Pre-Sanction Reports in the Irish Youth Justice System: Evidence of Internalising Risk Focused Practice?

Dr Etáin Quigley
UCD Institute of Criminology, Sutherland School of law, University College Dublin

Abstract

Commentators suggest that the pre-sanction report has undergone significant change since its introduction. The discussed changes are in line with reported penal shifts in Anglophone jurisdictions which argue that offenders are no-longer perceived as suffering from a moral or social deficit, but rather are understood as being in need of stratification according to their risk level. The aim of this paper is to explore theses shifts in an Irish context, utilising the pre-sanction report process in the youth justice system as a case study. This paper therefore outlines the preparation and utilisation of the pre-sanction report with the aim of identifying the prevalence and influence of risk focused discourse and practice.

Data discussed in this paper were drawn from a broader study exploring the contemporary policy and practice in the Irish youth justice system.

Key Words: Youth Justice, Pre-Sanction Reports, Risk, Assessment, Decision Making

Introduction

According to Field et al (2010) sentencing is more than a narrow legal process and has traditionally also incorporated individual social narratives. The pre-sanction report is an integral tool in this process and is used by the court to combine the legal and social elements of justice and therefore to understand issues other than the offence. It also provides the court with information which would otherwise be unavailable during the hearing process and thus plays a vital role in terms of helping practitioners make sense of other snapshot information presented. As a result the report provides context to other issues and factors. The type of information and the manner in which it is presented is therefore a guiding factor in terms of shaping the ideological position of the system. An investigation into the content and use of pre-sentence reports can thus provide valuable insights into the rationales underpinning day-to-day practice.

The origins of the pre-sanction report can be traced to the work of John Augustus in the US during the mid 1800's (Panzarella, 2002), and to the practice of social enquiry in the English Police Courts (Magistrates Courts) during the 1870s (Downing et al, 1997). Thus the use of pre-sanction reports, as a means to provide the court with additional information,

has existed for over a century, with either probation officers or social workers traditionally preparing such reports (Ibid). Commentators have argued that the report has undergone significant changes in Anglophone jurisdictions since its introduction (McWilliams, 1986) and has progressed through three eras of reform: era 1) was epitomised by the understanding of the offender as a sinner in need of moral reform, era 2) was marked by the understanding of the offender as suffering from a social deficit and as in need of professional treatment and era 3) relates to an era where the probation officer no longer pleads for nor treats offenders but rather assesses with the aim of bifurcation. Bifurcation is the practice of dividing offenders into two classes – 1) offenders who are deemed to require detention or incarceration as a sanction due to the increased likelihood of them offending, and 2) offenders who can be worked with within the community due to a low risk of reoffending (Downing et al, 1997; McWilliams, 1986).

More broadly, recent commentary by some in the criminological field, largely focusing upon the macro space of policy, has led to reports of a move away from holistic practitioner led welfare/rehabilitation based approaches; and a move towards a narrower view of the offender based on self-management and criminogenic risks (see, Feeley et al, 1992, Garland 2001). Likewise, some international commentators have argued that pre-sanction reports are increasingly concerned with risk assessment and risk management over and above social enquiry and welfare interventions (Field et al, 2010; Hannah-Moffat, 2010b, Netter, 2007, Simon, 2005). Evidence of the impact and influence of 'risk' in report writing is visible in some jurisdictions in terms of the focus upon criminogenic needs over and above 'self-defined needs' or 'clinically defined holistic needs'(Hannah-Moffat et al, 2010b). This approach, it is argued, individualises and pathologises risk and need, and thus excludes wider social-cultural factors often overlooking issues such as deprivation and poverty (Ibid). Furthermore, an emphasis on criminogenic needs potentially omits the needs identified by the client themselves and/or restricts practitioners from including broader non-criminogenic needs identified through their professional judgment. This shift has led some commentators (e.g. Persson et al, 2012) to suggest that reports now have a double aim. Alongside their traditional role of assisting the court in sentencing, they now also facilitate post-conviction planning and determine how a sentence should be served – based upon the offenders level of risk.

The increased emphasis upon risk in reports and at sentencing has led some commentators to question the ethics of including risk assessment scores. A risk assessment score outlines the 'risk' of an offender re-offending in the future. In other words the risk assessment score informs decisions about punishment of an offender but is based upon predictions about possible future behaviour that has not happened yet, and indeed may never happen (Gledhill, 2011; Hannah-Moffat, 2010; Maurutto et al 2006; Monahan 2006; Netter 2007). It has been suggested therefore that it is unethical to include information in reports which may cause the accused to be sanctioned for behaviour which may never occur (ibid). However, advocates of this approach argue that the structured risk assessment process facilitates best practice by enabling practitioners to determine the level of intervention required for the individual – low level intervention for those rated as low risk that reduces their involvement with the system, and high level interventions for those rated as high risk - thereby facilitating the efficient targeting of resources to those who need them most (Andrews et al, 2008). Furthermore, the shift to structured risk assessment emerged as a result of the documented unreliability of clinical judgment, the previous method of assessing offenders, and therefore has been credited with providing a more robust method of constructing an understanding of the person and their likely future behaviour (Singh et al, 2010).

These arguments emerged from studies conducted in jurisdictions other than Ireland, and broadly relate to the adult criminal justice system. This paper explores these arguments in an Irish youth justice context due to the Irish adult criminal justice system having been described as not clearly following the risk based trajectory outlined above (Bracken, 2010; Hamilton et al 2016; Healy, 2015; Kilcommins et al, 2010; Rogan 2011) and the Irish youth justice system having a long history, dating back to the Children Act of 1908, of practitioner led rehabilitation. The aim of this paper is to examine the day-to-day practices of report preparation, information reviewing, information utilisation and decision making. Moreover it aims to explore the ideas and motivations behind these actions with the objective of identifying the ideological undercurrents guiding the decision making processes.

Pre-Sanction Reports in the Irish Youth Justice System

As stated above, the Irish youth justice system represents an interesting case study for analysis of this kind as reports suggest a unique penal trajectory unfolding. Irish scholars typically report findings contrary to international commentary and suggest continuity alongside a more nuanced shift in the Irish criminal justice field (Bracken, 2010; Hamilton et al 2016; Healy, 2015; Kilcommins et al, 2010; Rogan, 2011). The youth justice area is of particular interest as a result of the traditionally strong welfare approach related to young people – due to their longstanding recognised vulnerability within the criminal justice environment (Seymour, 2013).

Currently, in Ireland, pre-sanction reports for the children's courts are prepared by Young Persons Probation Officers and are thereafter presented to the court by the Court Probation Officer. This practice was placed on a statutory footing with the enactment of the Children Act 2001 (s 99). Under this Act, pre-sanction reports can be ordered by a Children Court once guilt is established. A Judge may order a report in any case but is obliged to do so in cases where a community sanction, detention or a detention and supervision order is being considered. The yearly average of reports ordered for young people from 2008-2013 was 873 (Irish Probation Service Annual Reports 2008-2014).

The court may also seek information regarding the care and control of the young person to determine whether any failures in terms of parental/guardianship responsibilities contributed to the offending behaviour (Children Act 2001 s99 ss2). Finally, the court can decide not to order a report where the penalty for the offence is fixed by law or where the young person was subject to a prior report prepared not more than two years previously in cases when the attitude of the child and the circumstances of the offence are have not changed since the previous report (Children Act s99 ss4 (a) (b)).

Methods

This paper resulted from a broader study which explored contemporary policy and practice in the Irish youth justice system. The broader study conducted a review of Irish youth justice policy (content analysis of key policy documents from 2001-2014); qualitative interviews with key stakeholders (judges, lawyers, probation officers, An Garda Síochana (Irish police) and detention school workers); observations at a children's court in Ireland (a key site where the majority of interviewed practitioners interact during daily practice); and a review of 100 pre-sanction reports.

This paper focused upon data related to pre-sanction reports so as to explore the already discussed shifts in ideology and practice reported in other jurisdictions with reference to the Irish youth justice field. The data reported in this paper emerged from the interview and observational phase of the study:

Qualitative Interviews

Data related to three different classes of practitioner was utilised for this paper, namely, judges, lawyers, and Young Persons Probation Officers. These groups were selected because of their regular and repeated interactions with each other in terms of the pre-sanction report. Irish youth justice practitioners do not operate in isolation and therefore focusing upon one particular group of practitioner would have limited the findings and produced only a partial picture of contemporary practice. A total of 15 practitioners therefore participated in the in-depth qualitative interview phase of the study. Whilst the sample size is small, the Irish youth justice area is a relatively small subsection of the Irish criminal justice system (District Court Judges: approximately 61 (courts.ie); Child Lawyers: approximately eight specialising in the area. Other lawyers do practice in this area but mix their youth justice practice with other areas of the criminal justice system (adult); Young Person Probation (YPP) Officers: information not available but YPP teams are only based in six counties in Ireland (Dublin, Cork, Waterford, Limerick, Sligo and Drogheda) and therefore it is unlikely that there is significant number of officers nationally). As such it is suggested that the sample size is likely to be broadly representative of practitioners in the area. Furthermore, the interviews were conducted on a national basis and the findings are therefore likely to apply to practice outside the Dublin area.

The interviews were guided by a topic guide that was piloted prior to entering the field. The topic guide was structured so as to allow for comparisons between the different participants. However, the participants were free to veer from the structure and add any information they felt was relevant. The interviews lasted approximately 50 minutes and were audio recorded with the permission of the participant.

The audio recordings were transcribed verbatim and entered into NVivo. Nodes and sub-nodes were created according to a thematic coding system.

Ethnographic Observational Fieldwork

Ethnography is a form of qualitative research which involves direct social contact with those involved in the study over a protracted period of time. It allows for richly 'representing at least partly in its own terms, the irreducibility of human experience' (Willis et al, 2000: 5) and is regarded as a superior method for studying the micro field (Wacquant 2002). Moreover, it provides data which is unattainable through any other method and thus constitutes an important methodological tool.

The observation phase allowed the researcher to observe the manner in which decision making occurs in practice within the children's court setting, the factors that influence such decision making and the role these factors play in the process – particularly related to and informed by the pre-sanction report. The benefit of this approach is that social reality is observed by an external observer as opposed to reported upon by an internal participant (Flick, 2009). Combining the observational and interview data allowed for a richer and

more in depth understanding of court interactions, processes and procedures related to the report.

A total of 256 cases were observed and of these 121 resulted in qualitative field notes (cases were the young person appeared in the court for a brief plea, did not appear, had the case struke-out, adjournments etc. were not recorded due to minimal data). Contemporaneous field notes as well as the notes that were recorded after exiting the field were written up and entered into NVivo for analysis. Nodes and sub-nodes were created according to a thematic coding system.

Results and Discussion

Having outlined the central position of the pre-sanction report in the court process, this section discusses how judges, lawyers and Young Person Probation Officers report using and actually use pre-sanction reports during daily practice. All practitioners shared the same view of pre-sanction reports and therefore there was no divergence of opinion on their role, function and content. This consensus is likely the result of the widespread and wholesale influence of the Children Act 2001 which placed the reports on a statutory footing.

Findings from this study revealed that probation reports are still written in a narrative format based on interviews with the offender and, where appropriate, other relevant persons (this can be any person such as a Juvenile Liaison Officer, the young person's school principal, social worker and so on). They contain information on the personal and social history of the young person, their family, accommodation circumstances and education and/or training. The report also provides information related to the current offence and any offending history. In addition, it reports on the young person's attitude to the offending behaviour and, where applicable, attitude to the victim. Finally, they report on the young person's risk of re-offending in the future. The probation officer uses this information to make a recommendation on how best to proceed with the young person's case and the court may either follow the recommendation fully or take it into consideration but conclude the case in an alternative manner (Children Act 2001 s 99 ss1). These findings highlight a strong retention of traditional means of inquiring into a young person's social history with an addendum of 'risk of future offending' and thus diverges from international discussions outlined above related to shifts in ideology and practice in the pre-sanction report process.

All practitioners regarded the pre-sanction report as a crucial document in terms of providing information to the court that would otherwise be unattainable, and thus allowing the court to make informed decisions based on a broad information base.

"Pre-sanction reports are crucial": practitioners' perspectives

This section outlines practitioners' discussions of the pre-sanction report. It discusses how a report is understood, what should be contained in a report, how practitioners interpret the information contained therein, and how such information influences the decision making process. These findings highlight what 'type' of information is deemed important when making a decision and thus points to whether a young person's risk score holds currency during this process. Highlighting the position of a risk score within the decision making

process assists with understanding ideological shifts in this area. This data was generated during the qualitative interview phase of the study.

Practitioners did not place great emphasis upon the inclusion of a risk assessment score and, whilst they acknowledged its presence, did not report adapting their decision-making process significantly as a result. Indeed, they reported considering the same factors they had always considered when making a decision. For example, Young Person Probation officers reported addressing the same issues now as they had prior to the incorporation of risk scores into the report, despite describing the process of assessment and report writing as having become more structured and rigid:

> YPP 1: 'I think in fairness with the social work background these are all areas which you look at - we'd be looking at those anyway. However, it has structured it for us. I suppose the other thing it has done is taken out em, it has made it more formal, because you'd have informal things like the area that they live in and there isn't really room for that and em, but em probably it would be different language as well. More formal and more limited, and when you want to talk about the environment and the area where they come from and all that, it's a more clinical report nowadays. Which isn't a bad thing but it doesn't really encourage the welfare side'.

Therefore whilst there was an acknowledgement of the process becoming more formalised and streamlined and less conducive to an examination of welfare issues, the probation officers reported retaining their traditional social work role whilst also adapting to the requirements of a more formal process. These findings highlight practitioners' adaption of policy initiatives rather than a wholesale adoption. This is in line with findings from this (Hamilton et al, 2016) and other jurisdictions which highlight a lacuna between macro penal theory on the one hand and actual daily practice on the other (McNeill et al, 2009; Robinson, 2008). These findings highlight a possible retention of a traditional welfarist ideology at practice level, and thus resistance to the imposition of a risk oriented ideology, which is typically a top down policy aspiration.

However, the more structured approach, which limited the officers' ability to report on issues outside of the report structure, was discussed as problematic as a result of its rigidity. Nevertheless, other studies show that Irish probation officers retain significant discretion and are permitted to combine their clinical judgment with the structured assessment process (e.g. Bracken, 2010; Fitzgibbon et al, 2010, Hamilton et al, 2016; O'Leary et al 2009). Similarly, officers in this study discussed overriding the risk assessment score when required to ensure that they were describing the young person as accurately as possible:

> YPP 1: 'I could override it if I want to. If I look at it and think Oh my god he is coming up as very high, but there is evidence of protective factors which would help that, I would always mention the protective factors in my probation reports. I do think they are important because they might be the very thing that might reduce his risk and turn him round and in the right direction. But where, ehhh, the risk assessment might be saying the complete opposite, like very strong on this guy is going to be trouble, you know we have that right to override it, you know.'

In this respect, Young Person Probation Officers reported including the risk assessment score in the report but regarded it as something they referred to amongst other issues discussed (i.e. issues derived from clinical judgment). They discussed the risk score as one factor amongst many to be considered and reported the narrative section of the report as being the primary piece of information:

> YPP 2: I would generally just refer to it [risk assessment score] I wouldn't say, I always put it in and say - in light of the standardised risk assessment tool, such and such is at whatever risk of re-offending but I really am talking about, I kinda bring everything that I've said in the report together. I highlight what are the main risk factors for this young person beneath that - I wouldn't just use that when making my recommendation. I'd summarise all of the other factors as well.

Young Person Probation Officers therefore adopt a hybrid approach when preparing reports whereby they report on traditional social work issues that may be present in a young person's life and then conclude with a brief summary of the risk score. This suggests that the practice of preparing pre-sanction reports, in the area of Irish youth justice at least, has not shifted towards a risk narrative to the extent that has been reported in other jurisdictions. These sentiments were mirrored in judicial attitudes towards the pre-sanction report. All judges described the risk assessment score (low, moderate, high) as being influential but regarded it as only one piece of information to be considered within the report. They used the broader range of information to guide their understanding of a young person's identity and their decisions regarding the most appropriate progression pathway through the system for the young person. In practice, most judges discussed the risk score as being dependent upon broader welfare issues and in this respect risk and welfare were reported as not mutually exclusive:

> Judge 1**:** 'They [risk score] would be quite influential, I would take that into consideration…. one is dependent on the other - they are high risk because of the, they're high risk because they have a drink problem and they're unemployed, there is a drug problem, they're interconnected really [welfare and risk].'

The narrative section was described as being the primary and most influential piece of information because it provided an additional layer of information that helped the judge to form a more in-depth understanding of the young person's background. This was discussed as having the potential to override information related to risk:

> Judge 1: 'I think perhaps an odd time it comes up, that they have been abused and that, I usually, while I might not have given someone else a chance, I might give them a lot of leeway because of the history and that, cause of the reason….. you know if a child has lost a parent or you know if there has been, you know, very, very difficult or sad matters I would certainly take those into consideration.'

The main concerns discussed by judges related to gaining insight into the young person's social background and in this respect they relied on information more aligned with welfare issues than risk:

> Judge 2: 'You're looking at structures, family structures, identify the problem and identify the solution. Is there a broad consensus towards it?'

Therefore, all judges included in the study explained that they always deferred to the report as it was not possible for them to explore the type of issues contained therein through any other mechanism:

> Judge 5: 'They [PSR] would be crucial, we would depend a lot on the Probation Service to advise us because they'd have more experience and the capacity to look at the bigger picture and the training of course. They can get information that we can't get and apply the concepts that we can't apply and tell us after assessing the individual away from the court in a more fair environment in many ways.'

These findings highlight that judges have retained an understanding of the pre-sanction report which relates to social enquiry. This is contrary to what has been reported in other jurisdictions and therefore highlights divergence in terms of the level of internalisation of risk discourse and practice by the Irish youth justice judiciary.

Lawyers, similarly discussed the risk score as generally not relevant in practice and as an additional piece of information rather than the main influencing factor on decisions:

> Lawyer 3: 'it's not really discussed. You'd see that a lot in adult court, they tend to kind of take that as a major factor most of the time. Whereas in the children's court they generally emmm look at the information as in emmm see what positives and negatives are and what can be addressed and what the child is willing to do and all the rest so whilst the judges obviously see that emmm what the risk score is and take it on board they do it in the context of the overall contents of the report.'

All practitioners reported engagement with services and compliance with requests and orders as a key determining factor when reading a report. Furthermore, a 'good' report was described as being key to achieving a successful outcome for the young person:

> Lawyer 3: 'massively influential. If there's a good report you get a good result simple as that. If there's a bad report it's an uphill struggle then for me as a practitioner. Sometimes if there's a bad report it might lead to more information like I was saying earlier so you kind of have to sit down with them [young person] and say why didn't you show up to your appointment and they might say - I got a job and I was working. So what was a terrible report emmm now has this positive element you know so emmm. Yeah it's the judges, generally follow the direction of the Probation Service because they know what they're doing.'

By deferring to the report, judges rely heavily upon the information therein, highlighting a shared decision making process in relation to young offenders. Overall, this suggests a collaborative decision making process, as has been reported in other jurisdictions (Tata, 2007) and a shift away from the judge retaining a monopoly of power in the decision

making process.

In sum, these findings suggest, and are in line with other Irish findings in the area (see Bracken, 2010, O'Leary et al 2009) that Young Person Probation Officers adopt a hybrid approach which combines their traditional social work role of providing an in-depth analysis of issues associated with a welfare ideology with a more contemporary role which requires them to summarise structured assessment outcomes related to the likelihood of the young person re-offending in the future. Thus, whilst this suggests some changes to the information contained within the report, and therefore to the information presented to the court (judiciary and lawyers), these changes operated alongside more traditional reporting practices and thus their impact was diluted. Further, findings suggest that lawyers and judges rely heavily upon reports to understand the young person and make decisions about sentencing. The pre-sanction report therefore is a key document in terms of forming an understanding of the young person.

The function and utilisation of pre-sanction reports

Having outlined the role, significance and content of pre-sanction reports, this section will discuss the use of reports in a court setting. As such, it will build upon the previous discussion by outlining how the report is utilised during daily practice. This section draws on field notes recorded during observation at a children's court in Ireland. The results showed that pre-sanction reports functioned as a key document within the court and were relied upon heavily by practitioners.

Pre-sanction reports acted as a source of information about the young person which strongly influenced sentencing decisions. The findings revealed that young people who positively complied tended to receive a positive report as a result of their engaging with all requests and orders of the court and thus meeting practitioners' expectations. By presenting in such a manner the young person was dealt with more leniently and often received a 'second chance,' thus avoiding conviction and a criminal record. In such cases, the report, as presented to the court, did not focus on desistance and/or future offending but focused primarily on engagement and compliance. This points to an assumption by the court whereby engagement and compliance will lead to no further offending - suggesting practitioners make an ideological correlation between 'normal' behavior and desistance rather than between punishment/management and desistance. For example, this young person was fully compliant and was met with praise by the court:

> DS-1-2: The pre-sanction report played a key role in showing how the young person was engaging with the probation service. The lawyer discussed his attending a training course, and doing well at it. His engagement with services on offer – they were not elaborated upon. The fact that the young person had a supportive family was discussed. The negative elements discussed were [that] his peer group was a problem but he was staying away from them. His problem of substance abuse was also discussed – he was attending services in relation to this problem. The young person himself was engaged with the court in so far as he was listening intently. The judge gave him 'another chance' with a probation order. The judge discussed his ability and prospects in relation to his future. The past events were not really discussed and the primary focus was on his ability to have a positive future.

A corollary of this is when the information contained in the report informed the court that a young person was not complying. When this occurred, the young person was likely to either receive or be threatened with a sanction as a means of coercing compliance. The court was often willing to provide the young person with a further chance to achieve a 'good' probation report but that was perceived as being in the hands of the young person. This was reminiscent of the responsibilisation agenda which refers to individuals being understood as capable of and required to take responsibility for their own risk management, a process related to the movement towards governmentality (meaning the manner in which governments influence and guide the people they govern so as to fit within the prevailing doctrine) (McNeill et al, 2009; Robinson, 2008). Thus, the young person was deemed responsible for generating a 'positive' or 'negative' report and was therefore understood as a rational actor who could choose to responsibilise and self-manage. For example one judge warned a young person in relation to not complying and told them it was their responsibility to re-present to the court with a positive report and to engage positively with the process:

> DS-1-14: The judge ran through the bail conditions with the young person and asked 'do you understand' he/she then discussed breaching the conditions. The judge stated:
> – 'if you get into trouble with conditions tell Gardaí so it can be sorted…. Do not come back before me …. If you do I will take it very seriously' The judge warned that if he did not engage with the services and get a positive pre-sanction report he would find himself in trouble and that he was 18 now. He was given 4 weeks to work with probation service and get a 'positive report'. The judge stated – 'it's up to you now'.

This suggests that the report has a quadripartite purpose – as referenced above, Persson et al, (2012) suggest that reports have a dual role 1) provide the court with information to assist the court with sentencing; and 2) generate information to facilitate post-conviction planning and determine how a sentence should be served (Ibid). However, findings from this study suggest an additional two uses for reports, namely, 3) it provides the court with a tool to compel the young person to comply by not offending and by conforming to broader social norms, and to return with documented evidence of the same; and 4) as will be discussed below, lawyers use them for mitigation at sentencing stage.

Interestingly, lawyers used the positive information reported in the pre-sanction report for mitigation. They often referred to the young person's positive attitude and compliance when seeking lenient disposals. Further, even when a young person had history of non-compliance they could redeem themselves with a positive report:

> DS-2-7: This young person was produced from custody. He had breached conditions. His responsible adult was a care worker and a social worker. The lawyer used the pre- sanction report for mitigation. He/she focused on the engagement with services, how he was changing his behaviour and had a positive attitude. The young person seemed neutral and it was difficult to tell if he knew what was occurring. When spoken to he simply replied ' yes' but did not elaborate on any issues asked about. He was not negative in his manner but he was certainly not positive when addressing the court. The judge gave him conditional bail (reside in particular place, curfew, not to come to attention of Gardaí) and

> ordered an up to date probation report for the next hearing. The judge stated that he had one week in custody and he had given a positive letter of apology to the court. The judge stated it was an 'excellent letter' and the fact that he wants to change his behaviour is a positive thing. The judge discussed his positive personal ability and said he/she wanted to move things on and wished him luck with his future.

The report therefore functioned as a tool to highlight the young person's social and psychological status as well as risk of reoffending. In this way, it combined traditional methods of social enquiry with more contemporary methods of risk enquiry.

Conclusion

This paper highlights the central position of the pre-sanction report in the decision making process of the children's court. All practitioners included in this study discussed the influential nature of the report and the necessity of the information contained within. Practitioners discussed risk information in terms of having a minor position when compared to other issues, particularly those related to compliance. The Irish system appears to be adopting a hybrid model which combines social enquiry as a means to understand, assist and treat; with risk information as a means to predict the likelihood of future offending and thus provide for public protection. In particular, this analysis highlights a continued reliance upon traditional factors such as compliance, remorse, redeemability and social capital as determining factors in terms of the decision making process, but less of a reliance upon contemporary risk statuses ascribed from assessments based on risk assessment tools. These findings support reports of hybridity emanating from other jurisdictions, particularly when practice is explored alongside policy (McNeill et al, 2009, Phelps 2011,2012; Robinson, 2002), and thus challenges the broadly accepted contemporary doctrine of a clear shift to risk based practice in Anglophone jurisdictions.

Whether this state of affairs will change in the years to come and whether these findings simply represent a delay in the adoption of new practices, only time will tell. Social theorists such as Pierre Bourdieu (2010) suggest that there is often a time-lag between top down change and bottom up adoption – the latter requiring a greater period of time to adjust and adapt to the imposition of change. However, as of today the Irish youth justice system appears to have only adopted some elements of risk oriented practice in terms of pre-sanction report construction and utilisation.

Author's Note

I wish to thank Dr Deirdre Healy for her helpful comments on an earlier draft of this paper.

References

Andrews, D. A. (2008). Extensions of the Risk-Need-Responsivity Model of Assessment and Correctional Treatment. In *The Proceedings of the 2007 North American Correctional & Criminal justice Psychology Conference* (pp. 2008-02).

Bracken, D. 2010. Differing conceptions of risk and need in Irish probation officers. *Irish Probation Journal*, *7*, pp.108-118.

Bourdieu, P. (2010). Distinction: A Social Critique of the Judgement of Taste. Harvard University Press. US.

Children Act 1908 Irish Statute Book.

Children Act 2001 http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html
Courts.ie http://www.courts.ie/

Downing, K. and Lynch, R. (1997). Pre-Sentence Reports: Does Quality Matter? *Social Policy & Administration*, 31(2), pp.173-190.

Feeley, M. and Simon, J. (1992). The New Penology: Notes on the Emerging Strategy of Corrections and its Implications. *Criminology* 30 (4) pp. 449-474.

Field, S. and Nelken, D. (2010). Reading and Writing Youth Justice in Italy and (England and) Wales. *Punishment & Society*, *12*(3), pp. 287-308.

Fitzgibbon, W., Hamilton, C. and Richardson, M. (2010). A Risky Business: An Examination of Irish Probation Officers' Attitudes Towards Risk Assessment. *Probation Journal*, *57*(2), pp. 163-174.

Flick, U. (2009). *An introduction to qualitative research*. Sage, UK.

Garland, D. (2001). *The Culture of Control: Crime and Social Order in Contemporary Society*. UK: Oxford University Press.

Gledhill, K. (2011). Preventive Sentences and Orders: The Challenges of Due Process, *Journal of Commonwealth Criminal Law*,1, pp. 78–104

Hamilton, C., Fitzgibbon, W. and Carr, N. (2016). Punishment, youth justice and cultural contingency: Towards a balanced approach. *Youth Justice* 10, pp 1-20

Hannah-Moffat, K. and Maurutto, P. (2010). Re-Contextualizing Pre-Sentence Reports: Risk and Race. *Punishment & Society*, *12*(3), 262-286.

Healy, D. (2015). The Evolution of Probation Supervision in The Republic of Ireland: Continuity, Challenge and Chance. In Robinson, G. and McNeill, F. (eds) (2015). *Community Punishment: European Perspectives*. Routledge. UK.

Kilcommins, S., O'Donnell, I., O'Sullivan, E. and Vaughan, B. (2010). *Crime, Punishment and the Search for Order in Ireland*. Ireland: IPA.

Maurutto, P. and Hannah-Moffat, K. (2006). Assembling Risk and the Restructuring of Penal Control. *British Journal of Criminology*, *46*(3), pp. 438-454.

McNeill, F., Burns, N., Halliday, S., Hutton, N. and Tata, C. (2009). Risk, Responsibility and Reconfiguration Penal Adaptation and Misadaptation. *Punishment & Society*, *11*(4), pp.419-442.

McWilliams, W. (1986). The English Probation System and the Diagnostic Ideal. *The Howard Journal of Criminal Justice*, *25*(4), pp.241-260.

Monahan, J. (2006). 'A Jurisprudence of Risk Assessment: Forecasting Harm Among Prisoners, Predators, and Patients', *Virginia Law Review,* vol. 92, pp. 391–435.

Netter, B. (2007). Using Group Statistics to Sentence Individual Criminals: An Ethical and Statistical Critique of the Virginia Risk Assessment Program. *The Journal of Criminal Law and Criminology*, pp. 699-729.

O'Leary, P and Halton, C. (2009). An Evaluation of Risk Assessment. *Irish Probation Journal*, 6, pp. 97-112.

Panzarella, R. (2002). Theory and Practice of Probation on Bail in the Report of John Augustus. *Fed. Probation*, *66*, pp.38.

Persson, A. and Svensson, K. (2012). Shades of Professionalism: Risk Assessment in Pre- Sentence Reports in Sweden. *European Journal of Criminology*, *9*(2), pp. 176-190.

Phelps, M. S. (2011). Rehabilitation in the Punitive Era: The Gap between Rhetoric and Reality in US Prison Programs. *Law & society review*, *45*(1), 33-68.

Phelps, M. S. (2013). The Place of Punishment: Variation in the Provision of Inmate Services Staff Across the Punitive Turn. *Journal of Criminal Justice*, *40*(5), 348-357.

Probation Service Annual Report 2008
http://probation.ie/pws/websitepublishing.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2008/$FILE/Probation+Service+Annual+Report+2008.pdf

Probation Service Annual Report 2009
http://probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2009/$FILE/Probation+Service+Annual+Report+2009.pdf

Probation Service Annual Report 2010
http://probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2010/$FILE/Probation+Service+Annual+Report+2010.pdf

Probation Service Annual Report 2011
http://probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2011/$FILE/Probation+Service+Annual+Report+2011.pdf

Probation Service Annual Report 2012
http://probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2012/$FILE/Probation+Service+Annual+Report+2012.pdf

Probation Service Annual Report 2013
http://probation.ie/website/probationservice/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2013/$FILE/Probation+Service+Annual+Report+2013.pdf

Probation Service Annual Report 2014
http://probation.ie/website/probationservice/websitepublishingdec09.nsf/AttachmentsByTitle/Probation+Service+Annual+Report+2014/$FILE/Probation+Service+Annual+Report+2014+web.pdf

Robinson, G. (2002). Exploring Risk Management in Probation Practice: Contemporary Developments in England and Wales. *Punishment and Society*. 4:5.

Robinson, G. and Shapland, J. (2008). Reducing Recidivism A Task for Restorative Justice? *British Journal of Criminology*, *48*(3), pp.337-358.

Rogan, M. (2011). *Prison Policy in Ireland: Politics, Penal Welfarism and Political Imprisonment*. Routledge. Oxon.

Seymour, M. (2013). *Youth Justice in Context: Community, Compliance and Young People*. Routledge. England.

Simon, J. (2005). Reversal of Fortune: The Resurgence of Individual Risk Assessment in Criminal Justice. *Annu. Rev. Law Soc. Sci.*, *1*, pp. 397-421.

Singh, J. P. and Fazel, S. (2010). Forensic Risk Assessment A Metareview. *Criminal Justice and Behavior*, *37*(9), pp. 965-988.

Tata, C. (2007). Sentencing as Craftwork and the Binary Epistemologies of the Discretionary Decision Process. *Social & Legal Studies*, *16*(3), pp. 425-447.

Wacquant, L. (2002). The Curious Eclipse of Prison Ethnography in the Age of Mass Incarceration. *Ethnography*, *3*(4), pp. 371-397.

Willis, P. and Trondman, M. (2000). Manifesto for" Ethnography". *Ethnography*, pp. 5-16.