioural programmes for offenders, which was in principle a positive development, was clumsily handled and failed to win the support of many practitioners (Raynor 2007b), and at the same time criminal justice policy was becoming more punitive and more politicised, so that probation officers became an easy target for criticism when politicians wanted to look tough. All this created a climate for the introduction of risk-need assessment in which it was not easy to realise its potential benefits.

Other criticisms were also made: in addition to the concerns mentioned above about proportionality and actuarial justice, some commentators argued that risk assessment techniques derived from research on white male offenders could have limitations when uncritically applied to minority ethnic groups or to women (Hudson 2002, Shaw

and Hannah-Moffatt 2000). One study pointed to possible over-prediction of risk among minority ethnic groups (Hudson and Bramhall 2005), and there were also concerns that if sentencers took likely future offending into account, this could result in more severe sentencing for women who committed minor offences. Certainly the rate of imprisonment of women increased steadily in England and Wales as risk assessment came into general use, but there were also other pressures towards more punitive sentencing, and it is not clear how far risk assessment methods might have contributed to this trend. There is some evidence of possible overestimation of risk for women offenders from at least one jurisdiction outside England and Wales (Raynor 2007a), and evidence that although the relationship between risk factors and offending is *broadly* similar for men and women (Andrews et al. 2012) there are also important differences in motivation, opportunity, onset and desistance (Gelsthorpe, Sharpe and Roberts 2007). However, all these criticisms, although seen as arguments against risk assessment, could equally be seen as arguments for more thoroughly researched and better implemented risk assessment, as advocated by some of the key developers of the risk-need approach (Andrews, Bonta and Wormith 2006).

In 2003 a new Criminal Justice Act reversed many of the ‘just deserts’ provisions of the 1991 Criminal Justice Act, and introduced a wider range of options for community sentences as well as new indeterminate sentences for some violent offenders and others considered to be ‘dangerous’. The 2003 Act was the result of a far-reaching official review of sentencing policy (Halliday 2001) which was itself strongly influenced (some would say over-influenced) by the new risk assessment practices and evidence-based programmes being introduced into probation services, and although it was not the intention of the 2003 Act to increase the use and length of

prison sentences, in practice the established trend towards more imprisonment of offenders simply continued in spite of general reductions in offending. So overall in England and Wales the experience of introducing risk assessment methods into criminal justice practice has been mixed. Practitioners have been slow to accept them, and they have been introduced alongside a large number of other changes and major reorganisations which have been disruptive and often unwelcome. In particular, there is no evidence that the use of risk assessment methods has resulted in more community-based rehabilitation and less imprisonment: although there have been more community sentences supervised by the Probation Service, this has been because of a reduction in other non-custodial penalties such as fines, and the prison population has continued to rise (Raynor 2007b).

However, it can be argued that the routine practice of risk assessment has improved the management of dangerous offenders in the community. These are now subject to regular assessment and supervision by multi-agency panels as part of Multi-Agency Public Protection Arrangements (MAPPA), and some high-risk violent or sexual offenders, including paedophiles, may be in contact with probation and/or police several times per week. They may also be subject to restrictions about where they can live and where they can go, and to such measures as electronic tagging and supervised accommodation (Kemshall 2008). Good practice in these arrangements is based on thorough planning and careful decision-making, in which the risk assessment is only one element. While it is difficult to demonstrate conclusively that the public is safer as a result, it certainly seems likely that this is the case, in spite of some high-profile exceptions. In general it could reasonably be argued that improvement in MAPPA arrangements has been a beneficial consequence of the focus on risk in England and

Wales. However, for the routine recidivist offender committing the less serious offences that make up the vast majority of the crime figures (the so-called ‘volume crimes’), it is less clear whether risk assessment has led to improvements in sentencing or more effective rehabilitation. One fairly recent study, however, suggested that the effectiveness of group programmes for offenders in England and Wales was beginning to improve (Hollis 2007) and that they were starting to achieve reconviction rates below predicted levels. This is likely to reflect better targeting and selection for the programmes, which in turn may be a consequence of better initial assessment.

It would certainly be wrong to condemn and reject risk assessment techniques on the basis of the rather mixed experience of England and Wales. In some ways the circumstances of their introduction were unfavourable, since many other trends in criminal justice were adverse. We can also point to more favourable results in some other places: for example, in the small independent jurisdiction of Jersey in the British Channel Islands the systematic use of risk-need assessment since 1996, based on LSI-R, has been associated with reductions in short-term imprisonment and improvements in the effectiveness of rehabilitative programmes and supervision, as well as reductions in intervention with low-risk offenders who were unlikely to benefit (Raynor and Miles 2007). Again context is important: in Jersey developments in risk assessment have formed part of a thorough commitment to effective practice based on providing probation staff with the skills and techniques to improve their practice, rather than a managerialist attempt to control them and restrict their discretion. There is also an ongoing partnership with criminological researchers which produces regular external evaluation of performance and collaboration in several research studies. Such

curiosity about results provides a good context for innovation, and although not everything has worked perfectly, the general impression of the impact of risk-need assessment is very positive. (For a recent example outside Britain see Van Winderen, Van Wilsem and Moerings [2014] who describe how the introduction of risk-based pre-sentence reports in the Netherlands has led to less ‘controlling’ and more ‘diverting’ sentencing, contrary to the predictions of ‘actuarial justice’ theorists.)

Finally in this review of current British practice it is worth mentioning one further benefit of risk-need assessment. If carried out well, it can provide evidence about the impact of intervention by comparing initial and subsequent assessments. Repeat assessment can track the progress of individual offenders to show whether improvement has occurred, and in which risk factors. Most importantly, research has now shown that when offenders’ scores improve they are likely to reconvict at lower than expected rates, whereas the reverse is true for offenders whose scores deteriorate. By way of illustration, Table 1 shows the one-year reconviction rates of all those offenders on probation who received repeat LSI-R assessments in the pilot studies in England and Wales, and in Jersey up to 2001. (It should be noted that increases and decreases in scoring during supervision occur across the full range of initial scores, and do not simply represent regression towards the mean: see Raynor [2007a]).

Table 1: Direction of change in LSI-R scores and reconviction (N=360)

LSI-R scores:	Reconvicted in one year	Not Reconvicted
Risk increased during supervision	79 (67%)	39 (33%)

Risk decreased during supervision 102 (42%) 140 (58%)

Significance (chi-square): $p < 0.001$

Contrasting narratives of risk assessment: corrections, critique and context

To sum up, it is clear from the evidence and experiences reviewed in this paper so far that the story of risk discourse and risk assessment practices in criminal justice can be told in several different ways, all with some empirical support. This final section reviews three core narratives which each encapsulate a particular approach to understanding and using risk assessment in criminal justice, and discusses the policy contexts and management styles which tend to determine which of them is dominant at particular times and places.

First, and most influential in the initial adoption of risk-related professional practices in British criminal justice, is the positive correctional narrative which emphasizes the potential of risk-driven techniques and practices to improve criminal justice, reduce re-offending and promote the rehabilitation of offenders. As we have seen, there is evidence that the systematic use of risk assessment methods in probation services can help to determine the level and kind of supervision needed by individual offenders, and can sometimes be deployed in pre-sentence reports to avoid unnecessary over-intervention. It can also point to areas of need where supervision can make a difference, and can improve real-time evaluation of services to show how far offenders are benefiting from the supervision provided. These improvements in the rehabilitation of offenders are associated particularly with the techniques known as risk-need assessment, since these include factors in the risk calculation which are ‘dynamic’ or potentially able to change or improve. Such improvements in services,

for the benefit both of offenders and the community, were among the central aims of the researchers who first introduced routine risk-need assessment into criminal justice practice as part of the 'RNR' or 'Risk, need and responsivity' model of rehabilitative practice (Andrews et al. 1990). This model, strongly informed by research evidence and essentially progressive in its aims, advocated the targeting of rehabilitative efforts on offenders with a substantial risk of re-offending rather than on low risk offenders where there was less need for change; the use of forms of supervision which reduced risk by helping to meet offenders' criminogenic needs, and the provision of social learning opportunities specifically designed to increase the likelihood of a positive response.

The designers of the LSI-R (Andrews and Bonta 1995) intended to support this way of working, and there is evidence that this has happened in some places. In Jersey, as mentioned above, risk assessment is integrated into a pattern of probation practice which still substantially retains a traditional focus on helping offenders to change: practitioners retain a considerable amount of autonomy and discretion in their work, and the probation service is trying to encourage approaches to local criminal justice which are less punitive and coercive, and more effective in reducing further offending. These developments so far tell a positive story about risk assessment in criminal justice, because it is being used in the context of a probation policy which prioritises rehabilitation and the development of practitioners' skills. It is also demonstrably linked to improvement in services and outcomes (Raynor and Miles 2007). However, this evidence from a small jurisdiction is yet to be matched in the larger jurisdiction of England and Wales.

Critique

The second narrative which can be read in the history of risk assessment in criminal justice is less optimistic and less progressive. It emphasizes managerialism and punitiveness rather than improvements in services, and some of the developments reviewed in England and Wales have conformed more to this model than to the more optimistic account. The OASys risk assessment instrument, although performing at least as well as others in relation to accuracy, was often regarded as cumbersome and over-elaborate by practitioners (Mair et al. 2006) and was imposed on them by managers rather than being seen by practitioners as a logical enhancement of what they were already trying to do. Generally it seems that innovations are more acceptable to practitioners if they can see how they add value to their practice, but in the very centralised management system which has existed in the National Probation Service of England and Wales since 2001 the tendency has been to try to manage change by very directive methods, with an increase in targets, regulations, procedures and form-filling which has greatly reduced the discretion and autonomy of individual staff. Some probation officers say they are spending 70 per cent of their time working on the computer rather than seeing offenders. At the same time the whole criminal justice system has become more punitive, with greater use of imprisonment and stricter enforcement of community sentences, so that many of them are not completed and prison numbers are increased further by offenders who have breached their community sentences or their post-custodial supervision requirements. This is partly due to a political strategy of 'populist punitiveness' (Bottoms 1995) in which political parties compete with each other to announce the toughest-sounding policies, and partly due to unintended consequences of poorly designed legislation.

To take just two examples, the 1991 Criminal Justice Act introduced the concept of probation as a punishment rather than an alternative to punishment, and the 2003 Criminal Justice Act required any court dealing with a breach of a community order to impose a more severe sentence or order, without the option of giving a warning or a token punishment, which would have been a frequent response in the past. Together with stricter requirements on probation officers to prosecute offenders for minor breaches of supervision requirements, this could lead to quite severe punishments which neither the probation officer nor the judge would have considered necessary if they had been free to use their own judgment. In such a context, we begin to find evidence of cultural changes which move the probation service away from its traditional concern with the welfare of offenders: for example, one recent study in which solicitors were asked about their experience of probation officers reported comments that enforcement had become over-rigorous, and that probation officers 'have drifted towards an emphasis . . . on punishment in the community or imprisonment' (Whitehead 2007, p. 147). In another recent example, a small exploratory comparison of samples of pre-sentence reports from different decades (Gelsthorpe, Raynor and Robinson 2010) finds that reports recently presented to courts are more negative in tone than in the past, concentrating on offenders' weaknesses and defects, their responsibility for harm done to victims, and the probability of future offending. There are few comments about positive aspects such as strengths, desire to change, or motivation to co-operate with supervision. We speculate that some of this may be a problem of stereotyped interviewing to meet the requirements of a computerised risk assessment questionnaire rather than a genuine conversation and dialogue with the offender. This seems particularly likely if the officer's attention is on the computer more than on the person. One possible

consequence of more negative reports is, of course, more severe sentencing and more custodial sentencing.

This, then, is the second, less optimistic narrative about risk: as predicted by actuarial justice theorists, the discourse of risk can contribute to the emergence of a new penalty in which proportionality and desert become less important, and more coercive and punitive outcomes result from the attempt to control future crimes.

However, this does not appear to be an inevitable development: instead, it occurs in a context where we find a particular management style and particular penal policies.

The combination of coercive managerialism, which disempowers practitioners who want to work in a flexible, individualised and rehabilitative way, with a penal policy dominated by the politics of toughness and the growth of imprisonment, creates an environment in which it is difficult for risk assessment methods to produce advantages and easy for them to produce problems. Critics need to think carefully about how far this is due to risk assessment techniques, and how far it is due to the policy context of implementation. Are they in favour of abandoning risk-need assessment altogether, or of returning to arbitrary and inconsistent first-generation methods? The contrasting results of research on pre-sentence reports in England and Wales and the Netherlands, reviewed above, suggests that the impact of risk assessment can be very different in different policy contexts, and we now turn to some implications of this.

Context

The third and last of these emergent narratives of risk concerns the relationship between social and individual risk factors, and consequently the balance between the

responsibilities of society as a whole and the responsibilities of individuals. Here again we are invited to take a critical look at the assumptions and processes of risk assessment, and to consider how risk-driven approaches might interact with the process of social policy formation. To put this in historical context, many countries (particularly but not exclusively Anglophone countries) have been through a process of trying to redefine the relative responsibilities of the State and the citizen in the field of social problems. The 'Welfare States' constructed around the middle of the twentieth century, usually by left-of-centre Governments, were significantly reshaped by right-wing Governments in the 1980s and subsequently. In Britain this has been particularly associated with the Governments led by Margaret Thatcher and to some extent Tony Blair, and embraced with new budget-slashing enthusiasm by the current Conservative-led coalition government: welfare expenditure and levels of personal taxation have been contained, inequalities of wealth and income have increased, and people have been encouraged to take individual responsibility for their own welfare and economic situation in a process often described as 'responsibilisation' (Rose 2000). This has proceeded alongside an emphasis on the personal responsibility of offenders, and increases in punitive sentences such as imprisonment.

Critics of risk assessment and risk-need assessment have pointed out that although such methods may be designed to help offenders by facilitating the use of rehabilitative programmes, they may carry different messages when applied in a context of responsibilisation. Because risk assessments are carried out on individuals, risk factors are presented in a way which makes them appear as individual characteristics. Modern risk assessment measures make the very important distinction between static risk factors (which cannot be changed) and dynamic risk factors (which

are in principle subject to change), but there is little attempt to distinguish between dynamic factors which are subject to change through the decisions or efforts of offenders themselves, and those which are socially imposed deprivations beyond the capacity of the individual to change, and alterable only by broader social or economic measures. For example, an impulsive personality is a risk factor for offending, and is a dynamic factor which individuals can address: reductions in impulsiveness are regularly reported among individuals who undertake appropriate rehabilitative programmes (Raynor and Vanstone 1996). Living in an area of cheap and poor housing and social disorganisation is also a risk factor, dynamic in principle, but not easily alterable by the individual offender who cannot afford to move to a better area.

Such distinctions between individual and social risk factors are not absolute (for example, individual personality characteristics may result from early childhood experiences in families stressed by poverty) and depend to some extent on context (for example, being unemployed is a risk factor which individuals can address if there are plenty of jobs, but not so easily when unemployment is high). However, the basic point that risk assessments tend to translate social disadvantage into what look like individual risk factors is clear, and can be problematic when Governments have an ideological commitment to decreasing social provision and enlarging the sphere of individual responsibility. To take just one example from the field of risk factor research on young offenders: the fact that families likely to produce delinquent children can be identified with better-than-average accuracy, as a result of developmental cohort studies, has encouraged politicians to develop 'early intervention' policies directed at these particular families, and using methods such as training in parenting (Garside 2009). At the same time, one of the most sophisticated

cohort studies yet undertaken has shown that the risk of offending can be *increased* by early contact with the criminal justice system (McAra and McVie 2007). One possible mechanism to account for this is labelling: receiving special attention of a type known to be targeted on troublesome families will mark a family as troublesome and its children as likely to offend. Even if it has some positive effects, which cannot be guaranteed, it is likely also to have this negative effect. Add to this the problem of ‘false positives’, or children being mistakenly treated as pre-delinquent when they are not, and it becomes clear how difficult it is to get early intervention right. To improve the circumstances of stressed families in a non-stigmatising way probably requires a universalist or area-wide programme of assistance to all low-income families, so that particular families are not singled out. However, one can understand why Governments of the centre-right are more interested in policies that target less than a hundred thousand ‘problem’ families rather than policies which aim at a broad and significant attack on inequalities affecting millions of families. Such policies are seen as too expensive, requiring too much progressive taxation, even if they would in the long term have better crime-reduction effects (Wilkinson and Pickett 2009). We also need to remember that even individual risk factors can be socially relative: impulsive and irresponsible risk-taking among low income youngsters is likely to get them a criminal record, but impulsive and irresponsible risk-taking among wealthy bankers appears to earn them a public subsidy to continue behaving in much the same way.

A final darkly comic illustration of the misuse of risk factor research under an authoritarian regime can be found in the account given by the Scottish anarchist Stuart Christie of his imprisonment in Franco’s Spain in the early 1960s (Christie, S. 2004). He describes being taken to a special room for ‘anthropometry’, consisting largely of

examination and measurement of his head and the shape of his skull. The anthropometrists were delighted to find that he had no ear-lobes, which students of Lombroso (1876) will recognise as one of the physical characteristics which he claimed to have identified as typical of *l'uomo delinquente*. By identifying this supposed risk factor they could attribute Christie's beliefs and behaviour to atavistic criminal tendencies, thereby reducing a social question of political differences to an individual defect.

All these three narratives about the impact of risk discourse and risk practices in criminal justice encapsulate real features of the current situation. Criminal justice organisations and personnel have some relative autonomy in relation to broad social and economic trends, but this is limited: although there is convincing evidence that risk-need assessment methods can improve the rehabilitation of offenders, this is most likely to happen when they are applied in a political context of progressive reforms in criminal justice, and when they are used and supported by practitioners who understand them and believe they can be useful in their work.. In a more punitive context, and against the background of social and economic policies which perpetuate disadvantage and inequality, their impact will be limited, and they may have unintended adverse effects such as increasing the severity of punishment, or reducing the apparent need to address social problems in a social way. During the 1980s in Britain it often seemed that the only way to attract resources to meet social needs was to present them as risk factors for crime, but this also risked redefining social problems as aspects of criminal conduct, contributing to a punitive attitude to the social difficulties of individuals. Risk-need assessment techniques are undoubtedly one of the major steps forward in contemporary approaches to the

management of offenders, but to have their best effects they need the right kind of criminal justice policies and a commitment to addressing offending primarily through rehabilitation rather than punishment.

All this suggests that in practice, risk assessment methods (and in particular risk-need methods which emphasize dynamic factors) can make a positive contribution to the rehabilitation of offenders and even to penal reform, provided that the context is favourable to the development and improvement of rehabilitative sentencing.

Although the hybridization of risks and needs (Hannah-Mofatt 2005) has its own dangers, it has the clear merit of maintaining at least some focus on needs within criminal justice. However, these methods can also have undesirable consequences if the context for their use is wrong. Some safeguards are necessary: for example, a policy of proportionality in sentencing so that predicted risks do not add too much to the sentence or order; a policy of penal reductionism, aiming to reduce custodial punishment and to address offending through rehabilitation rather than incapacitation; and a parsimonious approach to the use of protective measures such as indefinite sentences for dangerous individuals, based on clear evidence of probable harm and permeated by a strong commitment to human rights. The reduction of anti-social behaviour is more likely to happen in pro-social communities.

In addition, experience suggests that the use of risk/need assessment methods within criminal justice is most likely to have a positive impact when properly validated in relation to a range of diverse populations, and when introduced in a user-friendly fashion: for example, involving practitioners in development and implementation and emphasizing that its purpose is to support their work rather than to control and

manage it. The best-developed systems allow professional over-ride (i.e. the modification of the risk assessment through professional judgement). The most promising environment for innovations will be one where a range of effective professional practices are already in place, including appropriate organizational culture, effective programmes and services implemented with integrity, well trained and supported staff, appropriate skills, good integration with community resources, and service evaluation (Gendreau and Andrews 2001; Bonta et al. 2013). Finally, the importance of the wider social context is well summarised in a recent British text: ‘... what really matters, we would argue, is not so much the technical competences which practitioners deploy, or even the benevolence of their intentions, but the ways in which their practice is linked with other tides in the collective life of a society’ (Jordan and Drakeford 2012, p.176).

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