



National  
Economic and  
Social Council

An Chomhairle  
Náisiúnta Eacnamíoch  
agus Sóisialach

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The Criminal Justice  
System:  
Policy and Performance

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No. 77

December, 1984

**NATIONAL ECONOMIC AND SOCIAL COUNCIL  
CONSTITUTION AND TERMS OF REFERENCE**

1. The main task of the National Economic and Social Council shall be to provide a forum for discussion of the principles relating to the efficient development of the national economy and the achievement of social justice, and to advise the Government, through the Taoiseach on their application. The Council shall have regard, inter alia, to:

- (i) the realisation of the highest possible levels of employment at adequate reward,
- (ii) the attainment of the highest sustainable rate of economic growth,
- (iii) the fair and equitable distribution of the income and wealth of the nation,
- (iv) reasonable price stability and long-term equilibrium in the balance of payments,
- (v) the balanced development of all regions in the country, and
- (vi) the social implications of economic growth, including the need to protect the environment.

2. The Council may consider such matters either on its own initiative or at the request of the Government.

3. Members of the Government will meet regularly with NESC on their initiative or on the initiative of NESC to discuss any matters arising from the terms of reference and in particular to discuss specific economic and social policy measures and plans and to explore together proposals and actions to improve economic and social conditions. Any reports which the Council may produce shall be submitted to the Government and, shall be laid before each House of the Oireachtas and published.

4. The membership of the Council shall comprise a Chairman appointed by the Government in consultation with the interests represented on the Council, and

Five persons nominated by agricultural organisation,

Five persons nominated by the Confederation of Irish Industry and the Irish Employers' Confederation,

Five persons nominated by the Irish Congress of Trade Unions,

Five other persons appointed by the Government, including two from the National Youth Council of Ireland,

The Secretaries of the Department of Finance and the Department of the Public Service.

Any other Government Department shall have the right of audience at Council meetings if warranted by the Council's agenda, subject to the right of the Chairman to regulate the numbers attending.

5. The term of office of members shall be for five years. Casual vacancies shall be filled by the Government or by the nominating body as appropriate. Members filling casual vacancies may hold office until the expiry of the other members' current term of office.

6. The numbers, remuneration and conditions of service of staff are subject to the approval of the Taoiseach.

7. The Council shall regulate its own procedure.

# NATIONAL ECONOMIC AND SOCIAL COUNCIL

## *The Criminal Justice System: Policy and Performance*

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\*The Council membership was reconstituted on 23 July 1984.

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## **PART I**

### **The Council's Comments<sup>1</sup> on the Criminal Justice System: Policy and Performance**

<sup>1</sup>The Council's comments were drafted by James Raftery of the Council Secretariat following discussions in the Social Policy Committee and in the Council.

## INTRODUCTION

1. The preamble to the Constitution and Terms of Reference of the National Economic and Social Council states that:

“The main task of the National Economic and Social Council shall be to provide a forum for discussion of the principles relating to the efficient development of the national economy and the achievement of social justice, and to advise the Government, through the Taoiseach, on their application.”

2. The Council adopted the view that public policies have social implications “to the extent that they influence the distribution of resources and opportunities between different groups and categories of people”.<sup>2</sup> The Council agreed that attention should be focused not only on the distribution of material resources but should also be concerned with the way individuals’ life chances and general welfare are distributed and influenced by the State’s activities as well as the extent to which social justice is enhanced by the way individuals and groups are identified, labelled and treated by State agencies. The security and legal systems were explicitly included within the definition of social policy adopted by the Council in *An Approach to Social Policy* (NESC Report No. 8). Indeed given the terms of reference of the Council, an examination of how justice is administered would seem most appropriate. An additional reason for analysing the social policy implications of the criminal justice system has to do with the resources it absorbs, almost £300m in 1983 or some 2% of GNP. The Council commissioned the study which is published as Part II of this report to examine the social policy implications of the criminal justice system and to make recommendations thereon.

In the following paragraphs the Council notes the findings of the consultant and comments on these and other associated matters.

### **Objectives of the Criminal Justice System**

3. Evaluation of the criminal justice system necessitates statement of objectives, which according to the consultant include (a) investigation

<sup>2</sup>*An Approach to Social Policy*, NESC Report No. 8.

and prosecution of criminal acts reported to the police, (b) a consistent and fair treatment of cases and (c) the minimising of crimes which might otherwise be committed and also of miscarriages of justice.

4. Consistent and fair treatment of cases can be subsumed under the concept of "due process of law" which includes three criteria of fairness:

- (i) openness in decision making
- (ii) a right to be heard in one's own defence
- (iii) impartiality by those who make the decisions.

In Ireland the concept of "due process" is incorporated in the Constitution, as interpreted by the higher courts. The application of criteria based on due process in the evaluation of the Irish criminal justice system would involve questions of openness, defence and impartiality at each stage of the system. The Courts are the key arena for application and examination of these criteria, which have emerged largely from the experience of jury trials. The application of the concept of due process to the police and the prisons is more difficult because of the lack of explicit complaints procedures.<sup>3</sup> Aggrieved persons may, however, appeal to the courts which have also made rulings governing rights to bail, prisoners rights and the like.

5. The criminal justice system operates within the overall social objective of maintaining law and order. It is important to stress the law and order objective of the criminal justice system for a number of reasons. Firstly, the objective of minimising the level of crime, and particularly serious crime, is likely to be widely demanded by members of society. Secondly, this focus involves consideration of factors outside the criminal justice system which may work towards increasing or decreasing the number of crimes committed. If, as is the case, most of those arrested share common characteristics such as low socio-economic status, youth and poor education, it is clear that public policies which affect these groups will alter the probability of crimes being committed. The evidence that young unemployed and poorly educated males dominate the arrest statistics suggests that improved education and employment opportunities may be suitable policies in responding to criminal activity by this group. This is not to excuse the individual who commits a crime; rather it is to stress the importance which changes

<sup>3</sup>The Minister for Justice has stated that a complaints procedure will shortly be established in the Garda Síochána.

in social and economic conditions can have in increasing or decreasing the probability, or rates of occurrence, of criminal acts amongst various sub-populations.

6. The sustained increase in the level of crime over the past two decades has posed difficult adjustment problems for the criminal justice system which was structured at a time when the number of offences was much lower and when social conditions and attitudes were very different. A fundamental re-evaluation of how the system operates is prompted by the emergence of the following factors:

- (a) widespread public concern over the level of crime and demands for "solutions",
- (b) limits in the prison facilities and probation services available,
- (c) wide and varying degrees of discretion at most stages of the system, without any monitoring at many stages,
- (d) the lack of evident means by which the system can monitor, evaluate and adjust its performance,
- (e) discontent among several of the major personnel groups involved.

7. While the complexity of the criminal justice system poses problems for evaluation, the information available is inadequate to fully evaluate the operation of the system. According to the consultant there is no accurate tally of what happens to individuals as they enter and proceed through the various stages in the criminal justice system. Very little is known about the distribution of the discretion exercised by the police in deciding whether a person suspected of a criminal action will be charged or whether the charge will be proceeded with. Minimal attention is paid to the contribution that social policies can make to reducing avoidable crime. Despite these problems, the consultant's report provides a broad outline of how the system operates and which socio-economic groups are most affected by it.

8. The consultant notes three major limitations of the published crime statistics:

Firstly, the classification of offences as indictable and non-indictable is much too crude a measure.<sup>4</sup> The number of indictable crimes (those serious enough to warrant trial by judge and jury) is widely used as an index of the crime rate but includes both very minor

<sup>4</sup>A similar point is made by the consultant about the irrelevancy of the distinction within the indictable category between treason, felonies and misdemeanours.

and major crimes. Further, the categories used to record decisions do not accurately reflect court verdicts.

Secondly, no information is available on the total number of persons "at risk" at each stage, thus preventing the estimation of ratios like proportion of those convicted who are committed to prison, or proportion of those arrested who subsequently appear in court. In other words, while the numerator is often provided, the denominator is generally missing.

Thirdly, the unit of observation of crime, the case, is neither homogeneously nor consistently used; the same individual event may be entered several times in the records depending on the set of offences, the number of arresting officers etc, and the same person may be entered for the same set of events under different headings. To further complicate matters, data on unresolved proceedings at the end of the year are difficult to follow into the subsequent year.

9. Underlying these difficulties, some of which can be circumvented by a more selective statistical approach to those activities regarded as criminal, is the basic difficulty in defining a crime. On the narrowest definition a crime has been committed when a court finds someone guilty of it or finds that a crime has been committed by a person or persons unknown. A wider definition would be acts which are so defined by common or statute law. However, acts which do not become the subject of legal proceedings can only be called "criminal offences" in a hypothetical sense. In the case of victim surveys, anything that a respondent thinks is a "criminal offence" is generally counted as if it were one. Many people choose not to report "criminal acts" and police officers often ignore minor offences. What is actually recorded as "a crime" therefore is largely determined by the interaction between the police and the wider society, within the framework of the law as interpreted by the courts. The public perception of a crime varies both by time and area and, plausibly, by the social and cultural backgrounds of different groups in society. The degree to which such acts are thought to be controllable is also likely to vary. Although certain crimes, like murder, rape, and other acts of violence against the person, are considered criminal in almost all human societies, the definition of crime is to some extent socially constructed.<sup>5</sup> In some countries road traffic

<sup>5</sup> *Research in Criminal Justice*, HMSO, 1977 defines crime as "relative". A recent study has argued that what is to be treated as a crime is largely determined by the wider society within the framework of the limits set by law as interpreted in the courts, see *Police and People in London*, Policy Studies Institute Study no. 618, 1983, p. 17-18.

offences, tax evasion, and over-consumption of alcohol may be tolerated socially while consumption of other drugs, larceny of items of low value and the like may be objected to more strenuously. The differing treatment of drunken driving and other alcohol related offences in various countries thus provides an example of the social classification of "crime".

10. Once it is accepted that what is to be treated as a crime is largely determined by the wider society within the limits set by the law, as interpreted by the courts, several consequences follow. Firstly, whoever makes the decision to treat an act as a crime has considerable discretion in many cases. This issue is examined in subsequent paragraphs. Secondly, the legal framework may need to be evaluated for its actual relevance, particularly in Ireland where the historical development of criminal law has been greatly affected by the UK. The consultant shows that despite widespread agreement on the need for law reform, very few changes have been made. Thirdly, if crime is largely defined by society, then social concern about the level of crime must be set in the context of the roles and interests of the major groups involved. This point is discussed after reviewing the pattern of crime.

#### Recommendations on Statistics

11. In order to improve the information available the Council recommends that the various agencies in the criminal justice system reach agreement on:

- (a) the unit by which records are to be collated,
- (b) the categories under which offences and persons are to be classified,
- (c) the manner in which proceedings "pending" at the end of the reporting year are to be included in the next year's records.

The major technological advances in information processing that have occurred in recent years could greatly facilitate the recording and analysis of the necessary data. Some of the data required is already collected by the Garda Síochána and the Probation and Welfare Service on social backgrounds, charges, sentences, etc. For these reasons the cost of implementing such a recommendation should be minimal. There is also an economic rationale for the improvement of data based on the evidence in the US and elsewhere that decisions can be made more rational, accountable and cost effective by so doing.<sup>6</sup> The establish-

<sup>6</sup> *Towards More Rational Decisions on Criminality*, G. Glaser, Geary Lecture, 1983, ESRI 7/11/82.



ment of a committee of experts to draw up guidelines for the necessary co-ordination of data would appear to be desirable. In this way the lack of data on how the criminal justice system selects, processes and disposes of cases could be remedied.

### **The Pattern of Crime in Ireland**

12. The consultant shows that, based on previous studies and an examination of the incidence of selected offences, the level of crime in Ireland has increased substantially in recent decades with an upward shift in the trend after 1965. The rapid increase in reported crime in the past two decades has prompted public anxiety. The 15 to 20 age group have a crime rate some four times the national average. A pattern of early school leaving and unemployment or marginal employment predominates amongst this group. In Dublin the inner city and the newer suburban estates accounted for a large proportion of those arrested. Crimes against property dominate the statistics. Around 60% of recorded offences in 1982 were classified as "Offences against Property without Violence", including larcenies, forgeries and frauds of various kinds. Some 37% involved "Offences against Property with Violence", and under 3% were classified as "Offences against the Person". The consultant examines trends in the incidence of burglary and robbery offences, two of the more serious offences which also appear to figure largely in the public perception of crime. Burglary, which accounts for the major portion of Offences against Property with Violence, is shown by the consultant to have continued to increase in incidence and to have a detection rate which, although declining, is close to 40% with little regional variation. There is, however, evidence of two types of burglary offences, the major one involving relatively unsophisticated practitioners but this is complemented by small but more organised groups. A similar pattern appears from examination of the statistics on robbery which, although a much more serious crime, accounts for under 4% of "Offences against Property with Violence". The detection rate was again close to 40% and a high proportion of incidents involved relatively small values.

13. The consultant suggests that, although the level of crime in Ireland, as measured by reported and specific incidents, is low by comparison to the UK group of countries, the early results of the ESRI Victim Survey indicate a relatively high incidence of certain offences like burglary and car theft in Ireland. The discrepancy between reported and experienced crimes results, according to the consultant, from differences in the way the police record crimes, in the readiness of the public to report crimes and in the division of crimes into those affecting households and commercial or institutional establishments.

14. The public perception of the level of crime is such that crime is regularly cited in the opinion polls as one of the most pressing social issues. The fact that the trend in the level of reported crime has been sharply upward over the past two decades may contribute to the public disquiet over the crime rate, particularly if dominant public attitudes date from an earlier, lower crime rate period. The apparently random distribution of certain highly publicised crimes in urban centres, like "mugging", may generate fear among all potential victims and lower the quality of life for all. The most likely victims of such crimes tend to be the most vulnerable members of society e.g. the old and infirm, those living alone, older women etc. It is worth noting the lack of symmetry between groups in whose interest it is to suggest there is a high or low level of crime. In other words there can be incentives for various groups to emphasise the high level of crime as well as a lack of incentives to put the other side of the picture. Both the Garda Siochana and the prison officers are remunerated significantly by overtime payments, the negotiation of which may be facilitated by public concern with the level of crime. The public, insofar as it fails to make connections between demands for greater law and order on the one hand and the costs of financing it on the other, may also tend to overemphasise the level of crime. Pressure groups, political parties and the media may also incline towards exaggeration of the level of crime. By contrast it is difficult to find any organisation in whose interest it is to argue against such claims, or to articulate a more enlightened view of public policies on crime.

15. Finally, it is important to stress that international crime rate comparisons do not imply that the level of crime in Ireland will inevitably rise to the level of other industrialised societies, particularly the UK and the USA. The examples of Switzerland and Japan show the extent to which rapid industrialisation can be achieved without destroying the social structures associated with relatively low crime rates. An imaginative strategy for developing a crime policy in Ireland would build on and extend the existing values and traditions as well as social and economic organisations which could reduce the risk of crime. The following paragraphs examine the role of the Garda Siochana, the courts and the prisons and make policy recommendations for each, before examining these issues.

### **The Garda Siochana**

16. The Garda Siochana are the frontline of the criminal justice system with responsibility for enforcement of law and order including investigation of complaints, and when appropriate, detection and questioning of suspects. They also have a key prosecutorial role which entails a

considerable degree of decision making authority. The consultant shows that a variety of both formal and informal goals have been attributed to the Garda Siochana, most of which involve difficulties in measuring effectiveness. Discretion, the consultant suggests, is inevitable, as one of the functions of any police force is to screen those who will be sent forward for prosecution. He suggests that little or no information is available on the high proportion (some 50%) of those arrested who do not subsequently appear before the courts.

17. The consultant argues on the basis of international research that there is no evidence that the size of a police force is related to its effectiveness in controlling crime; instead the method of policing and its degree of community support appear to be the critical factors. If this is so, then a continued expansion of the size of the Garda Siochana, as occurred in the 1970s when the force expanded by some 50%, may not be the most effective policy. Indeed the expansion in numbers which took place was offset to some extent by the drop in the number of official hours worked.<sup>7</sup> Although the number of gardai has been increasing rapidly in recent years, demands for increased deployment are reflected largely in overtime. Overtime payments amounted to 26% of basic salaries in 1981, 23% in 1982 and an estimated 11% in 1983. Average earnings (all grades) in the Garda Siochana were over £14,000 in 1983.

18. The 1979 Ryan Commission on the Garda Siochana<sup>8</sup> reported that the major problems facing the force included discontent due to earnings disparities resulting from the distribution of overtime, poor promotion procedures and a paucity of proper arrangements for personnel training and assessment. By contrast with many other countries where graduates are recruited to the police force through cadet schemes, recruitment to the Garda Siochana is exclusively at the basic grade. Furthermore, the style of management is shaped on a military model.<sup>9</sup> These factors, combined with poor promotion prospects and weak management training, are likely to buttress traditional practices and inhibit innovation. The consultant notes that, although in-service training has been

<sup>7</sup>A fixed 42-hour working week was introduced after the publication of the report, *Commission on the Garda Siochana*, in January 1970 (Stationery Office) and the working week was later reduced to 40 hours.

<sup>8</sup>*Report of the Garda Siochana*, Committee of Inquiry, April 1979, S.O.

<sup>9</sup>*Police and People in London*, Volume IV, Policy Studies Institute 1983, p. 344.

developed for newly promoted officers, the training for new recruits, particularly on-the-job training, is still weak.<sup>10</sup>

19. The Garda Siochana operates the Juvenile Liaison Scheme which was established in 1963 to provide an alternative to the prosecution of young offenders by a rehabilitation programme which includes guidance and youth work. Young offenders receive a formal caution and are released under the care of a Juvenile Liaison Officer. However, the number admitted to the scheme is very small, amounting to 2,300 in 1982. Juvenile Liaison Officers spend much of their time supervising delinquents' homes, visiting youth clubs, and lecturing and addressing meetings, particularly in schools. A study of the Juvenile Liaison Scheme<sup>11</sup>, which showed that the scheme reduced recidivism, recommended the establishment of separate Garda Siochana departments for juveniles in large population centres, the limiting of case loads to 50, the adoption of a standard form of caution and two-yearly case reviews. These recommendations, which appear to have considerable merit, have not been implemented.

20. Because the Garda Siochana have considerable discretion in deciding whether or not to charge the suspect(s) and in deciding whether or not to proceed further to prosecute, there is bound to be, implicitly or explicitly, a set of priorities for so doing. However, no information is available on what these priorities are or how they are exercised. Without information on how the police employ their discretion it is not possible to state that all individuals are given equal treatment, that is, that the due process of law is applied. While discretion is inherent in effective policing it is important that this discretion is exercised both equitably and consistently. The development and implementation of standard guidelines for exercise of discretion by the Garda Siochana would appear to be a necessary step in this direction.

21. The concept of community policing whereby the Garda Siochana work closely with local communities has been suggested by the Association of Garda Sergeants and Inspectors (AGSI) as a means of preventing crime.<sup>12</sup> The AGSI proposals envisaged pilot schemes with a community garda of considerable dedication and maturity, living near or in his or her community and who would work with a local district crime preven-

<sup>10</sup>Although there have been improvements; for example, officers graduating from Templemore will in future receive a National Diploma in Personnel/Management from the NCEA.

<sup>11</sup>*Youth and Justice – Report of Working Party*, ed. H. Burke, C. Carney, G. Cook, p. 68.

<sup>12</sup>Discussion Document on Community Policing, Dublin 1982.

tion committee. Two community pilot schemes have been recently established in Dublin. The consultant broadly supports this approach but warns that the success of community policing presupposes the implementation of a much wider policy of community revitalisation, particularly in areas of multiple deprivation. The Council has previously recommended<sup>13</sup> the establishment of priorities in education, training and employment for such areas, and in particular urged a comprehensive approach, including community development, to halt the decay of Dublin's inner city.

#### Recommendations in Relation to the Garda Siochana

22. The Council recommends that the due process of law must be seen to be the basis of Garda Siochana activity. Specifically the Council considers that this objective might be furthered by implementing the following measures:

- (a) that information be recorded and made available routinely on persons charged and prosecuted as well as how decisions were made to drop prosecutions. Such information would elucidate the means by which some 50% of persons charged at present do not go to face prosecution;
- (b) that guidelines on the use of discretion by the Garda Siochana be developed and made explicit, particularly in the training of new recruits;
- (c) that consideration be given to improved training (both initial and in-service), in both routine policing functions and in Garda management;
- (d) that the Juvenile Liaison Scheme be extended;
- (e) that the current pilot schemes in community policing should be thoroughly evaluated and the findings used in devising appropriate methods of community policing.

#### The Criminal Courts

23. Since the main outcome of the criminal courts are decisions, the consultant suggests that the equity, effectiveness and efficiency with which the courts operate be measured by evaluating these decisions by use of the following criteria:

- that the full range of options for case disposition is utilised,
- that the options chosen are appropriately and equitably related to offences,

<sup>13</sup>*Urbanisation: Problems of Growth and Decay in Dublin*, NESC Report No. 55, Council Comments, Paragraphs 29 and 34.

- that all available information and advice is considered in choosing a sentencing option,
- that unnecessary delay is avoided,
- that the proceedings and the surroundings reflect the seriousness and dignity of justice.

24. The consultant experienced grave difficulties in obtaining the necessary data on court outcomes which was required to fully describe, let alone evaluate, their activities. From the evidence assembled, the following major points emerged:

Firstly, in contrast to the growth in both the incidence of crime and garda numbers, the total caseload of the Criminal Courts hardly changed between 1976 and 1981. The number of jury trials diminished, accounting for only 4% of indictable offences.

Secondly, it appears that guilt is the most common finding. About half of all defendants plead guilty initially and the proportion rises to three quarters at final outcome. Very little is known about the negotiation, if any, that may take place before the defendant decides to plead guilty. It has been suggested<sup>14</sup> that a form of statutory plea bargaining operates whereby almost all criminal cases are dealt with by the District Court which can impose prison sentences of up to a maximum of one year.

Thirdly, only around half of those persons arrested in the Dublin area went on to face court trials. While this proportion is not unusual by international experience, very little is known about the criteria used in deciding whether or not to proceed.

Fourthly,<sup>15</sup> court appearances seem to be handled reasonably rapidly with around one third of cases being decided at the first court appearance, three quarters within 4 months, and virtually all decided within one year.

Fifthly, around three quarters of defendants appear to have had legal representation (for indictable offences, legal aid was granted to 50% of defendants).

Sixthly, prison sentences accounted for about 8% of all sentences,

<sup>14</sup>See Appendix II of the consultant's report.

<sup>15</sup>This and subsequent points in this paragraph, are based on the survey of the Galway District Court, outlined by the consultant in his study.

and a further 8% received suspended sentences. Fines were the most common punishment and almost one third of those convicted were dealt with by either the application of the Probation of Offenders Act or supervision by the Court Welfare Officers.

Finally, less than one in ten cases are appealed from the District Court to higher courts, with the result that around one in five of those appealing had their convictions reversed.

25. The consultant stresses that much remains to be known about the operation of the courts, whose proceedings are cumbersome, slow, difficult to understand and whose setting often does little to instil respect for the law. Most court decisions are recorded by handwriting and in a variety of ways and forms which seems more appropriate to the last century. The District Courts are suggested as being most in need of reform since they are the major courts in terms of cases disposed of, accounting for 90% of sentences to places of detention. The proposals before the Oireachtas at present (June, 1984) to raise the maximum sentence that the District Courts can impose from one to two years may have the effect of increasing the average sentence imposed with a resultant increase in the prison population. Despite an extensive use of fines by the District Court, the consultant notes that less than three quarters of all fines are paid.<sup>16</sup>

26. Public expenditure on the courts has grown much less rapidly than expenditure on other aspects of the criminal justice system. In real terms, expenditure approximately doubled between 1960 and 1981, compared with a threefold increase for the Garda Síochána and a 13 fold increase for the prisons. This is largely because the number employed in the courts has changed very little in recent decades. Since the mid-1960s, the courts' caseload has more than doubled while the number of District Justices has increased from around 35 to 45.

27. It is difficult to understand the rationale for the way the legal system in general and the courts in particular, are organised. The division of the legal profession into barristers and solicitors is a characteristic which Ireland shares with Britain and which differentiates both countries from almost all the rest of the English speaking world. There is considerable overlap between the two sides of the profession and there are many ancient rules of protocol and etiquette that are perhaps inappropriate to modern society.<sup>17</sup> In addition the restrictive barriers

<sup>16</sup>Based on a study by James Fitzharris cited by the consultant.

<sup>17</sup>*Introduction to Irish Law*, Grimes and Horgan, p. 135.

to entry to the legal profession enable that profession to exercise near monopoly powers, including high charges and minimal competition.

28. With respect to the judiciary, Ireland shares with Britain the procedure by which judges are appointed mainly from the stock of barristers. To be eligible for appointment in the case of the Supreme and High Court, a barrister must have 12 years practice (10 years in the case of the Circuit Court and lower courts, to which solicitors may also be appointed). Appointment is the prerogative of the President on the advice of the Executive. It has been noted that the appointment of judges is necessarily coloured by the opinions of the Government in power and that the backgrounds of judges have many common features in terms of class culture and tradition.<sup>18</sup> By way of contrast it should be noted that in most European countries aspiring judges choose the judicial profession early on in their careers and work their way up the judicial ladder. Very little training for judges is provided in Ireland either at inception or during their career, again in contrast to virtually all common law jurisdictions. For example, the lack of training or education on the Misuse of Drugs Act (1977) may have contributed to uneven sentencing by various judges under this Act. The provision of training for judges in the range and relative effectiveness of the various sentencing options would appear to be a necessary development.

29. Very little is known about the sentencing policies practised by the judiciary. This is due partly to the data difficulties already referred to. The degree to which sentencing policy may vary by judge and even by offence can discredit the courts. Research on the variability on sentencing policy, particularly in the United States, and to a lesser extent, the UK, has led to the introduction of sentencing guidelines for judges.<sup>19</sup> In the US these guidelines are not compulsory but rather indicate statistically to judges the range of sentences that have been imposed by their peers over the recent period on offenders with a similar record and guilty of a similar crime. Judges who impose sentences outside these guidelines are asked to indicate their reasons for departing from precedent. In theory, the Court of Criminal Appeal should serve the function of standardising sentences. However, the consultant argues that this Court does not fulfil this function as adequately as it might because the judgements of the Court are not collated and also because the Court is composed of a rotating panel of judges. It is difficult to see any rationale for not collating the Court's judgements.

<sup>18</sup>*Ibid.*

<sup>19</sup>D. Glaser, *Towards more rational decisions on criminals*, Geary Lecture 1983, ESRI, 7 November 1983.

30. In relation to prison sentences it has been suggested that very few judges appear to have ever visited the prisons despite their legal right to do so.<sup>20</sup> Lack of knowledge of conditions in prisons may mean that judges are unaware of the consequential effects of some of their decisions. Appropriate training for judges should include not only detailed knowledge of the range of sentences available, but also of how sentences are implemented, including knowledge of conditions in places of detention.

31. The Probation and Welfare Service is the main supervisory agency for non-custodial sentences and also provides evaluation reports on offenders prior to sentencing. This scheme differs from the Juvenile Liaison Scheme of the Garda Síochána in dealing with persons after they have been prosecuted in court. The service deals with about 2,000 new cases each year, mainly direct references from the Criminal Courts. About 150 persons were employed at the end of 1981, with around 60 attached to the District Courts, around 20 attached to the prisons, 20 involved in the Intensive Supervision Scheme and the remainder running hostels, community projects, special schools and the like.<sup>21</sup> Although the service caters for both juvenile and adult offenders, most of the schemes cater mainly for young people. The consultant suggests, based on the experience of other countries, that this service may play the most vital role in determining the future success of the Irish criminal justice system. Probation, he suggests, may not only be effective but may also be highly cost efficient.

#### Recommendations on the Courts

32. The Council recommends that:

- (a) the operation of the courts should be simplified and clarified in such a way that the due process of law can be seen to operate equitably, effectively and efficiently. This would involve the following:
  - (i) collection and provision of statistics on offences charged, judgements granted, sentences imposed and discretion exercised in not preferring charges,
  - (ii) measures to ensure that defendants fully understand the proceedings, which should include:
    - facilities for offenders, particularly those in receipt of legal aid, to meet and consult in private with their solicitors;

<sup>20</sup> ICTU Annual Report 1982, p. 282.

<sup>21</sup> Report of the Probation and Welfare Service 1981.

- amplification of proceedings;
  - provision of simple outlines of court procedures.
- (b) extension of the range and improvement of the consistency of sentencing policy, which should involve:
  - (i) the adoption of the principle that imprisonment is a punishment of last resort and suitable only for those offenders who are a continuing threat to society,
  - (ii) expanding the range of options available to the judiciary for offenders to include:
    - increased provision of supervised full time and part time hostels for those who do not require the level of security operating within the prison system;
    - the introduction of weekend imprisonments;
    - income related fines;
  - (iii) expansion of the Probation and Welfare Service, along with a review of its role and organisation. The costs of expansion should be met by a reallocation of funds from the prisons in line with the increased use of the service as an alternative to incarceration;
  - (iv) extension of the use of conditional discharges and binding over orders whereby offenders are discharged subject to compliance with certain conditions.
- (c) alternative methods of training judges, by the provision of both initial and in-service training, including full knowledge of the range and effectiveness of the various sentencing options.

#### The Prison System

33. Most of those committed to prison are young (around half aged 17-25 in 1982 with 20% aged 17 to 21) and have been found guilty of relatively less serious offences. Of the court categories used<sup>22</sup> almost half of all inmates are in the category "Offences against Property Without Violence"; which is made up largely of larceny, larceny and trespass, receiving stolen goods and car thefts. The next largest category was "Other Offences" which comprises mainly road traffic offences and drunkenness. "Offences Against the Person", arguably the most serious category of offence and which may require imprisonment for social protection, accounted for around one sixth of all committals, with assault and assault/resist garda the two major sub categories. "Offences against Property with Violence" accounted for some 11% of committals, with robbery, malicious damage and burglary the main sub categories.

<sup>22</sup> Annual Report on Prisons and Places of Detention for the Year 1982, Department of Justice.

34. The working of the courts alters the categorisation of offences from those used in the initial charges so that it is impossible either to link suspects/defendants to prisoners or to relate offences to sentences either imposed or served. Of those imprisoned in 1982 some two out of every three had at least one previous conviction and 40% had four or more previous convictions. Sentences tend to be short; three out of four are for less than one year. The Council for Social Welfare<sup>23</sup> has suggested, based on three surveys, that the greater number of prisoners come from deprived urban backgrounds and from families which have serious social problems. Prisoners typically have few work skills and little education, have often been unemployed and are likely to have been juvenile offenders and come from low income families with criminal records. A high proportion of the homeless are ex-prisoners who often serve further sentences for the offence of vagrancy.<sup>24</sup> It has also been suggested that many prisoners have low IQs, with some bordering on mental handicap.<sup>25</sup> It is not clear that imprisonment is a suitable treatment for many of those offenders, particularly those jailed because of being drunk and disorderly (no longer directly punishable by imprisonment in the UK),<sup>26</sup> traffic offences, minor larceny, vagrancy and the like.

35. The prison population has increased steadily over the past decade. The number of prisoners (all prisons and places of detention) has grown from around 1,000 in 1971 to close to 1,240 in 1982 and close to 1,500 in 1983, while the number of prison officers has almost grown five fold; from 335 in 1971 to 1,540 in 1983. The result has been a dramatic three fold increase in the ratio of prison officers to prisoners, from 1:3 to 1:1. To some extent this increase was due to the development of high security prisons for subversives but it appears that the prison officer-prisoner ratio is also relatively high in the more conventional prisons. The equivalent ratios in Britain and France are around 1:3. The cost per prisoner in 1983 is around £430 per week, or over £22,000 per annum.<sup>27</sup> Prison officers earned on average around £15,000 per annum in 1983 (including substantial overtime payments). In addition prison officers perform tasks normally performed by clerical staff, including

<sup>23</sup> *Report on the Prisons*, Council for Social Welfare, 1983.

<sup>24</sup> *The Homeless, Prison and Justice*, Preliminary Report, Simon Community, Dublin 1984.

<sup>25</sup> *Report on the Prisons*, Council for Social Welfare, 1983.

<sup>26</sup> *The Politics of Penal Reform*, M. Ryan (Longman 1983), p. 125.

<sup>27</sup> Estimates Volume 1983, see also M. Noonan, Minister for Justice, speech to Conference on Drugs 5/3/83.

storekeeping, typing and the like. Training for prison officers comprises an initial training period of twelve weeks, with little in-service training provided.

36. International comparisons made by the consultant suggest that Ireland has a moderate use of imprisonment as a penalty as well as tendency towards the use of imprisonment for short sentences and probably for relatively minor offences. Nonetheless overcrowded prisons are a characteristic which Ireland shares with most industrialised countries<sup>28</sup> and which accounts for the growth in early, unsupervised releases. There were almost 1,300 early, unsupervised releases in 1982, compared to just over a total of 3,500 committals.<sup>29</sup> These releasees were prisoners serving sentences for non-serious offences or who were coming to the end of longer sentences. Early release is seen by the prison authorities as the main alternative to overcrowding, which would involve more than one prisoner per cell. The recent increase in the prison population has been made possible, however, by increasing the average number of prisoners per cell. The consultant recommends that the overall size of the prison system should not be increased since it appears that supervised probation could achieve the same goals as effectively and at considerably lower cost. Such a policy, he suggests, would necessitate the courts developing a sentencing policy which related to the capacity of the prison system, as well as the expansion of the Probation and Welfare Service.

### Recommendations in Relation to the Prisons

37. The Council recommends that:

- (a) construction of further prison places should not constitute a higher priority in expenditure on the criminal justice system than the implementation of the recommendations made above in relation to the Garda Síochána, the courts and the Probation and Welfare Service. These recommendations, if implemented, would divert many offenders away from prisons,
- (b) data should be collected and made available on offences, sentences and the exercise of discretion in how the sentence is served. This data should be comparable with the classification used by both the courts and the Garda Síochána,

<sup>28</sup> *Economist*, 8/10/83.

<sup>29</sup> Some of these early releases may have been committed pre-1982, invalidating the comparison with the 1982 committals. However, the proportion is thought to be small since prison sentences rarely exceed one year.

- (c) existing education and training facilities, particularly those relating to minimum social skills like literacy, should be maintained, evaluated for effectiveness and existing links strengthened to outside agencies like VECs and AnCO in order to facilitate reintegration of prisoners into society,<sup>30</sup>
- (d) prisoner's rights should be recognised on the basis that the lack of liberty involved is the basic punishment. The recognition of prisoner's rights should include consideration of:
  - (i) guidelines for behaviour which will qualify the prisoner for early release,
  - (ii) representation by Local Authorities on Prison Visiting Committees,
- (e) the role of the Prison Officers should be extended by increased in-service training in both penology and criminology as well as in education and training of prisoners,
- (f) improved post-release facilities be provided for prisoners, including the provision of:
  - (i) improved co-ordination with social welfare officers so that the releasee is not rendered destitute on release,
  - (ii) increased funding for the provision of hostels for homeless ex-prisoners, particularly by voluntary and community organisations,
  - (iii) increased use of part-time release to allow arrangements to be made for a return to society.

### Particular Groups

38. The following paragraphs examine particular subgroups which have not received individual attention in the preceding paragraphs: young offenders, drug offenders and women.

### Young Offenders

39. Because of the disproportionate representation of young people relative to the general population at each stage of the criminal justice system, it is essential that the system respond appropriately to this group. Disturbingly, the consultant suggests that the criminal justice system is least capable of responding to the needs of the 17 to 21 year old age group who fall into a gap between the services provided for juveniles (under 17) and adults. Individuals in this age group are at a crucial stage in the life cycle, when occasional adolescent rebellion, unless dealt with carefully, can develop into adult criminal roles. The

<sup>30</sup>Work training facilities are available, in conjunction with AnCO, in Mountjoy and Arbour Hill. A total of 83 prisoners commenced a course of training in Irish prisons in 1982 (Annual Report on Prisons 1982, p. 25). The VECs are involved in providing teachers in the prisons.

consultant locates the problems of this age group in the context of the lack of employment opportunities which has had a disproportionate effect on the most disadvantaged youth who often leave school without any qualifications. Besides employment creation, the desirability of which the Council has frequently commented on, the thrust of policy should be towards minimising the level of avoidable crime among disadvantaged youth, both by extending the range of opportunities open to them and by responding flexibly to young offenders.

40. The treatment of juveniles in the criminal justice system has been examined in some detail in the official study, *Task Force on Child Care Services – Final Report*,<sup>31</sup> which recommended new legislation on children, including the raising of the age of criminal responsibility from 7 years of age, the development of the Children's Courts, the greater use of dispositional alternatives to imprisonment and the establishment of a special Juvenile Section of the Garda Síochána.

41. The Council considers that the division of juveniles and adults at the age of 17 is arbitrary and that decisions should be made on treatment of young offenders in the 17 to 21 age group on the basis of the extent to which they can benefit from alternatives to imprisonment. Expansion of the Juvenile Liaison Scheme in the Garda Síochána and of the activities of the Probation and Welfare Service would appear necessary if there is to be increased reliance on non-custodial sentencing of the sort already recommended in relation to the courts. The raising of the age of criminal responsibility and the provision of Children's Courts are also necessary developments.

### Drugs Offenders

42. Present policy appears to be focused on reducing the supply of the more serious drugs by concentrating increased police deployment on apprehending "pushers" and reducing supply. It is, however, arguable that as long as there is a demand for drugs, it will be met from various sources and by a variety of substances. The evidence of the concentration of heroin abuse among disadvantaged youth would suggest that an appropriate public policy response would go beyond the criminal justice system to consider issues like employment, education and training as well as socio-cultural factors which could successfully counter the emergence of drug sub-cultures.

<sup>31</sup>*Task Force on Child Care Services – Final Report*, p. 273-275, Stationery Office, 1980.

## Women

43. Although males account for the bulk of criminal activities women do figure in the statistics, mainly in the less serious indictments, particularly under "other larcenies". The average number of female prisoners in 1982 was 32 compared to some 1,200 males and larceny offences accounted for almost 60% of females committed to prison. Conditions in the main female prison in Mountjoy have been widely agreed to be very unsatisfactory.

44. A new women's prison is planned for Wheatfield, Co Dublin, along with a juvenile detention centre. While there is little doubt that there may be need for imprisonment of female prisoners who are convicted of more serious crimes, the numbers involved are small (8 females imprisoned for assault and 7 for assault/resisting Garda in 1982). Because of the size of the numbers involved, the construction of a new women's prison hardly seems a priority.

## Concluding Remarks

45. The Council believes that a successful strategy to deal with crime will necessarily involve policies which alter the social context in which crimes are committed as well as bringing about changes in the criminal justice system itself. Although the precise relationship between the incidence of crime and its social context is unclear, the extent to which disadvantaged youth dominate the crime statistics is striking. Adolescent males, who have often left school early and are either unemployed or sporadically employed and who tend to come from the most deprived areas account for the bulk of arrests, court appearances and imprisonments.

46. From the evidence available there is such a strong relationship between deprived social, economic and cultural conditions and the rate of criminal activity that, although the precise causal sequence is not at all clear at an individual level, any policy which improves or disimproves these conditions within the group will increase or decrease the rate of criminal activity within that group. This is not to argue that at an individual level the person is not to be held responsible for his/her own actions, (or the parents in the case of a child found guilty of breaking the laws). But this concept of individual responsibility has to be interpreted as it is applied within the particular social group to which a person belongs, so that a group facing very restricted economic and social conditions and with very few options for full economic and social life will tend to have a different and higher level of criminal activity than a group where many more opportunities are possible. Put differently, an individual makes decisions, including those to do with breaking the

law, within a societal framework which structures the range and type of options open to that individual. Policies which increase the range of attractive opportunities to that group will reduce the level of crime. The impact of such policies may however not be discernible for some time. The Council believes that measures should be initiated to counter the cumulative educational and employment disadvantages which certain sub-groups of young people face with a view to minimising their involvement in crime.

47. Social policies of this kind will not, of course, prevent criminal activity. In dealing with a level of crime that is unlikely to diminish, the criminal justice system must adapt so that it can deal more effectively and equitably with the large numbers of people passing through the system. At its simplest, there is an urgent need for improved information with which the system can be monitored. While the independence of the judiciary must remain a basic principle, the lack of information on how the courts operate is extraordinary. Provision of information on the relationship between offences and sentences, for example, need not in any way affect the independence of the courts. In the preceding paragraphs the Council has made recommendations which could clarify and make more public the operation of justice at each stage of the system, involving more explicit guidelines for the exercise of police discretion, the simplification of court procedures, the provision of sentencing guidelines and an increased range of sentencing options. The Council also recommends that imprisonment should be used as a measure of last resort, suitable mainly for offenders who have committed serious crimes and who are likely to commit further such acts if left free. In making these recommendations, the Council also wishes to state that the criminal justice system has generally served Ireland well. The thrust of the above recommendations is to enhance that role rather than discredit or otherwise damage it.



**PART II**

**The Criminal Justice System:  
Policy and Performance**

by

**David B. Rottman**

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Many individuals and groups provided assistance and support during the preparation of this report. I wish here to record my gratitude to them while retaining full responsibility for the report's contents, including the accuracy of all statistical material, descriptions, and interpretations.

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## CHAPTER I

### INTRODUCTION

#### 1.1 The Origin of the Report

A consensus emerged only in the mid-1970s that crime in the Republic of Ireland has reached crisis proportions. Such a perception had existed in most Western countries twenty or more years previously.

This belated recognition is significant. First, it reflects the reality of crime levels in the Republic. In the first 45 years after Independence, the country enjoyed a level of crime substantially below that of most European nations. Moreover, the level was not rising. The offence of robbery indicates the pattern found for all serious criminal offences. There were 55 robberies in 1932, 43 in 1942, 23 in 1952 and 39 in 1962. Then in the mid-1960s, a fundamental change took place, evident in the 622 robberies of which the Gardai were aware in 1972 and more evident still in the 1,883 robberies entered into the 1982 crime statistics. So nearly all of the rise in the crime rate has been crowded into the last 15 years.

The second implication is that crime in Ireland should not be regarded as simply a local outbreak of some international epidemic. Rather, it is reasonable to associate specific recent changes in economic and social conditions to the post-1965 growth of crime. Such an association is less readily made in other countries, where rising crime rates were often features of the last two centuries.

Ireland's late entry as a crime conscious society thus offers both a potential and a challenge. Potentially, Ireland can have the advantage of learning from the numerous mistakes and rarer successes of other countries. If there is any comfort to be found in the present circumstances, it is precisely that our predicament was faced earlier and more intensely elsewhere. There is also the potential, greater than in most countries, to identify and understand the underlying causes of the crime problem.

But the challenge will be to adapt the experience of other countries in ways that will work in local conditions. Also, the newness of Ireland's

concern over crime imposes some practical difficulties on the task of formulating a response. Information on the current situation is often sparse, and generally inadequate for policy needs. What we know about crime and law enforcement in the 1980s largely reflects the information gathering practices of the British administration in the last century. Only the Garda Síochána have substantially modernised their record-keeping. The courts, and to a lesser extent, the prison system, retain a deep attachment to older book-keeping procedures. Such neglect was understandable in the decades of unconcern over crime. Today, it is a serious hindrance to effective policymaking.

This lack of information can be put right. However, the absence to date of serious efforts to understand the causes of crime in Ireland and to evaluate how the criminal justice system is coping with law enforcement and the administration of justice will be more difficult to remedy.

The constraints imposed by an often antiquated set of statutory provisions and institutional structures will be equally difficult to overcome. We have a criminal justice system whose framework of offences, penalties and decision making procedures and rules was established in the late nineteenth and early twentieth century. Most criminal proceedings today will be governed by some combination of The Offences Against the Person Act, 1861, The Larceny Act, 1916, The Probation of Offenders Act, 1907, The Children's Act, 1908 and The Judges' Rules (1918 version). The result of the many decades in which crime was regarded as an inconsequential social or legal problem in Ireland is that an old-fashioned and rusty machine was asked in the 1970s to cope with a situation beyond its capacity.

It was in this context of rising public and government concern over the level of crime and the quality of the official response to it that the Social Policy Committee of NESI commissioned this study of criminal justice policy. That concern has led to proposals for reform in the various sections constituting the criminal justice system, many of which have been or are being implemented. Such a piecemeal approach, however, presents a danger that some fundamental issues are being left unresolved, to the likely detriment of the prospects for success from any one proposal. First, it tends to view crime and the response to crime in isolation, devising solutions without reference to causes and selecting responses from too narrow a set of options. Second, criteria for evaluation logically must be agreed before the areas most in need of reform are identified. Evaluative criteria are also prerequisites for making the best choice among policy alternatives. Third, piecemeal change gives too little weight to the extensive linkages among the sections of the

criminal justice system itself.

The terms of reference for the study are "to consider the structure and operation of the criminal justice system and to discuss in particular:

- (a) the objectives of the criminal justice system and how these objectives relate to the aims of social policy;
- (b) the current and changing pattern of crime in our society especially in terms of the implications for the criminal justice system of the characteristics of the persons brought before it;
- (c) a review of the response of the criminal justice system to the problem of crime;
- (d) the relevance of other instruments of social policy to the problems of crime and how they relate to the operation of the criminal justice system;
- (e) the range of choice facing policy-makers in the future development of the criminal justice system.

The study will not concern itself with the operation of the criminal justice system with regard to crimes of a subversive nature."

The main agencies of the criminal justice system are the Garda Síochána, the Office of the Director of Public Prosecutions, the criminal courts, the Probation and Welfare Service, and the prison system. In addition, officials within the Department of Justice have supervisory and administrative responsibilities for most of the specific agencies just listed and for the overall management of the system. Together, these agencies and their activities form the subject matter for this report.

This diversity of agencies and the study's terms of reference obviously mark out a substantial number of topics for consideration. The report is in consequence intended as a general framework within which issues of policy and of evaluation can be discussed and debated. It provides an overview of those issues from a social policy perspective, describes the current structure of the system, fills in some of the gaps in knowledge that were encountered in the course of preparing the report, and then uses the available information to evaluate the criminal justice system as it now operates. Finally, the report looks to the future and outlines the options available for change.

Many of the topics that are covered are those to which particular professions or occupations claim expertise. It is undeniable that special knowledge and skills have been monopolised by groups with long traditions of involvement in criminal justice. But such claims to unique

expertise can serve to inhibit public examination of and accountability for activities that are of pressing concern to the welfare of the general community. Moreover, claims of occupational and professional competency tend to artificially compartmentalise the criminal justice system, focusing on the particular at the cost of ignoring the general, and perhaps more fundamental, questions.

### 1.11 The Irish Criminal Justice System

Both the interconnections within the criminal justice system and some of the general issues become apparent if we put together a graphic representation of how the system works. The diagram on the next page includes the major outcomes that are possible once a person has been brought into the criminal justice system. Essentially, it charts the various decision points within the system. This report takes the view that the main work of the criminal justice system is that of decision making. Much of the decision making is administrative (by Gardai, Probation, and Welfare Officers, the Director of Public Prosecutions, Department of Justice Officials) rather than judicial.

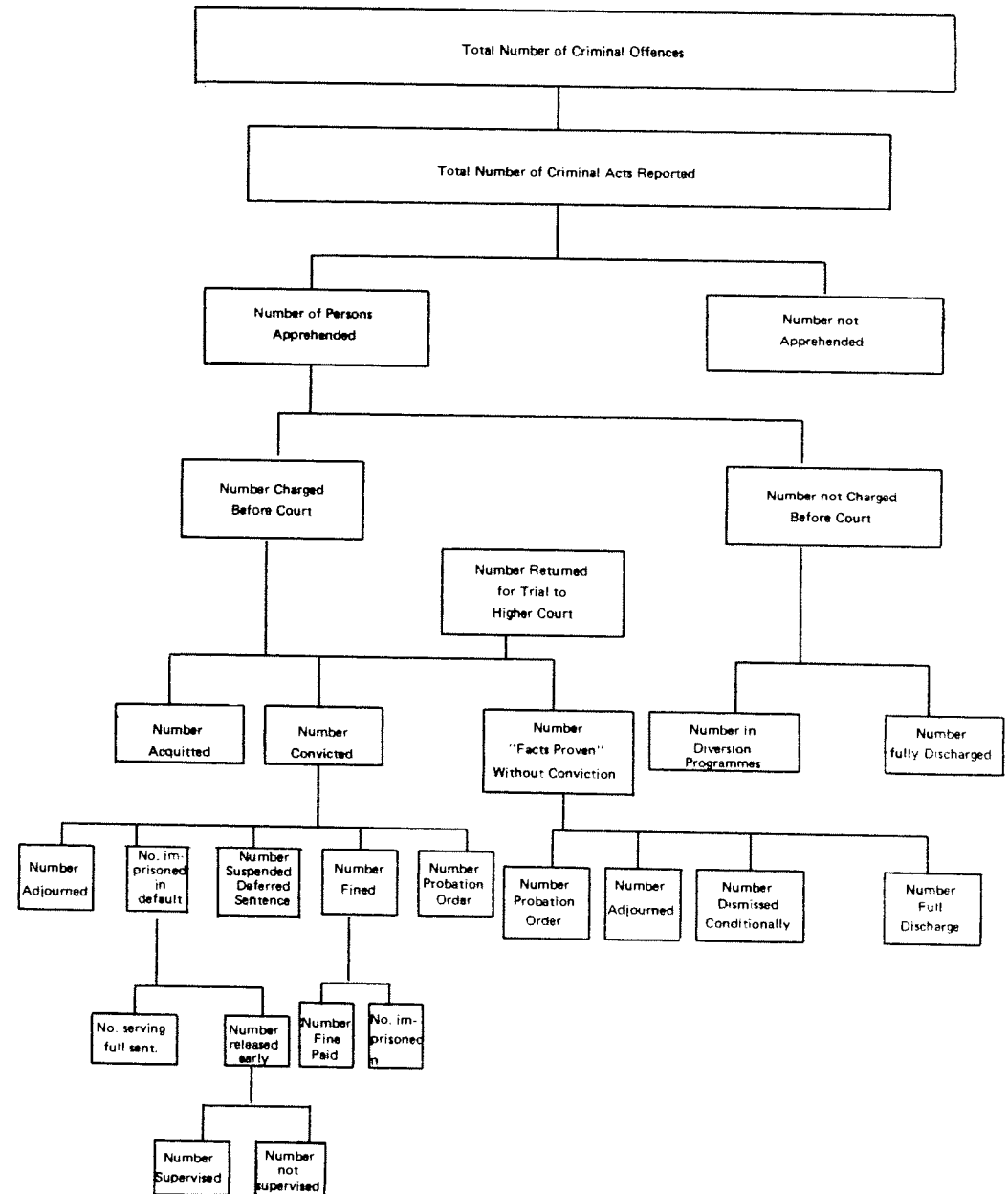
The criminal justice system is obviously quite a complex decision-making apparatus. But if we follow the movement of persons through the system, it is possible to identify six key decision points: (i) the decision to arrest a suspect, (ii) the decision to initiate criminal proceedings, (iii) choice of charges, court jurisdictions and pleas, (iv) the court verdict, (v) the sentence given and (vi) the manner in which those sentenced are released from the system.

The six decision points can be briefly summarised as follows:

(i) *Arrest or Summons*: The initial decision that brings a case into the criminal justice system is the determination that an offence has in fact taken place. Once established a decision will be sought as to which person or persons should be held responsible for that offence. When the link between offence and suspect is such as to justify "reasonable suspicion" that person(s) can be apprehended, either by arrest (physical custody) or by issuing a summons. This stage is almost entirely the responsibility of the Garda Síochána. The rules for any subsequent taking of statements from suspects are set down in The Judges' Rules, guidelines established in 1918 for police procedures in investigating crime (since extensively revised in England – see Appendix 12, Royal Commission on Criminal Procedure 1981) and in the Garda Síochána Code). The Gardaí also have substantial powers to decide whether to release a suspect on bail pending an initial court appearance.

Figure 1

Flow Chart of Criminal Justice System: District Court Jurisdiction only



(ii) *Initiation of Court Proceedings*: As will be seen in Chapter 3, the Gardai have broad discretion to decide whether a suspect once "apprehended" should be brought forward for prosecution in the courts. A decision not to prosecute can result in two outcomes. One outcome is that the suspect is diverted into a special programme established as an alternative to prosecution. The only such programme currently in operation is the Juvenile Liaison Officer Scheme.<sup>1</sup> In the second outcome, the suspect is freed totally from the criminal justice system because (a) the evidence against him or her is insufficient, (b) the offence is regarded as trivial, or (c) it is believed that prosecution will merely exacerbate the problems that led to the offence in the first place and is therefore not in the public interest.

A decision to initiate court proceedings will require the sanction of the Office of the Director of Public Prosecutions (DPP) where a serious offence is involved. Since 1974, the DPP has assumed most of the responsibility formerly held by the Attorney General in relation to criminal prosecutions. The DPP is totally independent of the government of the day and has guarantees against arbitrary dismissal. As Delaney (1975, p. 45) notes, the new office was "created so as to remove the decision to institute prosecutions from any appearance or suspicion of amenability to political pressure". In practice, however, the DPP's office screens only a very small proportion of cases proposed for prosecution, chiefly those serious charges that must be tried on indictment or, where such prosecution is discretionary, the Gardai or defendant wish the case to be so prosecuted.

(iii) *Determination of Charges and Court Jurisdiction*: An intermediate stage now intervenes in which decisions must be reached as to the specific charges that are to be preferred and the court jurisdiction that will be sought (District Court, Jury Court or the Special Criminal Court). This involves the Gardai in nearly all instances, the DPP in major cases, and the defendant and his or her legal advisers. Though each protagonist chooses their own strategy, their choices will often be subject to review in the District Court. For example, decisions previously taken by the Gardai on whether to allow release on bail will be reviewed. The main decisions at this stage, however, are (a) the specific charges that will be adjudicated, (b) the plea that will be entered, and (c) the court jurisdiction in which the trial will take place. If trial before a jury is either mandatory or selected where optional, the District Court

<sup>1</sup>The JLO scheme was established within the Garda in 1963 as an alternative to prosecution for children under 17. The child accepts certain conditions and supervision by the JLO all of whom are gardai. By the end of 1982, 18,448 persons had been "cautioned and supervised" by JLO staff and other gardai.

will, unless the defendant waives the right to this stage, conduct a preliminary examination. This involves the preparation of a "Book of Evidence", compiled under the auspices of the DPP and then served on the accused, but with the legal work being undertaken by staff of the Chief State Solicitor's Office, located in the Office of the Attorney General, or in the local State Solicitor's Office, and/or a barrister retained for that purpose.

Where the District Court is of the opinion that a sufficient case has been presented, the accused will be forwarded for trial to the appropriate higher (jury) court. Effectively such a decision removes the individual from the flow chart, though the sentencing options in the jury courts are broadly similar to those shown for the District Court.

(iv) *Verdict*: If it retains jurisdiction and the defendant pleads not guilty, the District Court will then try the case summarily. A Garda will generally act as the prosecuting official and the accused may be defended by a solicitor. The District Justice considers the statements of the two opposing parties, and makes a formal decision of (a) conviction, (b) "facts proven" but without proceeding to convict or (c) acquittal. In the higher courts, the choice before the jury is that of conviction or acquittal.

(v) *Sentencing*: One of the complexities of the Irish criminal justice system is that many sentencing options routinely used by the courts do not involve a formal determination of guilt, though the court has accepted that there is sufficient evidence to prove the case brought against the accused. Some of these options are set by statute, chiefly in The Probation of Offenders Act, 1907. Other options, however, lack a firm grounding in a statute law, and thus may be used by some Justices and Judges but not by others, and for differing circumstances and purposes. A further complicating factor is that each court jurisdiction (level) has its own sentencing options, which overlap with, but do not coincide with, those in other jurisdictions. Statutes (and sometimes also common law precedents) set the range of penalties available to each court for a particular offence(s). But The Constitution (Articles 34 and 35) grants the judiciary absolute sentencing discretion within those parameters.

The most commonly used sentencing options in the District Court are:

- (a) On Conviction:
  - (i) Committal to Prison or to a place of detention for a fixed amount of time (with one year the current maximum);
  - (ii) Fines which may carry a penalty of a fixed period of

- imprisonment or detention if not paid;
  - (iii) Suspended Sentence, which has no clear statutory authority in Ireland (Ryan and Magee, 1983, pp. 400-401) and which in the District Court does not carry such recognisances and sureties as to ensure that the sentence is enforced if the Justice's conditions are not observed. Briefly, a recognisance is a formal undertaking to keep the peace and a surety is a guarantor;
  - (iv) Deferral of Sentence, where a sentence is given with the proviso that the warrant is "not to issue" for the length of time stated in the sentence. If the defendant is of good behaviour and does not come to the notice of the Court during that period, the sentence is deemed to have been administered. (here, the court has the ability to enforce the penalty if its conditions are not met)
  - (v) Adjourned Supervision, in which the informal procedure is adopted of requesting the defendant to co-operate with the Probation and Welfare Service. This request cannot be enforced, either by the Court or the Probation Officer;
  - (vi) Medical Treatment or Care for Drug Offenders, as provided by Section 28 of the Misuse of Drugs Act, 1977. In lieu of other penalties available for the relevant offences, the Court may substitute either (a) the defendant's recognisance to participate in a specified form of treatment or education or (b) detention in custody in a treatment centre. The Courts have rarely used these sentencing options to date;
  - (vii) Probation Order, involving supervision by the Probation and Welfare Service and recognisances by the defendant.
- (b) Without Conviction, Though "Facts Proven" (as governed by the Probation of Offenders Act, 1907):
- (i) Full Discharge, with no order issued or conditions specified;
  - (ii) Adjourned generally, with liberty to re-enter for sentence, and thus without any record of the "facts proven" being recorded;
  - (iii) Conditional Discharge, which can involve recognisances (and sometimes sureties) on the part of the defendant, as when compensation or restitution are demanded, or can be made without recognisances. (this latter use of the Probation Act is again one that has no formal statutory authority and hence is unenforceable if the

- conditions are not met.)<sup>2</sup>
- (iv) Probation Order, which always involves recognisances on the part of the defendant and supervision by the Probation and Welfare Service.

The Circuit Court or Central Criminal Court can avail of most of the above options, the main exception being the clear authority to use a Probation Order without first making a conviction. Generally, however, the options actually used in the higher courts tend to be more formal, in that it is rare for sentences to be given without a clear statutory basis for sanctioning non-compliance. A suspended sentence, thus, would be on the basis of recognisances and, perhaps, supervision by the Probation and Welfare Service (PWS). There, the authority to recall the person before the courts and enforce the original sentence is unambiguous. Enforcement in the District Court is less certain. The most likely sanction would arise if there were to be a subsequent court appearance during the relevant time period. The defendant's prior court convictions would be read out in Court and the failure to meet any previous conditions set by the Court taken into account when passing sentence on the current charge(s). Only if a Probation Order has been issued for the previous offence would it be likely that the violation of the attendant conditions would be formally dealt with by the court.

The courts increasingly rely on evaluations prepared by the Probation and Welfare Service before passing sentence. There has been some statutory encouragement to this trend, as in the Misuse of Drugs Act, 1977.

(vi) *Release*: The Minister for Justice has ultimate authority as to the actual length of time for which a person is imprisoned or detained. This follows from Article 13.6 of the Constitution and Section 23 of the Criminal Justice Act, 1951, which specifically grants the Government the right to "commute or remit, in whole or part, any punishment imposed by a court" (except in capital cases) and more specifically delegates that power to the Minister for Justice (see Byrne *et al.*, 1981, pp. 103-104).

Decisions on release are generally initiated within the individual institutions, with a review group forwarding a recommendation to the Office of the Minister for Justice. The main options are (a) release with

<sup>2</sup>"Adjourned supervision" may also be used without first convicting if the defendant is remanded on bail to a future date and required to report to the PWS, which would be asked to prepare a report for the court on that date.

Chapter 2 first addresses the issue of the relationship that the aims of social policy have to criminal justice. This takes two forms: (a) criminal justice is viewed as a government activity which has substantial social distributional consequences and (b) specific social policies, such as those in housing and education, have implications for the level and pattern of crime. Chapter 3 then turns to the specific objectives of the criminal justice system and its component agencies. It addresses the problem of how success in meeting objectives can be evaluated.

Chapter 4 provides an overview of recent trends in Irish crime and of their implications for criminal justice policy. The rise in the level of crime is linked to the major economic and social changes Ireland experienced in the last few decades. Those changes form the context within which social policy and criminal justice policy must jointly forge a response to the problem of crime. The chapter also reviews evidence on the level of crime and on the socio-economic characteristics of persons brought before the criminal justice system.

Chapter 5 combines a description of how the criminal justice system is responding to the problem of crime with an evaluation of the adequacy of that response. The evaluation is necessarily limited. Information is simply not available in Ireland to answer the most important evaluative questions. Subsections of the chapter deal separately with the Garda Síochána and the courts. A similar treatment is afforded to the prison system in Chapter 6.

Chapter 7 turns to the final two terms of reference. On the basis of a summary of the problem confronting policy makers, it is argued that changes are urgently needed in both traditional social policy instruments and in the operation of the criminal justice system. The range of alternatives now available is reviewed, including some proposals already being debated and others which merit consideration but have yet to be put forward in Ireland. As part of this exercise, the crucial issue of costings for any proposals will be reviewed in the context of an examination of trends in criminal justice expenditure.

The limitations imposed by unreliable or incomplete – or both – information will be a theme that recurs in each chapter. To partially offset those restrictions, several forms of material will be used as evidence. First, the report draws on research findings and evaluation studies conducted in other countries. Considerable care was exercised in selecting the evidence to be derived from these sources. Only material that carries a strong presumption of applicability to Ireland is used. Second, through the co-operation of the Garda Síochána and the Department of

Justice, unpublished material was obtained on offences, arrests, and court proceedings. This considerably expanded the range of criminal justice activities that could be described and thus evaluated. Third, the results of a study of the Galway District Court, conducted by Michael Needham and Professor Kevin Boyle of the Faculty of Law, University College, Galway, were made available for analysis. This provides the only in-depth portrait of the workings of an Irish criminal court at our disposal (see the summary in Appendix II).

Finally, this report was written by a sociologist and reflects that discipline's view of the causes of crime and of the nature of criminal justice decision-making. The resulting focus will be apparent in the discussion of those topics in the two chapters that follow.

## CHAPTER 2

### SOCIAL POLICY AND CRIMINAL JUSTICE

This chapter considers the relevance of the aims of social policy to the objectives of the criminal justice system. It discusses the general affinity between social policy and criminal justice. In the next chapter, that affinity is specified more systematically so as to facilitate a link between social policy and specific objectives of the criminal justice system.

#### 2.1 The Relevance of Social Policy to Criminal Justice

The aims of social policy have two basic connections to criminal justice. First, the criminal justice system clearly falls within the scope of social policy as defined by NES. Second, the social policies of government are linked to the prevalence of crime through, for example, housing, educational, and employment provisions. The remainder of the first section of the chapter will expand on and support those two connections.

#### 2.11 Social Policy and the Distribution of Criminal Justice

David Donnison's *An Approach to Social Policy* offers the most widely accepted definition of what constitutes social policy in Ireland:

... the social policies of Government are those of their actions which deliberately or accidentally affect the distribution of resources, status, opportunities and life chances among social groups and categories within the country and thus help to shape the general character and equity of social relations. Social policies are therefore concerned with fairness. (p. 30)

When accepting Donnison's definition of social policy, the National Economic and Social Council explicitly specified that the relevant consequences of government actions extend beyond money incomes and material wealth. The consequences include the manner in which people are labelled and treated by large-scale institutions and "the degree to which individuals and groups feel they can influence the environments in which they earn their living and live their lives" (p. 12).

NESC's definition of social policy can be applied to three distinct aspects of criminal justice policy that have distributional consequences.

First, government agencies have the primary responsibility for providing protection from crime victimisation and freedom from the fear of crime. Second, the criminal justice system is based on a set of procedures and rules which may not be equally accessible to all groups. Third, the agencies of the criminal justice system exercise considerable discretion which also may affect social groups differently. These three aspects will be discussed in detail.

(i) *Protection from crime*: Criminal justice policies are the means by which the government provides protection from crime victimisation and seeks to alleviate the fear of crime that may inhibit persons from feeling secure in their work, leisure, and home environments. The government proposes to spend some £300 millions in 1984 for that purpose, about one third of proposed spending on education and nearly one third of the 1984 estimate for health care services (*Estimates for the Public Service, 1984*).

Donnison's criteria for distributional fairness therefore have clear relevance to criminal justice policies. The amount of public expenditure involved highlights the importance of applying those criteria to spending on the agencies of the criminal justice system. Social policy here is relevant to the equal distribution of the benefits of public spending on crime control, law enforcement, and the administration of justice. As with other areas of social policy, achieving fairness in criminal justice expenditure will probably require more than an allocation of resources by some standard such as the population size of localities. Standards of need will be required if the distribution is to be fair in the sense that Donnison proposed.

(ii) *Distributional Fairness*: Donnison explicitly recognised a second social policy dimension to criminal justice. This refers to the procedures by which the criminal justice system operates. Those procedures were established to ensure that all citizens stand equal before the law (Atiyah, 1983, pp. 32-43). As Donnison (p. 27) notes, this equality cannot be taken for granted: "Do the courts and the professions associated with them give all groups — rich and poor, men and women, young and old — equal access to justice? If free legal aid is provided, does it enable the poor to secure the services of lawyers attuned to the needs of the rich, or does it create a service equipped to deal with the legal problems of the poor?" The procedures of the Garda Síochána, the courts, and the other agencies of the criminal justice system should meet this second criteria of fairness. That is, the rules and procedures should operate in a manner that does not place any group at either an advantage or disadvantage over other groups. Given the complexity of



the law and legal procedure, such a standard of fairness will not be easily met.

This second social policy dimension of criminal justice takes on particular importance in a common law country such as Ireland (briefly, the common law countries are those which inherited the basic principles of English law, e.g., the United States, Australia, Canada). In criminal law this is embodied in a system of "accusation" by a prosecuting authority and an "adversary" method in which the accusation is brought before a court which then acts as a neutral judge of the relative merits of the defence and prosecution claims (Byrne, *et al.*, 1983, pp. 10-13). This contrasts with the "inquisitorial" nature of many Continental systems of law, in which the court conducts its own investigation. Criminal justice procedures in a common law country must therefore be such as to place the defendant on equal footing to the prosecution. If some groups experience difficulty in making use of those procedures, the criminal justice system as a whole cannot be equitable or fair. Since the courts serve as the main arbiter as to whether a prosecution is justified, and given the time that elapses before such a determination is reached, citizens in common law countries must be protected against unwarranted accusations.

(iii) *The Use of Discretion*: There is a third sense in which the aims of social policy are relevant to the criminal justice system. Those working in the system have considerable discretion in the application of rules and procedures to particular cases. As NESC noted in its definition of social policy, "the life chances and everyday well-being of individuals are influenced by the way they are labelled and treated by others — particularly by organised institutions" (1975, p. 12).

The major points at which discretion can be exercised were indicated in the flow chart presented in the last chapter. Examples are the decisions as to whether an incident should be treated as a criminal offence and whether to begin court proceedings. Those decisions are made primarily by the Gardai. Here, discretion is inevitable: "the complexity of administration in modern societies is such that if all laws and police ordinances were to be universally enforced, all citizens would be criminals" (Chapman, 1970, p. 82). The discretion available to prison authorities in deciding eligibility for "early release" or "temporary release" provides further examples. This theme will be given extensive consideration in the second section of this chapter. For the present, there are two main implications. First, discretion in criminal justice should be exercised in such a manner as to meet the social policy definition of fairness. Second, many of the areas of discretion are not subject to continual

review by the courts. They are administrative decisions, equivalent to those made by administrators in areas like health or social welfare, and should be subject to strict criteria of fairness and have readily accessible forums of immediate appeal.

### 2.III Social Inequality and Crime

The preceding discussion was based on premises that can be applied to any government programme that has distributional consequences. But the aims of social policy also have a distinctive relationship to criminal justice. This follows from the manner in which "the distribution of resources, status, opportunities, and life chances among social groups and categories" (Donnison, 1975, p. 30) is related to the probability a person from a particular group or category will become involved in crime.

The issues here are complex. But they become more tractable when a basic distinction is made between (1) economic and social factors that can be shown to lead some social groups and neighbourhoods to have higher rates of crime than others and (2) the moral responsibility of the individual for the choices that he or she makes.

Take the example of unemployment: "most of the empirical studies find that the unemployment rate has a positive impact on the crime rate" (Phillips and Votey, 1981, p. 170). Such a statement, however, involves several assumptions. There is a correlation which indicates that crime rates are high in years with high unemployment, and crime rates are low in years with low unemployment. This does not imply that all persons who are unemployed commit crimes, or even that a substantial minority do so. Instead, it suggests that as the labour market opportunities of some groups become more restricted, particularly groups of young people, the relative attractions of non-criminal and criminal activities shift in a way that increases the probability of their engaging in illegal activities. So with high unemployment the *probability* that a young person will commit a crime increases, leading to that age group having a higher *rate* of arrests.

This way of linking economic and social conditions to crime can be used to explain variation between social groups in the rate of involvement in crime, rates that reflect the probability a person from a particular background will come to the attention of the criminal justice system. It may lead us to conclude, say, that children from areas with high long-term unemployment have, say, twice as high a probability of becoming involved in crime, as do children from more advantaged areas. The accountability of the individual before the courts for his or

her choice is in no way diminished by such a link.

Within this framework, however, we can specify clear ties between social inequality and group rates of participation in crime. Those links are well documented for labour market, housing, and educational inequalities.

Inequality is important not because it underlies all juvenile delinquency and crime but because it (a) produces a far higher crime rate in some areas than in others, (b) affects the probability that juvenile delinquency will be carried over into adulthood, (c) affects the seriousness of the types of offences that are committed, and (d) is a factor in the probability of recidivism (of a second offence or arrest).

### 2.III.a Juvenile Delinquency

Minor forms of juvenile delinquency – petty larceny, vandalism and trouble-making – are not confined to particular social groups or neighbourhoods. Numerous studies of self-reported involvement in crime in Britain and the United States have concluded that juvenile delinquency is common in all social classes and in all levels of educational participation (Nettler, 1978, pp. 97-117; Tittle, 1983). There is no need to link disadvantage to juvenile delinquency *per se*.

This is not particularly reassuring, as juvenile delinquency is far from being the most serious challenge facing the criminal justice system. Two findings from the *Delinquency in a Birth Cohort* study are of particular relevance here. Wolfgang and his colleagues (1972) carried out an 18-year-long study, in which all males born in the city of Philadelphia during 1945 were included. Based on that cohort's contacts with the police, it was found that nearly half (46%) of those who committed an offence never again came to the attention of the police (1972, p. 254). This could not be attributed to any action by the authorities. But a far smaller number of individuals persisted and were classified as chronic offenders: though they represented only 18% of persons who came into contact with the police, they were responsible for more than one half of all the offences committed by the cohort (1972, p. 248).<sup>1</sup>

<sup>1</sup>Hirschi and Gottfredson (1983) demonstrate that there is a general age distribution for involvement in crime, one that peaks at the 15-17 age group. They assert, and provide strong evidence, that this distribution is constant over long periods of time, in international comparisons, and applies to both sexes and all socio-economic groups and all levels of crime. However, though two distributions may be similar in shape there can be considerable variation in the level of offending contained under the distribution. If this evidence is accepted, it follows that the focus for crime prevention policies should be on those factors that increase the probability of involvement in crime *per se*, rather than on age specific programmes, and particularly

The highest rates of serious, recurrent crime and of adult crime are found among the more disadvantaged social groups (Braithwaite, 1979; 1981). Housing policies and patterns seem to enhance this effect. Generally, the greater the extent to which urban neighbourhoods are segregated by social class, the clearer the link between disadvantage and crime will be (Braithwaite, 1979, pp. 171-172). It follows that policies that encourage social class segregation may well contribute towards the high rate of crime in the most disadvantaged neighbourhoods. The effect of the reverse policy, that of discouraging social class segregation, is less clear. As Braithwaite (1979, pp. 174-175) notes, "class-mix policies are particularly unlikely to reduce crime when they involve force or uprooting people".

The connection between disadvantage and the probability of involvement in delinquency is also affected by the type of housing tenure. Whether a person lives in an area of owner-occupied, privately rented, or rented from the local authority housing can be linked to the probability of becoming involved in crime and of becoming a recidivist (Baldwin and Bottoms, 1976, Chapter 4). The main conclusion is that factors linking disadvantage or deprivation to crime are specific to "tenure groups". Two more specific findings, however, are also quite relevant. Recidivism for both juveniles and adults are highest in council estates and among housing estates there is a clear differentiation between "reputable" and "difficult" estates which is related to crime rates and recidivism rates (Baldwin and Bottoms, 1976, p. 133 and Chapter 7).

### 2.III.b Educational Disadvantage

Disadvantage in the educational system and in the labour market also enhances the probability that a group will have a high rate of "chronic delinquency" and that a high percentage of juvenile delinquents from that background will progress into adult crime. The most frequently replicated finding in research on delinquency is that those most at risk are young people with a limited stake in conventional society. Attachments, commitments, and aspirations to conventional activities like school and an expected employment make a serious and prolonged involvement in crime unattractive. Further, the effect of other factors, such as peer group pressures, on involvement in crime seem to be slight

on social factors that lead to some social groups having higher probabilities than others of becoming involved with the criminal justice system. To me, this further strengthens the argument for the relevance of a social policy based approach as a response to crime. It does not, however, preclude age specific programmes, as the age distribution Hirschi and Gottfredson identified is not absolutely invariant and can presumably be influenced. Obviously, even a slight reduction in the 15-17 age group's rate of offending will have a considerable effect on the overall crime rate.

unless such a stake in conventional activities and institutions is absent (Hirschi, 1972; Nettler, 1978, pp. 306-335).

This "stake" is most important in terms of the school system and the prospect of employment. There is evidence "that the school system itself may be an important influence on whether pupils drift towards delinquency and that there are identifiable factors within certain schools which actively facilitate the process" (Reynolds and Jones, 1978, p. 36). Independent of the social background of a school's pupils, school size and facilities, there are school-specific influences that can inhibit or promote the probability of delinquency among the students. Among the "identifiable factors" cited above were rigid streaming by measured ability, the presence of an authoritarian school "climate", and high staff turnover.

Here again, it is useful to distinguish the effects on what could be termed "normal delinquency", which may involve relatively trivial and infrequent offences, and more serious repetitive delinquency. The school may be, as Elliot and Voss (1974, p. 204) say, "the critical social context for the generation of delinquent behaviour". Delinquency is a way of coming to terms with failure in school. But structured inequalities within the educational system as a whole, may be more important. These act to concentrate early school leavers and low achievers in particular communities and, crucially, to block off a connection between education and the labour market. It is to such a situation that the quotation by Phillips and Votey linking unemployment to crime should be applied.

Another recent review of the evidence supports this contention (Hakim, 1982, p. 450):

... high levels of unemployment can be expected to contribute to higher levels of crime and delinquency and to an increase in the prison population. ... Three processes appear to operate: unemployment increases recidivist crime; parental and youth unemployment increase juvenile delinquency (which can form the basis for eventual adult criminality); and unemployment increases reconviction, the rate of imprisonment and the size of the prison population.

Unemployment is a particularly strong predictor of the changing size of a country's prison population over time. Moreover, this does not appear to be the consequence of conviction rates or sentencing practices that fluctuate in conjunction with the level of unemployment (Yeager,

1979). In interpreting such summaries of evidence, it is useful to stress that the relationships described only take on meaning within the context of inequality within the total society. If poor housing or poor educational facilities were the causes of crime, the policy options would be clear, though expensive to implement. Inequality, however, is cumulative in its effect and is rooted in the distribution of life chances and opportunities among social groups. In other words, the basic causes are not to be found in the individual neighbourhood or community, but in the way that an area fits into the total societal structure.

This is also true of all the links between specific aspects of social inequality and crime levels. Unemployment, for example, is potentially important insofar as and in the manner that it is related to the structure of inequality that prevails within a society. Social inequality can in this way be associated with rising levels of crime in periods of both recession and expansion. Danziger and Wheeler (1975, p. 113) argue that "shifts toward a greater degree of inequality in the distribution of income and increases in the absolute level of income when the distribution is constant are both accompanied by more crime". So it is unnecessary to insist that rising crime is an inevitable consequence of high unemployment or to taint the unemployed with the responsibility for high levels of crime (Carr-Hill and Stern, 1983). Unemployment, like educational disadvantage and inadequate housing bears a relationship to crime that is conditioned by a society's very make-up, and thus takes on a unique role at each time and place (see also Fox, 1978, pp. 77-78).

The relationship of crime and criminal justice to social policy is therefore very strong. As Donnison (1975, p. 26) observes, social policies are those that "deal with the allocation of resources and opportunities between potentially competing groups...". Social policy so defined does have relevance to the crime problem. On the other hand, more neighbourhood specific government policies, such as on provision of recreational facilities, do not in themselves appear to be related to the probability of involvement in crime in an area (Baldwin and Bottoms, 1976; Braithwaite, 1979, p. 100). Equalising the availability of such facilities among communities may be desirable, but it is not a social policy response to crime.

#### 2.IV Avoidable Crime

In connecting social policy and crime it may be useful to adopt the concept of "avoidable crime" or "policy amenable" crime. This refers to those factors that government and community decisions can alter so as to lower the probability that young people in a given locality will become involved and remain involved in serious law-breaking activities.

Factors such as the type of educational provision in a locality can cumulatively enhance or diminish the probability by which the social and economic disadvantage that is present will translate into crime.

“Avoidable crime” is a necessary interjection of realism. There is, and will remain, a core of law-breaking activity that cannot be reduced by any policy option available, either the most severe crime control measures or the most extensive programme to combat inequality. To search for the one option, for the one change in procedure or in the legal code that will appreciably reduce the incidence of crime is to seek a chimera. In most countries, that search simply slides into an ever-escalating series of demands for resources – finance, facilities, and procedures – and when each fails to produce immediate results, the next panacea is placed on the agenda. To make a contribution, a longer time horizon will be necessary, within which a full response to the challenge of crime can be worked out and implemented.

A focus on “avoidable crime” leads primarily to concern over the period of transition from juvenile delinquency to adult crime. As was noted earlier, few delinquents persist in crime: most stop after the first caution or arrest. Among those who do persist, adulthood generally alters the balance between the attractions of unlawful behaviour decisively in favour of conformity. Adult statuses and responsibilities remove the motivation for much adolescent trouble-making, wage employment offers a higher financial return than crime for most, and with responsibilities and attachments, the possible cost of arrest becomes too great. As Glaser (1972, p. 10) notes, “it is when social rewards for being a conforming person cannot compete successfully with the gratifications of crime that the latter are avidly pursued.” It is that balance that social policy can influence.

Diversionary schemes for juvenile offenders, which bypass the criminal courts, originated in a desire not to interfere with the effects of normal processes of maturation. Of course, diversion will not be successful for those who find delinquency a lucrative attractive career. This, however, would be true only for a small minority of juveniles who are arrested.

One way of looking at a serious involvement in delinquency (or of adult crime) is the idea of a subculture. A subculture refers to “a set of modal beliefs, values, norms and customs associated with a relatively distinct social subsystem (a set of interpersonal networks and institutions) existing within a larger social system and culture” (Fischer, 1975, p. 1323). The emergence of subcultures which have an identity grounded in law-breaking and an associated package of beliefs, skills, and customs

is the core of the problem of serious crime in most countries. But that subculture must have an attraction for those who join, and one aim of social policy would be to minimise that attraction by making other options viable.

A similar perspective is useful in linking drug abuse to crime. Drug addiction becomes an acute social problem because it occurs within a context of beliefs and customs that are sufficiently coherent to form a subculture. Belonging to such a subculture can itself have a value, an attraction to the individual (Carr, 1983). A response to drug addiction that starts with an image of inadequate, anti-social individuals will be unlikely to succeed because it may reinforce that subculture. A more appropriate response is likely to involve actions that are attractive within the terms of the reference of that subculture (e.g. the use of former drug users as case workers).

Social policy in areas like employment, housing, and education is at present having an effect on the rate of crime in various communities and areas. The challenge is to use those policies constructively, along the lines advocated, for example, by Bannon and his colleagues (1981), to minimise the probability that persons, especially young persons, will find persistence in crime an attractive alternative.

Social policy has another role to play as well. The competition between social groups cited by Donnison does extend in some respects to what is defined as being an offence in the criminal law and what criminal laws are given the greatest attention. Though an abhorrence of “street crime” such as robbery is virtually universal, if we measure the cost of crime in financial terms, “white collar” crimes, such as embezzlement and fraud, inflict the greater loss. White collar crime is the abuse of occupational positions of trust and responsibility. They are almost by definition middle class crimes. The amount of money taken annually through white collar crime vastly exceeds the profits accruing to robbers and burglars in most countries (Braithwaite, 1979, pp. 179-201; Szymanski, 1983, pp. 340-342). Indeed, the famous Equity funding fraud involved a loss to its victims that was equal to nearly three quarters of all money stolen in the United States by robberies and burglaries in the year the fraud was discovered (Silberman, 1978, p. 61).

## 2.V Concluding Remarks

The chapter that follows looks at the objectives of the criminal justice system itself. In doing so, it attempts to integrate basic concerns of social policy to the manner in which the criminal justice system *should* be evaluated. It is intended primarily to ask questions about the criminal

justice system in a new manner. At present, the state of information on criminal justice agencies and their decisions makes impossible more than a partial answer to the questions that will be raised in Chapter 3.

This chapter sought to provide the context for the rest of the report by indicating how the objectives of social policy are relevant to criminal justice policy. It was suggested that criminal justice is a state service with substantial social distributional consequences. It distributes protection both from crime and from unwarranted accusations of being involved in crime. It was further argued that social policies for education, employment and housing are necessary components of a viable response to crime. The problem of crime cannot be resolved by the actions of the criminal justice system itself, no matter how effective and efficient those actions might be. Social policy as defined by NESO is an indispensable part of any viable programme to reduce the level of crime. In making this claim it was stressed that the economic and social conditions that can be shown to be conducive to crime operate at the level of the social group by affecting the attractiveness to its members of different choices. Such a claim is not a justification that in any way removes from the individual their responsibility before the courts for the choices they make.

## CHAPTER 3

### EVALUATING CRIMINAL JUSTICE POLICY AND PERFORMANCE

This Chapter is concerned with how the criminal justice system can be evaluated. It assigns priority to establishing a reasonably precise set of objectives that the system is, or should be, achieving. That is the first step in any programme of evaluation. The section also relates those objectives to three main evaluative criteria. Two of these can be applied to any organisation: how effective and how efficient is it? The third criterion, potentially applicable to all public services, is that of the distributional consequences. As noted in the preceding chapter, this criterion is defined by NESO as how state policies or programmes "influence the distribution of resources and opportunities between different groups and categories of people" (1975, p. 8).

The section begins by a discussion of the general problem of evaluating criminal justice. It then considers individually some of the main agencies of the system and discusses particular problems or issues in evaluation that are specific to each agency.

#### 3.1 The Problem of Defining Objectives

Achieving clarity in objectives is essential whether effectiveness or efficiency is what we wish to maximise. Effectiveness is measured as the amount of goal attainment achieved during a particular time period. Thus, we need to know the objectives and the products of a section of the criminal justice system before we can hope to decide how effective that section is at present. Efficiency differs from effectiveness in that it measures the cost in resources that are required to produce each unit of organisational or system output (Etzioni, 1964, pp. 8-10). Obviously, we can only reach judgements on efficiency after we are clear as to what objectives are being pursued.

In practice, effectiveness and efficiency are used as joint criteria, with perhaps one given decisive weight. For example, if we accept the finding (Martinson, *et al.*, 1974) that imprisonment, probation and group counselling all produce the same rate of recidivism (one in three a "failure") then efficiency may become the important criterion of evaluation. The same result can be achieved with little or with great expense.

But minimising recidivism is not the only objective of the criminal justice system. Obviously, being effective in other ways, such as protecting the general public, may alter the balance substantially in favour of maximising effectiveness in that sense. For most cases, there will be some tension between what criteria of effectiveness and efficiency recommend.

As this suggests, organisations dispensing law enforcement or justice have objectives that will be more difficult to determine and evaluate than most. The complexity does not affect the desirability of such an enterprise, as studies of effectiveness and efficiency are primarily of use because they raise explicit questions about what the organisation or system is trying to achieve and the trade-offs between policy options (Culyer, 1980, p. 310). In his application of "output budgeting" to education, health, and policing, Culyer (1980, pp. 310-329) demonstrates the gains to policy making that result from asking better questions, even where objectives are contentious or imprecise.

Efficiency, too, can widen our concerns by raising pertinent questions. In particular, it directs attention to the social costs an organisation is responsible for, costs which may be borne by society rather than the organisation itself (where, for example, a police policy decision to downgrade road traffic control leads to a higher rate of accidents). It also directs policy makers away from a preoccupation with inputs (e.g. the cost of wages and salaries, transportation, or maintenance work) and towards how those inputs are used and the resulting products. So efficiency may be measured by reference to the relative amounts of resources devoted to prevention of crime, criminal investigation, prosecution, follow-up services to victims, etc.

Offences known to the Gardai, detections, proceedings commenced, convictions or numbers imprisoned are the outcomes of the criminal justice system that we can currently measure. That they are measurable does not, however, ensure that they are either reliable or valid guides to effectiveness or the appropriate units on which to cost efficiency. As Culyer (1980, p. 311) notes, "because people have not been forced before to ask the relevant questions the relevant data are not available."

The continued use in Ireland of the last century's criminal justice information gathering procedures suggests that it may well be some time since such a questioning has occurred. This may lead to a distortion if the outputs we *can* measure bear but an imperfect relationship to what the organisation is intended to do:

Most organisations under pressure to be rational are eager to measure their efficiency. Curiously, the very effort – the desire to establish how we are doing and to find ways of improving if we are not doing as well as we ought to do – often has quite undesired effects from the point of view of the organisational goals. Frequent measuring can distort the organisational efforts because, as a rule, some aspects of its output are more measurable than the others. Frequent measuring tends to encourage over-production of highly measurable items and neglect of the less measurable ones . . . the products which are superficially related to its substance are readily measurable. (Etzioni, 1964, pp. 9-10)

As a general principle, it can be suggested that the objectives of the criminal justice system are best considered in relation to the six decision points specified in Chapter 1. These were arrest, initiation of proceedings, pre-trial deliberations, verdict, sentencing, and release. The performance of the criminal justice system is largely a function of how well those decisions are taken.

**3.II The Dimension of Equity in Criminal Justice: Due Process of Law**  
The ultimate standard which all actions and decisions within the criminal justice system must meet is the concept of due process of law. Due process consists of three basic criteria of fairness. As it emerged in the industrial democracies of early modern Europe and later in the United States, due process requires (1) openness in decision-making, (2) a right to be heard in one's own defence, and (3) impartiality by those who make decisions. As P.S. Atiyah observes, due process is "probably the greatest contribution ever made to modern civilisation by lawyers or perhaps any other professional groups" (1983, p. 42).

Due process can also be extended to a requirement that there be no undue delay in decisions (as in the US Constitution's Sixth Amendment, "the accused shall enjoy the right to a speedy trial") and that there be consistency in the treatment of individuals facing similar charges (the emphasis of the Committee for the Study of Incarceration's report; von Hirsch, 1976). Speedy decisions are presumed to be in the interest of both the defendant, especially if incarcerated before trial, and of the community, for reasons of cost and of safety, especially if a defendant is on bail awaiting trial or sentence.

In Ireland, the concept of due process is incorporated in the Constitution as interpreted by the higher courts. Section 38.1 states that "no person shall be tried on any criminal charge save in due course of law" and 40.4.1. that "no citizen shall be deprived of his personal

liberty save in accordance with the law". The precise definition of what corresponds to "due process of law" requirements in the Republic of Ireland is still evolving, primarily in Supreme Court judgements (see Ryan and Magee, 1983; Byrne *et al.*, 1983).

The criteria embodied in the concept of due process are also part of Ireland's international obligations. Ireland was one of the original signatories to the Council of Europe's "Convention for the Protection of Human Rights and Fundamental Freedoms", which contracts this country to "secure to everyone within (its) jurisdiction the rights and freedoms defined in Section 1". Since ratification in 1953, Articles 5 and 6, which are within Section 1, provide specific guarantees on the conduct of criminal investigation and court proceedings, enforceable by appeal to the Commission on Human Rights and, ultimately, to the European Court, whose decisions have been accepted by Ireland as binding. These Articles are reproduced as an appendix to this chapter. Thus, the standards applicable to the criminal justice system are both of the highest order (The Constitution and international treaties) and are ultimately defined by judicial authorities which apply those standards to individual cases, thus establishing precedents.<sup>1</sup>

In an evaluation of the fairness of criminal justice as administered in Ireland, it is possible for a report like this one to focus on: (i) the procedures and rules that are formally required by statute or precedence (e.g., "The Judges' Rules"), (ii) the actual decisions that have been made by, and actions taken by, employees of the system or (iii) the outcomes of the process. Ideally, (iii) would entail a precise distribution of persons entering the criminal justice system by the decision outcomes shown in the flow chart presented in Chapter 1.

Of these, the second demands a long-term highly detailed observational study of work practices, such as that recently undertaken by the Policy Studies Institute at the invitation of the London Metropolitan Police (Smith and Gray, 1983). The third, fairness as manifest in outcomes, would involve data not currently obtainable on cases not proceeded with, prosecutions, types of sentences, and prison releases. Data *should* be available on the frequency with which each option is applied and the type of persons (age, offence, etc) to which they are applied. This theme of inadequate data will be pursued in detail in Chapters 4 and 5.

This leaves fairness in formal procedure as the main basis by which we

<sup>1</sup>The current status of Article 5, stating the rights to liberty and the rights of persons deprived of their liberty as implemented in decisions of the European Commission and the European Court of Human Rights can be found in *Human Rights File No. 4*, Council of Europe, 1981.

can evaluate decisions. It is an important form of evaluation. Fairness, as manifest in due process, is the basic underpinning for the rule of law. If it is violated in the application of law to that minority of citizens which finds itself in conflict with the criminal justice authorities, the law itself may emerge gravely weakened. It is a norm, a guide to conduct, that is ignored at some peril. For any non-totalitarian system of rule, conformity to the law must depend on a belief by most of the population that obedience has a value. And that belief centres around impartiality in the creation and enforcement of law under the constitution, where the state is as committed to obey those laws as is any citizen (Poggi, 1978, Chapter V).

The ultimate desirability of procedural fairness can be argued even though its use may from time to time produce results that seem unreasonable, as when a criminal case is halted because of some error in procedure on the part of the authorities. As Aytiah (1983, p. 43) argues:

Decisions of this character often lead laymen to think that the law is excessively technical in its stress on following correct procedures. Within limits this criticism may be justified, though it is today rare that a case is definitively disposed of because of some procedural mistake — more usually such mistakes merely lead to extra delay and cost. But in general the lawyer's answer to this criticism would be that nothing conduces more effectively to the making of just decisions than the following of just procedures.

The courts are the key element in the application of due process as they routinely review many decisions made by other agencies in the criminal justice system. Evaluation in terms of the due process meaning of fairness can, however, be extended without recourse to judicial review. There should be safeguards at each decision making point and ways of ensuring that fairness is maintained.

### 3.III Crime Control and Law Enforcement Objectives of the Criminal Justice System

The requirements of "due course of law" do not, of course, ensure that crime is kept at a tolerable level or that suspects are inevitably apprehended. Instead, due process is a necessary, but hardly sufficient condition for the Gardai, courts, prisons, and Department of Justice to meet. Procedural fairness and law enforcement are best viewed as complementary objectives, as two aspects of the common good (see Byrne *et al.*, 1983, p. 15).<sup>2</sup>

<sup>2</sup>The Preamble to the Constitution includes both "the dignity and freedom of the individual" and "true social order" as benefits derived from promoting the common good.



Ideally, effectiveness and efficiency should be evaluated for the total criminal justice system. The performance of each component section of the total system imposes constraints on the other sections, and duplication of effort, by two or more sections, for example, will lower the overall effectiveness and efficiency with which criminal justice is pursued. Thus an ineffective police force would preclude an effective court system, and ineffective courts would preclude effectiveness by the prison system. The links are essentially to be found in the quality of decision making at each of the major stages in the system.

Before turning to consideration of those individual agencies, some general points relevant to the entire system will be raised. These refer to evaluative considerations distinctive to criminal justice organisations.

First, criminal justice agencies have a dual focus inherent in their responsibilities. On the one hand, they need to consider effectiveness as an overall or typical level of accomplishment and, on the other hand, as the total absence of certain outcomes. This is unlike the problems faced by, say, a business enterprise or even a school. Such organisations can concentrate on maintaining a level of results (net profits or a certain average in Leaving Certificate results, for example). But a single unsolved murder or rape, one ineptly handled prosecution, or one prison escape, may, by some standards, negate a thousand criminal justice successes. So our evaluation must consider both the typical performance and the absence of certain atypical, but highly damaging, events.

Second, the objective of due process in decision making includes a presumption of consistency, not simply a set level of outcomes or avoidance of certain catastrophic outcomes. Standardisation of performance is itself a type of effectiveness (Hannan and Freeman, 1977, p. 128) for criminal justice agencies. So the overall, or typical level of performance must be satisfactory, certain other outcomes must be avoided, and the overall level of performance must result from an accumulation of consistent actions. Such a combination of concerns is unusual – most organisations face a far more simple task, that of maximising effectiveness on a single dimension or on several compatible dimensions.

Third, the appropriateness of the resources that are available and deployed will be an important evaluative criterion for criminal justice. In Ireland, this can be expressed as a number of questions: (a) have the various agencies within the system changed or been allowed to change with circumstances? (b) are the facilities and personnel of each agency suitable for its current responsibilities? and (c) is its adminis-

trative structure capable of co-ordinating and supervising agencies that have grown enormously in size and responsibilities since the mid-1960s? The likely contributors to success are administrative capacity and staff training.

Fourth, decisions on how to respond to particular persons and situations represent the main “product” of the criminal justice system. The effectiveness of those decisions cannot be higher than the quality of the range of choices that are available to Gardai, judges, probation and welfare officers, and prison authorities. So the range of choices on the disposition of cases sets a limit on the effectiveness that can be achieved. Some choices are also more cost efficient than others.

### **3.IV Specific Problems of Evaluation: The Criminal Law and its Application**

The next five subsections of this chapter review the issues raised in the preceding discussion as they relate to the criminal law, the Garda Síochána, the courts, the Probation and Welfare Service, and the prison system. Each subsection is also intended to expand on the rather cursory description of the criminal justice system offered in Chapter 1.

#### *3.IV.a The Irish Criminal Law*

There are two particularly relevant points for evaluating Irish criminal law. One, the criminal law as defined by statute cannot be taken as a given, but must itself be subject to assessment. Second, the criminal law is not an appropriate means for achieving some objectives, which should instead be delegated to other regulatory or social policy bodies.

Irish criminal law incorporates the common law inheritance from England and 700 years of statute law from Dublin and Westminster parliaments before Independence, and, of course, statutes enacted since 1922. Article 73 of the 1922 Constitution stipulated that all laws in effect “at the time of the coming into operation of this Constitution shall continue to be of full force and effect until . . . repealed or amended by enactment of the Oireachtas.” The Constitution of 1937 repeated that transfer as well as the 1922 proviso that an inherited statute must be consistent with the Constitution (Bartholomew, 1971, p. 52).<sup>3</sup>

For the most part, current Irish criminal law represents English legal thinking from the mid-nineteenth century (most importantly, the Offences Against the Person Act, 1861) through the early twentieth century (especially the Larceny Act, 1916). Generally, Irish statute

<sup>3</sup>Brehon law has been cited in Irish courts since 1922 (see Donaldson, 1957, p. 5).



law has followed fairly closely, though slowly, rationalisations of the English criminal law. For example, the British Homicide Act, 1957 re-defined the situations in which capital punishment was applicable, a change closely paralleled by the Irish Criminal Justice Act, 1964, and the re-specification of some major property crimes such as burglary and robbery in the Criminal Law (Jurisdiction) Act, 1976, in settling jurisdictional issues between the UK and the Irish Republic, also introduced definitional changes comparable to ones previously introduced in England and Wales through the Theft Act, 1968).<sup>4</sup>

Such isolated statutory changes and the adherence to the English precedents in doing so fall short of the stated intention, both in 1922 and again in the Programme of Law Reform, published in 1962, to codify a distinctly Irish criminal law. A letter from W.T. Cosgrave to the newly appointed members of the committee established to reform the legal system stated:

In the long struggle for the right to rule in our own country there has been no sphere of the administration lately ended, which impressed itself on the minds of our people as a standing monument of alien government more than the system, the machinery, and the administration of law and justice. The body of laws and the system of judicature so imposed upon this Nation were English (not even British) in their seed, English in their growth, English in their vitality. Their ritual, their nomenclature, were only to be understood by the student of the history of the people of Southern Britain. A remarkable and characteristic product of the genius of that people, the manner of their administration prevented them from striking root in the fertile soil of this Nation (quoted in Donaldson, 1957, pp. 23-24; attributed to Hugh Kennedy, the first Free State Attorney General, by Boyle and Greer, 1984, p. 16).

The Free State government did establish a committee to review the inherited legal structure, with an avowed aim of creating a completely new system (Donaldson, 1957, p. 35). The resulting Courts of Justice Act, 1924, swept away the old courts of lesser jurisdiction, replacing them with a unified, professional, District Court. But the law itself, except in respect to specific concerns, such as the sale and use of contraceptives (Criminal Law Amendment Act, 1935) has rarely been significantly changed.

<sup>4</sup>The "Explanatory Memorandum" that accompanied the Act when placed before the Oireachtas states: "The main purpose of the Bill is to extend the criminal law of the State, so far as it concerns serious offences, to things done in Northern Ireland. . . . The Bill also reforms the substantive criminal law of the State by replacing certain existing offences . . . ."

The status of English statute law in Ireland was even further consolidated by the doctrine of precedents used by the courts and citation of United Kingdom cases. The 1962 White Paper *Programme of Law Reform* urged the repeal of existing statutes, as "much of our criminal law is based on old statutes dating back to the fourteenth century. It is proposed to repeal and replace those statutes. In the process . . . the desirability of eventually producing a comprehensive criminal code would be kept constantly in mind" (quoted in Boyle, 1981, p. 19). Despite this, the situation today is essentially as it was in 1962.<sup>5</sup> Some 7,000 pre-1922 statutes remain applicable in the Republic (Boyle and Greer, 1984, p. 23). The Law Reform Commission, established in 1975, has yet to report on any substantive aspect of the criminal law.

The most visible change is the result of more and more regulations — such as those governing the use of motor vehicles — being drafted to fall within the criminal law. Most cases tried before the Irish criminal courts are "statutory summary offences" which do not assume a criminal intent or any inherent criminality in the prohibited behaviour. Here, the threat of the criminal law is used to encourage compliance with some rule designed for the common or individual good, such as an insistence that car safety belts be worn. As Chapman (1970, p. 82) has noted:

The modern tendency of legislators, as well as administrators, to attempt to improve society by penal sanction has led to a situation in which anti-social behaviour is combated by rules to make such activity technically illegal as well as socially repugnant.

The result is to add a new dimension to the responsibilities of the criminal justice system (see O'Siochain, 1977, pp. 31-32).

Both the archaic nature of much Irish criminal law and the appropriateness of the newer regulatory law merit evaluation. In doing so, it should be kept in mind that law cannot be presumed to be neutral between social groups, but may in its provisions have social consequences. Like other public policies, it may be experienced differently by the various groups that form Irish society. Both nineteenth century ideas about what falls under the heading of criminal conduct and the choice of which

<sup>5</sup>However, a gradual process of consolidation and rationalisation is underway. The Statute Law Revision Act, 1983, repealed over 500 pre-1923 statutory enactments, the most venerable dating from the reign of Henry III. Four previous statute law revision measures repealed "enactments which have ceased to be in force or have become unnecessary" (Statute Law Revision Act, 1983; see the Explanatory Memorandum produced in 1979 when the Act was introduced.)

modern regulatory statutes carry a criminal sanction can be evaluated in this manner.

The lack of coherence in Irish criminal law has a particular consequence of considerable policy importance. There is no sensible dimension on which we can order criminal offences by their seriousness. At present, most criminal offences fall under one of three headings: indictable, non-indictable, and hybrid offences. The distinction between indictable and non-indictable (also termed "summary") offences was drawn by British Parliamentary statutes in 1849 and 1851. It reflects ideas then current about the relative seriousness of various criminal offences. Simply stated, indictable offences can be (or must be) tried before a judge and jury, while non-indictable offences were viewed as sufficiently minor that they could be dealt with summarily by a judge acting without a jury. Though the application of the indictable/non-indictable distinction in court procedure has been revised, in part, by subsequent statute law, the mid-nineteenth century dichotomy remains in force. Homicide and treason, shoplifting and "public mischief" all qualify as indictable offences. In contrast, more recently created offences, such as those relating to drug abuse (including drug peddling) are stated as "hybrid" offences (see Ryan and Magee, 1983, p. 3) to be classified on a case by case basis and at the election of the prosecution are prosecuted as either indictable or summary offences. The Garda statistics include such new offences under the non-indictable totals. Other examples include offences under the Revenue Laws, Firearms Acts, and the Juries Act, 1976.

Within the indictable category, there is the by now truly archaic distinction by seriousness between treason, felonies, and misdemeanours.<sup>6</sup> An attempt in 1967 to sweep away these relics of another era of legal thinking and to generally effect a consolidation of the criminal law foundered (The Criminal Justice Bill, 1967; see Ryan and Magee, 1983, p. 2).

Severity of the maximum penalty upon conviction offers one element

<sup>6</sup>Felonies were originally those common law offences punishable by death, with new offences having been so designated in statute law over the centuries. Today, it is not necessarily true that a felony offence carries a more severe maximum punishment than does a misdemeanour (Ryan and Magee, 1983, p. 2). A larceny always constitutes a felony. There remain a few practical implications of whether an offence is designated as a felony, chiefly in the powers of arrest, which are wider for felony than for misdemeanour offences. Formally, all felonies carry an implicit common law power to arrest without having first obtained a warrant: such an arrest for a misdemeanour requires specific statutory authority, which, however, today is usually available. Felonies on conviction also carry certain disabilities, such as prohibition from becoming a TD, which cannot ensue from a misdemeanour conviction (Frewen, 1980, p. 80). The differences between felonies and misdemeanours are stated in full in O'Siochain, 1977, pp. 37-40.

of its seriousness. But this may, as in "hybrid" offences, depend on the form of prosecution, and, in any event, penalties are often specified in the lengths of imprisonment and amounts of fines thought appropriate a century or more ago.

Among indictable offences, the true test of seriousness is found in the court jurisdiction that reaches the verdict and passes the sentence on conviction. The rules for allocating offences in this fashion are set by two statutes: The Criminal Justice Act, 1951 (as subsequently amended) and The Criminal Procedure Act, 1967. In effect, there is a crude hierarchy of indictable offences, ranging from the few that must be tried before a jury in the High Court down to those offences which can be automatically tried without a jury in the District Court. Between those two poles, there is a mass of offences that cannot be abstractly classified by seriousness. The evaluation is made on a case basis by the originator of the prosecution, the District Justice, and frequently the DPP. And as we shall see, the Constitutional guarantee of a jury trial extends to all indictable offences, thus making the defendant an arbiter of seriousness. (This brief discussion cannot capture the extraordinary complexity of the issue of offence seriousness, and the reader is referred to Ryan and Magee, 1983, Chapter 1 and Appendix H.)

The burden on the criminal justice system imposed by the failure of successive governments to provide the promised consolidated Irish criminal law code is a theme that will emerge again in the sections that follow on the Garda Siochana and on the Criminal Courts.

### 3.IV.b *The Garda Siochana*

The formal goals of police forces are usually stated as general principles, desired states of affairs on which broad agreement can be assumed. Indeed, their obvious desirability lies at the heart of the consensus by which the police are given a monopoly on the legitimate use of force within liberal democratic society. But such general principles cannot serve as the operational objectives of a police force as they are far too vague to serve as a guide to what the police should be doing on a day-to-day basis. We need, therefore, to distinguish between the formal goals and the actual objectives of police work.

At its foundation, the formal goals mandated to the Garda Siochana were to ensure "the prevention and detection of crime, the security of life and property, and the preservation of the public peace and good order" (Garda Siochana Code, 1922, p. 5). This was echoed by the 'Obriain Committee, which noted that "the primary function of a Garda has been described as the maintenance of law and order and the

protection of the person and property of the general public" (1978, p. 7).

The international literature on policing suggests in numerous studies that such statements bear little relationship to what police forces actually do (see, for example, the research reported by Reiss and Bordua, 1967; Wilson, 1968; Bittner, 1970; Cain, 1973; Rubenstein, 1973; Mawby, 1979; Steer, 1980; Heal, 1982). By providing a simplistic and incomplete view of police work, formal goals are a poor guide as to what constitutes and facilitates police effectiveness and efficiency. Formal goals can be contrasted to the inherent objectives of policing, as defined by the tasks that (a) the public demands through requests for assistance and (b) police officers initiate in the course of their work.

In studies of policing, two particular aspects of police work have been highlighted that challenge the usefulness of studying a police force in terms of the formal goals of crime control and preserving the public peace. First, most police work can only tenuously be categorised as crime prevention or detection. "The majority of calls received by most police are for services that have little to do with crime but a great deal to do with medical emergencies, family quarrels, auto accidents, minor traffic violations and so on" (Wilson, 1975, p. 81). After all, as Bittner (1970) has noted about the American police, what other organisation is available 24 hours a day, seven days a week, and makes house calls without an appointment? By default of other providers, modern police have assumed a wide variety of social service functions.

Modern police work has become more diverse and complex for a second reason. It is not possible to simply enforce the law, as such a mandate is equivalent to ordering an army to simultaneously attack the enemy on all fronts. Discretion is inevitable. The formal goals as stated for a force like the Garda Síochána thus put forward an unrealistic and unachievable task. Wilson's (1968, p. 7) study of eight American police forces expresses concisely the reasons why this is the case.

Formally, the police are supposed to have almost no discretion: by law in many places and in theory everywhere, they are supposed to arrest everyone whom they see committing an offense or, with regard to the more serious offenses, everyone whom they have reasonable cause to believe has committed an offense. In fact, as all police officers and many citizens recognize, discretion is inevitable — partly because it is impossible to observe every public infraction, partly because many laws require interpretation before they can be applied at all, partly because the police can sometimes

get information about serious crimes by overlooking minor crimes, and partly because the police believe that public opinion would not tolerate a policy of full enforcement of all laws all the time.

Thus, police forces serve as the initial screening agency in most criminal justice systems, selecting those persons who will be forwarded to be prosecuted.

Like all police forces, the Garda Síochána works from a more precise job specification than its formal goals indicate. It also must set priorities among the tasks that it carries out. Such a realisation is evident in the Garda Síochána Code itself. The operational mandate that follows the general statement reads "these objects will be better effected by the prevention of crime than by the punishment of offenders after the crime has been committed. The prevention of lesser crimes and the punishment of minor offences is a sure preventive to the commission of greater crimes" (1922, p. 5). Priorities need to be established. Similarly, the Conroy Report (1970, p. 4) notes that the "policeman provides a public service by befriending any person who needs help, and assisting in any emergency that may arise". It also notes that the Gardai have the function of deciding "in the less serious cases whether a prosecution should be instituted and of carrying out these prosecutions in many cases" (p. 4). Here, the "less serious" cases in reality are all but the most grave felonies and "many" prosecutions refer to more than nine of every ten criminal court cases (see Chapter 5 of this report).

So there is an explicit recognition that the Garda Síochána needs an operational strategy to achieve its formal goals, possesses a public service role in addition to its law enforcement responsibilities, and has a substantial commitment to prosecute as well as to prevent and detect crime. However, there has been to date no official statement of what constitute the operational objectives and priorities of the force.

This discussion and the research literature on policing suggest three basic types of police objectives: crime control, law enforcement and public assistance. Of these, crime control is the broadest, as it includes all police activities intended to encourage respect for the law by the public. This is mainly sought through crime prevention and maintaining public order. Law enforcement objectives are those initiated when a crime is either reported to the police or observed by the police and steps are taken to find a suspect. Public assistance takes in the range of services police are requested to provide, though these often bear little relationship to either crime control or law enforcement (Morris and Heal, 1981).

A list of basic objectives inherent in the crime control aspect of police work is derived by Heal (1982, p. 18). He identifies five "tasks":

- (i) to alleviate the community's fear of crime;
- (ii) to support victims for whom the aftermath of an incident may well prove more distressing than the incident itself;
- (iii) to educate the public in how to avoid crime or, where incidents do occur, how best to respond to them;
- (iv) to intervene in situations about to fall beyond the control of individual members of the public, and to do so in such a way as to prevent criminal incidents occurring; and
- (v) to control those aspects of crime which, because of their particular characteristics, may be curtailed by police activity.

Heal's list provides a realistic set of objectives for a police force to meet in striving towards the goal of controlling crime. It can be extended to include the major law enforcement objectives of police work: (i) the successful investigation of incidents brought to the attention of the police, (ii) processing suspects through to the completion of court proceedings, (iii) participating in decisions on whether to prosecute and whether to choose among alternative diversionary schemes, (iv) carrying out prosecutions in the lower courts, and (v) traffic control.

The point of such differences between formal goals and operational objectives is that an evaluation of any police force will need to include aspects of policing that are important but which do not necessarily relate to the quantifiable measures of "success" like the detection rate. By establishing a realistic set of objectives, pursued at an operational level, criteria of effectiveness and efficiency can be derived. Such a set of objectives, moreover, is useful both for administration and evaluation. It focuses attention on the extent to which police activities are being carried out in a complementary fashion. Otherwise, effectiveness in crime detection may, for example, lower the effectiveness achieved for one or more crime control objectives.

Also, the discretionary powers of Gardai make it unrealistic to evaluate only the outcomes of policing, as if the decisions responsible for those outcomes were predetermined. In fact, their prosecutorial role gives the Gardai a decision-making authority quite unknown in American police forces. This is the discretion inherent in deciding whether to seek a court prosecution in the first instance and the ability to determine the manner of prosecution in the lower court.

In practice, the Garda Siochana are the main decision-makers in the

initiation of criminal prosecutions. The Director of Public Prosecution generally exercises supervisory control only in cases where the Gardai wish to prosecute on indictment (in one of the higher courts). Such a case must be referred to the DPP's office.

Unless the defendant opts for a jury trial, most criminal offences, with the exception of major felonies such as murder or treason, can be tried summarily before the District Court. The precise demarcation of jurisdiction will be stated in the next section of the chapter. For the present, it is of note that prosecution in many instances will be undertaken by a Garda in the District Court. The permission or participation of the DPP's office is not generally required to initiate a prosecution in the District Court (Ryan and Magee, 1983, pp. 66-83). In fact, members of the Garda Siochana routinely bring prosecutions to the District Court as "common informers" rather than as policemen prosecuting on behalf of "the people" or the DPP (Ryan and Magee, 1983, pp. 71-72). If the decision is taken to pursue a case in the higher courts, then the DPP's office will be involved, though often only after a book of evidence has been prepared. That office does not currently oversee decisions taken by the Gardai *not* to prosecute. The Gardai are the only official source of information reaching the DPP to the effect that a crime has taken place and a suspect apprehended.

If we consider the diversity of objectives included under the three main headings of crime control, law enforcement, and assistance, as well as the discretion available to police in meeting those objectives, evaluating police effectiveness or efficiency is obviously difficult. Moreover, the only readily available indicators of the performance of the Garda Siochana are the two outcome measures: offences known and offences detected. Both are poor indices of the force as a decision-making organisation and of course are relevant to only some of the objectives outlined in this section. Yet there is evidence that public satisfaction with police performance is most strongly affected by the non-crime "public assistance" role of a force. If so, then the success achieved in such activities may well be a prerequisite to effective crime control and law enforcement (Mastrofski, 1983). Both depend heavily on public co-operation.

Public concern over crime and demand for non-crime police services makes policing a major form of public service. So does the cost of providing that service. Economists have responded by developing a substantial literature on equity in police services (for example, Okun, 1974; Shoup, 1964; Thurow, 1970).

Ostrom (1983, p. 101) suggests three ways of thinking about equity that are of particular relevance to policing: (i) equity in service, as where police strength is allocated to neighbourhoods on a per capita population basis, (ii) equity of results, where the criteria are equal crime rates and equal satisfaction with police across all localities and sections of the public, or (iii) distribution according to need, where the level and type of service provision are tailored to the needs of those communities with the fewest resources. This third concept of equity is redistributive in intention, using a service financed out of general tax revenue to compensate for economic and social disadvantage.

These three concepts of equity in policing are at least in part contradictory. A strategy of per capita allocation for police services cannot be redistributive, nor is it likely to produce an equivalence of crime rates across localities. Similarly, any allocation by need may well encounter resistance from more affluent urban communities and from rural areas, both of which would be low priorities in such a scheme. Yet the choice between the concepts will probably have to be made. The proposals put forward for community policing implicitly raise the issues, as they tend to support the priority of "need" as a consideration *within* each community but then fail to address the issue of equity *between* communities.

For the present, the issue of equity in policing cannot be resolved even if one concept of equity could be given priority. The kind of information needed for evaluation purposes is simply not available. There is some information on the distribution of gardai, offences, and detections, and this could be made more geographically precise. But we would still be ignorant about the distribution of various types of police services, of "response times" to requests for assistance and of satisfaction with the Gardai. We would also need crime victimisation surveys to check the reality of differences between areas in official crime rates, as willingness to report offences to the police appears to be correlated with satisfaction and confidence in a police force.

Research on policing strongly suggests that it is the method of policing rather than the level of policing that affects both the level of crime and public attitudes (Wilson, 1975, p. 90). As with health care provision, the level of police service is an unreliable index of public safety or even public perceptions of safety. The results of the famous Kansas City Preventive Patrol Experiment are sobering. The extent of public fear of crime actually rose in those neighbourhoods in which the usual level of police patrolling was doubled or tripled (Kelling *et al*, 1974). Unaware of the experiment, local people presumably took the sudden rise in police activity as a reflection of a commensurate rise in crime. Further,

crime, measured both by official statistics and victimisation surveys, was unaffected by the experimental increases or reductions in the usual level of patrolling.

In this way, a consideration of effectiveness, efficiency and equity in policing, even if we cannot measure those concepts very well at present, may add a badly needed leavening of reality to public debate on crime policy and to decision-making within the Garda administration. It may also serve as a spur to developing measures of Garda activity and performance that are relevant to the effectiveness, efficiency and equity of the force.

### 3.1V.c *The Criminal Courts*

The effectiveness and efficiency of the courts is to be evaluated on the extent to which the judiciary provides the standard for other, non-trial adjudications within the criminal justice system and the quality of the judiciary's own decision-making. In an "accusatorial" legal system as in Ireland, the main function of the judge (or judge and jury) is to resolve a dispute between a prosecutor and a defendant, not to conduct an investigation as in many continental countries. The burden of presenting the argument against the defendant falls entirely on the prosecuting authority. If that argument is weak, the charges against a defendant are likely to be dismissed by the judge, such a decision being part of the function of the judiciary. This is basic to the "accusatorial" concept of criminal justice. If the prosecutor lacks convincing evidence of a person's guilt, a prosecution should not have been entered before the courts.

This section of Chapter 3 first outlines the structure of jurisdiction among the courts and the role of the court within the Irish criminal justice system. It then turns to more specific criteria of evaluation appropriate for the criminal courts. In doing so, the division of responsibility for prosecutions is described. That responsibility is not sufficiently unified to present it as a separate component of the criminal justice system.

(i) *Court Jurisdiction*: Trials for criminal law cases can be heard before three levels of judicial jurisdiction. Most cases are dealt with by the District Courts, which currently consist of 12 justices assigned to Dublin (including the President of the District Court), 23 Provincial Justices, seven "moveable justices" and two "temporary justices" (and at present the chairman of the Adoption Board as a forty-fifth justice). In addition to summarily dealing with the bulk of indictable crime (with the consent of both the defendant and the Director of Public

Prosecution in more serious offences), the District Court tries all non-indictable cases and is the court of first appearance, before which charges are levelled. Where the option of a jury trial is available and availed of, trials for indictable offences with the exception of murder, treason, and piracy (which are tried in the Central Criminal Court, the High Court exercising its criminal jurisdiction), are held in the Circuit Court. The maximum penalty that can at present be imposed by the District Court is one year imprisonment. The maximum for the higher courts is set by statute or common law.

The District Court is the workhorse of the judicial system. As will be seen in Chapter 5, this is clear in the division of actual workloads, but it is also apparent in the structure of the court system, which largely remains as devised in the Courts of Justice Act, 1924. Subsequent statutory changes have tended if anything to enhance the District Court's role in criminal law cases.

The District Court has the power to resolve criminal cases in four situations:

- (1) It can try and sentence any defendant brought before it charged with a non-indictable offence.
- (2) It may similarly try and sentence any defendant brought before it for those indictable offences listed in Section 2(2)(a) of the Criminal Justice Act, 1951 (as amended) if the case meets two criteria for being a "minor offence": (a) the District Justice is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily and (b) the accused, having been informed of his Constitutional right to a jury trial, consents to summary trial. Assault occasioning actual bodily harm, forgery, burglary, and some forms of malicious damage to property are examples of such offences.
- (3) Section 2(2)(b) of the Criminal Justice Act, 1951 (as amended) lists other indictable offences which may also be tried summarily under the conditions stated in (2) above with the additional proviso that the Director of Public Prosecution consents to a summary trial. That additional requirement sometimes applies to an entire offence category (e.g. perjury, indecent assault, public mischief, resisting or obstructing a police officer) and sometimes depends on the damage inflicted in the specific incident, as with the offences of larceny and robbery, where cases involving more than £200 require the DPP's consent for summary disposition to take place.
- (4) If an accused person is prepared to plead guilty to any indictable

offence with the sole exception of those under the Treason Act, 1939, murder, attempt to murder, conspiracy to murder, piracy, or genocide, the District Court is empowered (under the Criminal Procedure Act, 1967, Section 13) to deal with the offence summarily. This requires that (a) the Court is satisfied that the accused understands the nature of the offence and the facts alleged and (b) the DPP consents to summary disposal of the offence. On a signed plea of guilty, the Court may impose sentence within the limits obtaining for summary conviction (one year imprisonment) or alternatively send the accused forward for sentence to the Circuit Court with its unrestricted sentencing powers if the District Justice is of the opinion that the case does not constitute a "minor offence"

This leaves a residual of cases that may never be disposed of summarily including (a) where the accused pleads not guilty to an offence not scheduled in the Criminal Justice Act, 1951 and (b) treason, murder, attempt to murder, conspiracy to murder, piracy and breaches of the Geneva Convention Act, 1962) which may not be tried summarily under any circumstances. (The current rules for allocating offences to court jurisdictions are outlined in great detail by Ryan and Magee in their Appendix H; see also pp. 225-229.)

The District Court also conducts the preliminary examination which tests the reasonableness of the prosecution case for indictable offences not falling under, in all save the most grave offences, it decides on the remands awaiting further court appearances, including the decision on bail. The District Court also is the source of summonses and warrants issued in most criminal proceedings.

At a preliminary stage in the criminal process, the District Court receives certain information on the charges against the accused. Informally, this is termed the Book of Evidence, which is made available to the accused. On that basis and on the basis of depositions and witnesses, the District Justice reaches a decision on whether the prosecution has established a sufficient case, one such that a "reasonable jury, properly charged, could convict upon it" (Ryan and Magee, 1983, p. 232).

The District Court is thus the main forum for criminal law cases. Potentially, it can fully dispose of all but the most serious of felonies, and in cases that are to be tried on indictment, it oversees the pre-trial investigation. This leaves the Garda Síochána with very broad prosecutorial responsibilities and also tends to limit the extent to which the pre-trial investigation stage of the criminal justice process is carried out under

independent scrutiny. Even when a preliminary examination occurs, Ryan and Magee (1983, p. 242) note that it carries "little significance in comparison with the trial itself. It is a low standard which the prosecution must meet in order to justify keeping the accused within the criminal justice system."

(ii) *The Prosecutorial Function*: This situation makes it all the more important that accused and prosecution be on equal footing at the stage when a verdict is to be reached and sentence passed. Unlike Continental systems, which are "inquisitorial" in their functioning, the Irish legal system leaves the pre-trial stages to be largely administered by the police. The Office of the DPP was established to separate politicians from any appearance or reality of influence over decisions on prosecution. It has neither the mandate nor the resources to oversee the pre-trial investigative process.

The prosecutorial function is divided at present between the Office of the Director of Public Prosecution, staff of the Office of the Chief State Solicitor, the Garda Síochána, and panels of barristers in private practice who do work for the DPP. The Director of Public Prosecutions has statutory control over and responsibility for the prosecution of serious offences. In practice, however, there is at present no coherent system for the prosecution of offences. The DPP has immediate involvement with (a) cases to be brought before the Special Criminal Court, (b) very serious offences, such as murder, which are brought to his office's attention immediately and (c) certain other offences that have come over time to be transmitted at an early stage to the DPP, such as offences of drunk driving or complaints of Garda ill treatment. Here, the files would be received directly from the Garda Síochána and instructions would be issued in return as to charges and proofs required in relation to those offences, though members of the public can have direct access to the DPP. The instructions would be executed by the Chief State Solicitor's Office, which handles the legal work on his behalf. The DPP has no control over or responsibility for the staff of the Chief State Solicitor. Still other legal personnel, chiefly barristers in private practice on the various approved panels, would represent the DPP in court.

However, few indictable offences would be dealt with by the DPP's office in the first instance. Most indictable offences are prosecuted in the District Court, entirely by Gardai. Other offences are dealt with by the Chief State Solicitor's Office in conjunction with the Gardai at a summary level. By and large, it is only after a defendant has been returned for trial to a higher court that the DPP's Office becomes

involved. This is after the pre-trial investigative stage of the criminal justice system has been completed.

The DPP thus deals primarily with those offences that come for a hearing or other disposal before the higher criminal courts (save for certain District Court appeals). Even here, it is the panel of barristers which provides the prosecutor, not an official from the DPP's own Office. The prosecutor enters into a case at a relatively late stage and often, due to conflicts in court listings, the chosen prosecutor may hand over the prosecution brief to another barrister at extremely short notice.

Thus, it can be seen that there is at present little continuity in the processing of criminal cases through the courts and little effective scrutiny of the quality or persuasiveness of the investigation and resulting evidence in the bulk of criminal prosecutions.

This raises vital issues of whether the investigatory stage of the criminal justice system is so ordered and so monitored as to ensure that the accused and prosecution arrive in court on an equal footing. At present, the responsibility for ensuring that these conditions are met rests, as it does in all common law countries, with the courts. Police forces under the common law system are deemed to be largely independent of the government in decisions on investigation and prosecution (see Korff, 1979).

The common law system therefore places great emphasis on the trial and court decisions. The Constitution in Article 38.5 provides a guarantee that "no person shall be tried on any criminal charge without a jury", with the proviso that, as defined in earlier subsections of Article 38, "minor offences", "special courts", and "military tribunals" are exempted. In practice, there is a strong incentive for defendants to waive that entitlement, and indeed, an almost equally strong incentive for the prosecution to permit summary jurisdiction, thus saving resources and, where a guilty plea by the defendant is required for summary disposition, removing uncertainty over the result. The defendant's incentive stems from the restricted sentencing powers of the District Court: the maximum term of imprisonment it can impose is 12 months.<sup>7</sup> Further, willingness to accept the jurisdiction of a non-jury court and even more a plea of guilty may be presumed by a defendant to serve as

<sup>7</sup>The District Justice may as already noted, choose to send a defendant who has pleaded guilty forward for sentencing in the Circuit Court for an offence listed under the Criminal Procedure Act, 1967, which is not restricted to the one year maximum sentence of imprisonment. However, the defendant could in turn withdraw the plea of guilty and opt for trial (Ryan and Magee, 1983, p. 229). It is in any event not certain that the Circuit Court would in fact impose a sentence of greater severity than would have been available to the District Justice.



mitigating factors in his or her behalf. The Committee on Court Practice and Procedure, which is still in existence, recommended changes that would have removed these incentives (Fifth Interim Report; see Delaney, 1975, p. 47). At the time of writing, however, the division of criminal jurisdiction among the courts retains the features that caused the Committee's concern: (a) an inducement for defendants to plead guilty and waive their right to a jury trial and (b) on a plea of guilty, it is possible that an offence as serious as rape or manslaughter can be dealt with by a sentence in the District Court.

(iii) *The Appeals Process*: At present, there is no system by which the decisions of the court are subjected to a sustained evaluation. Higher courts do, of course, review decisions on a case by case basis when appeals are entered. The results do provide general guidelines as to appropriate trial and sentencing practice. Supreme Court decisions indeed can rather drastically change court practice overnight. In the controversial area of release on bail before trial, the Supreme Court in *The People (A.G.) v. O'Callaghan (1966 Irish Law Reports 501)* interpreted the Constitution to require that bail be granted unless there is a likelihood that the defendant will seek to evade justice or interfere with witnesses or jurors (see the discussions in Ryan and Magee, 1983, pp. 177-202; Byrne *et al.*, 1983, pp. 53-67). Factors relevant to those criteria can be advanced to justify a remand in custody of a defendant; other factors such as the possibility that the accused might commit other offences while on bail are irrelevant.

In the more mundane details of sentencing, however, the system of appeals is less decisive. Appeals from the District Court go to the Circuit Court, or to the High Court if a ruling on a question of law is put forward; the High Court exercises some criminal law jurisdiction over the Circuit Court; the Court of Criminal Appeal reviews decisions by the Central Criminal Court, the Circuit Court, and the Special Criminal Court; and the Supreme Court has overall as well as specific responsibilities to hear appeals (see Delaney, 1975, pp. 49-53). The Court of Criminal Appeal consists of a rotating panel of three judges, one Supreme Court Justice and two judges of the High Court. As Delaney notes (1975, p. 52), such an appeal panel is unlikely to manifest the consistency that lower courts need if guidelines are to be set, and its abolition was another recommendation of the Committee on Court Practice and Procedure. Generally, the results of appeals of sentences are rarely reported in reference works (see, for example, Frewen, 1980). The system of appeals thus does not in itself provide an on-going process of evaluation.

Given the state of published statistics on court decisions, no one, not even the most senior members of the judiciary, is in a position to describe, let alone evaluate, the performance of the courts. Certainly no outsider could hope to do so. The consistency with which sentences are given, for example, is simply not known. The failure by the legal profession to publish any but the most rudimentary information on court decisions is perhaps indicative of the weight it attaches to the general public's ability to evaluate its effectiveness or efficiency.

(iv) *Objectives for Evaluation*: The main objectives of the court system within its criminal law jurisdiction are internally to reach verdicts and impose sentences in accord with due process guarantees and externally to oversee the administrative decisions at the pre-trial and post-sentencing stages of the criminal justice system. In effect, the courts must be evaluated in terms of their own efficacy as evaluators. The Constitution assigns the judiciary full discretion, within the limitations specified by statute or common law, to pass sentences and hear appeals of sentences. This, however, does not preclude assessments based on the aggregate pattern of case dispositions and sentences.

Seven objectives of clear relevance to social policy should be part of such a process of assessment:

1. The full utilisation by the courts of the range of options for case disposition, linked to the range of offences so that the minimum stigma and punishment is imposed as is necessary in the circumstances. A court system that is effective in this respect will also be efficient in terms of the resources expended per decision.

While the quality of the options available to decision-makers sets an upper limit on the effectiveness and efficiency of the criminal justice system, availability neither ensures their use nor their appropriate use:

... if efforts are made to decrease the rate of incarceration by expanding the offices and staff that supervise and counsel offenders in the community, judges tend to use these new resources for petty offenders whom they would have previously warned and dismissed, rather than to reduce the number who are incarcerated. (Glaser, 1984, p. 4)

With the courts, as with all other agencies comprising the criminal justice system, the main products are decisions, and effectiveness and efficiency are measured by evaluating those decisions.



2. The avoidance of unnecessary delay in case proceedings. This objective is desirable in itself, but if achieved, it will enhance other objectives of the criminal justice system. As Mr Justice Walsh recently observed (1982, cited in Byrne *et al.*, 1983, p. 16), changes in legal procedure are "no substitute for speedier trials and more efficient police work".

3. The courts should make full use of the advice available from Probation Officers and other professional groups who are able to provide the judiciary with evaluations prior to sentencing.

4. Consistency in sentencing, so that there is a predictable link between the offence and prior convictions, on the one hand, and the type and severity of sentence that is imposed, on the other hand. That link will never be absolute, as judges impose sentences to meet what Boyle and Allen (1983, p. 184) term "the two competing and often conflicting alternatives" of punitive measures tied to the gravity of the offences and individualised sentences tied to the defendant's prospects for reform. The former alternative is intended to deter, the latter to assist, the defendant. In itself, the existence of these two emphases make it unreasonable to expect that identical sentences will be imposed on persons convicted for any one type of offence. But it is reasonable to expect a basic consistency, with a typical range of sentences for an offence. The state of Irish criminal law and the structure of the appeals system at present are not conducive to the emergence of such sentence ranges. This is one of the basic issues in the Irish criminal justice system, to which we will return in later chapters.

5. The courts of law should convey by their physical appearance and the manner in which they conduct their proceedings the seriousness, dignity and openness of their work. Conveying such an atmosphere is one objective of the criminal courts.

6. All persons involved in a court proceeding should be able to hear what is being said and to understand the terminology and procedures. Again, the lack of statutory consolidation hinders success in attaining the court's objectives, both in terms of offences and court procedures, with, to quote Ryan and Magee (1983, p. 103), "their arcane language and rituals".

7. The importance of access to legal assistance "attuned to the needs" of all groups (Donnison, 1975, p. 27) was already mentioned in Chapter 2. Since the 1976 Supreme Court decision in *The State (Healy) v. Donoghue*, (Irish Law Reports 325), the provisions of The Criminal Justice (Legal Aid) Act, 1962 have been considerably extended. An

accused individual is entitled to be informed by the court of his or her possible right to free legal aid. This right must be granted, unless waived with the court's approval, if the defendant faces a charge that could result in a serious penalty (such as deprivation of liberty or a sentence that jeopardises one's livelihood) and cannot afford to pay for legal representation. Even where financial capacity is not in doubt, the court has an obligation to satisfy itself of the defendant's intellectual ability to conduct a defence, and, if in doubt, to inform the accused of the right to legal assistance (*Report of the Criminal Legal Aid Review Committee*, 1981; Ryan and Magee, 1983, pp. 211-224).

The Supreme Court decision did not, however, effect a satisfactory resolution to the objective of providing legal representation where needed. Quite apart from defendants who are financially unable to obtain representation, the cost of exercising one's rights may well prove prohibitive even for a defendant of substantial means. And for those offered free legal aid, its delivery cannot be assumed to be entirely satisfactory. At the time of the Healy decision, The Criminal Legal Aid Review Committee was in the midst of its deliberations. The Committee in its final report (1981) made specific recommendations for modifying the criminal legal aid scheme. These remain before the Government. In one vital issue, the right to free legal aid during investigative, pre-trial stages of the criminal justice system, the Committee did not make recommendations as it was deemed to lie outside of its mandate (1981, Chapter 6).

The provision of adequate and appropriate legal representation remains a basic objective on which the Irish criminal justice system's performance can be evaluated. Monitoring success on that objective is currently a responsibility of the courts. The principle of "equal footing" between accused and prosecution, however, makes it a more pervasive issue. If all are to arrive at the courtroom as equals, then access to legal representation before trial also merits our attention.

### 3.IV.d *The Probation and Welfare Service*

The "youngest" section of the Irish criminal justice system, The Probation and Welfare Service, is also by far the smallest. Initiated in 1961 as The Probation and After Care Service, it has grown from an original staff of one officer to a current authorised strength of 147 officers (*State Directory*, 1984). Most of that increase has occurred recently, marking the decisive expansion in the Service's responsibilities that accompanied the growing importance of non-custodial sentences and evaluation reports in the criminal justice system. As reorganised in 1979, the Service remains part of the Department of Justice but now operates on a regional basis.

The official statement of the Service's role in the criminal justice system includes both general goals and operational responsibilities:

The general objectives of the Service are to reduce criminality in the community and to prevent and remedy social breakdown in the interests of both society and the individual. Through counselling, the service tries to bring those persons referred to, to a better understanding of their responsibilities to themselves, their families and the community. Close co-operation with other voluntary and statutory agencies who work with offenders is an important aspect of its work.

The duties of Probation and Welfare Officers in the courts include preparing pre-sentence assessments when requested and supervising offenders in respect of whom supervision orders have been made by the courts. In the prisons, the duties of Probation and Welfare Officers centre around helping the prisoner to cope with personal and family problems which may arise from imprisonment, leading him to a better understanding of his responsibilities to himself, his family and the community, counselling him in preparation for his eventual release, helping him in securing accommodation and/or employment and participating in the preparation of pre-release programmes. (*Report of the Probation and Welfare Service, 1981, p. 8*)

This combination of expertise and contact ensures that the Service will play a vital, perhaps the most vital, role in determining the future success of the Irish criminal justice system. That importance is already apparent in the growing use of the Service by the courts and is what would be expected from the experience of other countries.

It is therefore worth expanding on the nature of the Service's current role. When assigned to the courts, the members of the Service are in fact Officers of the Court. Their supervisory role may be involved as a condition of several forms of cases disposition: (i) where the Probation of Offenders Act, 1907 is applied, usually without proceeding to an actual conviction, with the defendant discharged conditionally or formally placed on a Probation Order for a fixed period of up to three years, and (ii) a proceeding may be adjourned without a sentence being given and specific conditions may be attached, such as participation in a therapy programme.<sup>8</sup> The court has discretion as to whether super-

<sup>8</sup>"Adjourned supervision" is a court innovation and has no statutory authority. "This term refers to cases where evidence has been heard and charges proved and where the court does not proceed to sentence but requests the person to co-operate with Probation and Welfare Officers during a specified period" (*Report on the Probation and Welfare Service, 1981, p. 16*). Such requests are not enforceable either by the Court or the Service.

vision by a Probation and Welfare Service Officer is required.

When assigned to a prison, in addition to the responsibilities stated in the preceding quote, Officers participate in decisions on granting prisoners "full temporary release" and "short term" release ("week-end", "mid-week", "holidays" to relieve overcrowding).

The Service also has the responsibility of supervising individuals released from the prisons under either "full temporary release" or the Intensive Supervision Scheme. The latter form of early release was established in 1979 (and since suspended due to inadequate resources)

... to remove from the prison system at an early stage of sentence those offenders who do not need secure custody but who are not suitable for ordinary temporary release. The rationale . . . , is that if an offender under supervision in the community can be kept out of trouble for the duration of his sentence then that is more beneficial to him and more economical for the State than his remaining in custody (*Annual Report on Prisons, 1982, p. 39*).

All supervisory work to be effective demands extensive contacts with facilities in the community, like hostels, alcohol and drug treatment programmes, training centres, and potential employers.

The Service has also been allocated a number of other responsibilities, less central to this report. Officers are assigned to a number of Special Schools, and within the courts, to non-criminal family law cases. The Service's research activities are more relevant. To date these have resulted in two publications: *A Study of the Alcohol Education Court Programme* (Department of Justice, 1982) and *Drug Abusers in the Dublin Committal Prisons: A Survey* (O'Mahony and Gilmore, 1983). A research unit was established in 1981. It is currently studying the operation of the Intensive Supervision Scheme.

The preceding description is essentially the role of the Service as portrayed by the Department of Justice and by the Service itself. Before 1980, the only information on the activities of the Service was on its prison responsibilities as noted in the Annual Report on Prison series; the Service has published its own annual reports for 1980, 1981, and 1982.

The three reports published thus far use descriptive categories that are more informative than the reports of other Irish criminal justice agencies. It is therefore possible to get a realistic picture of what the Service is

doing. For example, both the frequency with which the courts make use of the Service's various functions and the resulting outcomes are shown. But like other report series, inadequate information on persons "carried over" in the Service's charge from one year to the next will make a thorough evaluation difficult.

Still, it should be possible over time to measure the effectiveness of the various forms of probation, as indexed in the percentage of persons who successfully complete their period of supervision. This, however, may not be the most important evaluative purpose for which such evidence can be used. The use made by the courts of the Probation and Welfare Service is really the central issue. That level of usage largely shapes what the Service can itself achieve. But more generally, court use of the Service has implications for the effectiveness, efficiency, and equity of the entire criminal justice system. Effectiveness will be affected as probation programmes have a more promising record in terms of "success" (non-recidivism) than does imprisonment for most offence types and offenders. (See Brody, 1976 and Palmer, 1978 for the summaries of the evidence.) Similarly, probation use is efficient, as it costs but a fraction of a custodial sentence (about one-tenth as much — see Glaser, 1984, p. 14). The issue of equity is more difficult. It is tied to judicial decision-making, and we lack information on which defendants are given probation and which are given a custodial sentence.

### *3.IV.e The Prison System*

The objectives allocated to the prison systems of Western industrial societies changed with dramatic rapidity over the past four decades. With some simplification, the 1950s was the decade of custodial prisons, the 1960s, of rehabilitative prisons, the 1970s, of community based "corrections", and the 1980s, of humane but punitive incarceration.

That change is all the more extraordinary because it represented a succession of quite contradictory beliefs on the causes of crime and the role that imprisonment should play in its prevention. Each offered a distinct rationale for incarcerating offenders, and thus a distinct set of objectives for the prison.

The 1950s represented the heyday of the custodial prison, in which the sharply punitive conditions of the prison regime were without embarrassment intended to punish and thus to deter those incarcerated from continuing in crime subsequent to their release on parole. Though punishment presumably was linked to the probability of recidivism, in effect the custodial prison was an instance of an organisation in which one failure counted more than a thousand repentant graduates: "cus-

todial prisons are evaluated on the basis of their failures not successes" (Hannan and Freeman, 1977, p. 127).

In the 1960s, a medical rationale for imprisonment became fashionable, with prison, however implausibly, filling the role of hospital. Inside the prison walls, though perhaps with the title "Correctional Centre" over the entrance, treatment and rehabilitation would be carried out. Courts in the United States and in other countries co-operated by ordering indeterminate sentences; release dates would be set within the prison by the appropriate experts.

The rather unrealistically high ambitions set by the proponents of the rehabilitation model were not met. Though in retrospect training and retraining programmes and changes in the prison regime did have possibilities that were never fully realised (see Glaser, 1984), rehabilitation in the prison was soon supplanted by the idea of "community corrections". The US President's Commission on Law Enforcement and the Administration of Justice of 1967 heralded this innovation, by urging that the task of corrections should be defined to make as an objective "building or re-building solid ties between offender and community, integrating or re-integrating the offender into community life" (p. 7).

Such an objective, however, foundered on the costs of the new facilities it required and opposition from "the community". As the even stronger impetus towards "community mental health" to replace traditional institutionalisation discovered at the same time, the resources of the community are meagre indeed, at least when they are sought by the least advantaged of its members. The community failed to play the role allocated to it in the model of community corrections. And the "community correctional centre" never materialised as a major response to the problem of crime.

Yet the objectives it set retain considerable merit. Like those of rehabilitation through training, they have a strong, almost common-sensical basis. The lack of employment prospects is one of the strongest predictors of recidivism, and a programme of encouragement and contact with the community has been shown to reduce the recidivism rates in prison systems:

... it has been shown that giving 1000 or more hours of training in auto repair, welding or machinist work to prisoners more than pays for the cost by its increasing the prisoner's post-release tax payments, apart from the benefits of reducing recidivism rates . . . (Glaser, 1984, p. 15).

The research evidence also finds real benefits from maximising contacts of inmates with the community. 'This policy has been shown to reduce recidivism rates when it involves facilitating visits to the prisoners, giving inmates brief furloughs . . . and letting them serve the last portion of their sentences in a halfway house from which they can depart daily for work or for other approved activity . . .' (Glaser, 1984, p. 14).

Thus, though the objectives of rehabilitation or community integration failed as overall solutions to the negative effects of imprisonment, the experience did establish that both objectives can be sought successfully. This requires a substantial break with traditional prison practices and favourable local circumstances. Also though rehabilitation through training or community integration can be achieved, they cannot be reasonably advanced as general rationales for imprisonment. Either objective can be met more effectively and efficiently through non-custodial alternatives. However, where there appears to be no option but to incarcerate an individual, it is possible to evaluate the prison system in terms of the quality and success of training and community reintegration objectives. Few prisoners are confined for more than seven to ten years, even for very serious offences, and thus those objectives are relevant to virtually all those confined.

In the United Kingdom, a restatement of the objectives of imprisonment was officially given in the 1979 report of the Committee of Inquiry into the United Kingdom Prison Services (the May Committee), which rejected rehabilitation or treatment as objectives for imprisonment. The Committee instead put forward the objective of "positive custody" in which:

the purpose of the detention of convicted prisoners shall be to keep them in custody that is both secure and yet positive . . . (p. 67)

Positive custody was defined as incarceration in "hopeful and purposive communities" where confinement is made tolerable by good education and work facilities, but without an expectation that such services cause rehabilitation.

This was seconded by the American Committee for the Study of Incarceration. Their recommendation, which has been labelled the "Justice Model", however, was clothed in a new philosophical rationale for imprisonment: "just desserts". They argued that

when punishment is expressed in these terms, it abandons its primary reliance upon a utilitarian rationale. It is justified not as

an effective crime-prevention measure but because it is right. . . . Certain things are simply wrong and ought to be punished (von Hirsch, 1976, p. xxxix).

As a deserved penalty, the length of imprisonment would be determined by the nature of the offence. The discretion of judges in sentencing and of parole boards in release dates would consequently be greatly curtailed. Offences would be ordered in terms of their seriousness, a fixed penalty established for each level of seriousness, and a set of rules established for increasing the penalty to reflect the number and seriousness of all previous convictions. Mitigating circumstances would be considered only where they relate to the seriousness of a defendant's involvement in the criminal act (von Hirsch, 1976, pp. 98-104).<sup>9</sup>

The severity of this proposal was counterbalanced by a call to dramatically scale down the list of offences punishable by imprisonment, and indeed, to reduce the maximum sentence of imprisonment for all other offences. Here, the certainty of incarceration could offset the decreased average sentence. Probation or suspended sentences would be abolished for serious offences and prison sentences would be served in full.

Ultimately, however, the Justice Model is directed at the courts. To date, it has found little practical application. It offers a complete judicial programme and cannot be grafted on to an existing legal system.

The recommendations of the May Committee and the Committee for the Study of Incarceration leave the prison system with rather modest objectives. Along with meeting basic criteria of fairness and humanness, prison systems have obligations to provide more than "storage bins". A prison must, in other words, adopt measures of "success" beyond that of avoiding the failure of an escape. Such objectives necessarily involve decisions on allocation of inmates to programmes and to institutions within the prison system, as well as on the dates for release and on application for furloughs. It is in these decision areas that effectiveness and efficiency will be determined for the prison system.

<sup>9</sup>To illustrate: Suppose a defendant were convicted of armed robbery for the second time. Were no special circumstances of aggravation or mitigation shown, he would receive the disposition which the guidelines specify as the presumptive sentence for a second armed robbery. Were there several participants in the robbery and his role in the crime a peripheral one, however, this could be a mitigating circumstance permitting a limited reduction below the presumptive sentence" (von Hirsch, 1976, p. 101).

The 1980s found prison systems in considerable disarray. All the beliefs that gave a purpose to imprisonment had been found wanting and discarded. Experience in other countries suggests that a sentence of imprisonment is appropriate for only a small proportion of persons convicted. There are four objectives that a sentence of imprisonment can reasonably satisfy:

- (1) A sentence of imprisonment is expected to respond to the community's sense of justice, reflecting the moral concern that a particular offence raises;
- (2) sentences to imprisonment should be used to a degree sufficient to deter people generally from engaging in criminal activity;
- (3) imprisonment is justified where it is the only reasonable manner of limiting the prospect that an offence will be repeated by a specific defendant before the courts; and
- (4) even if the prospects for deterrence are limited, imprisonment may be necessary to protect society from individuals likely to inflict substantial harm on others.

There is little evidence to support the efficacy of the objective that is perhaps most often cited as an objective for imprisonment: to deter those imprisoned from further involvement in crime subsequent to their release. Such a specific deterrent has never been convincingly demonstrated (Blumstein *et al.*, 1978, offer the most comprehensive assessment).

The Irish prison system consists of ten custodial institutions which are administered by the Department of Justice. Of these, Mountjoy and Limerick have been in continuous use since the last century, as was St Patrick's Institution, once a women's prison and now the committal place of detention for juvenile offenders. The chart below adapted from McGowan (1980) and updated to 1984, shows all ten institutions, dividing them as to whether they are "open" or "closed" and whether they are for juvenile offenders or adults.

The Irish Prison System

	Open	Closed
Juvenile	Shanganagh Castle	St Patrick's Institution
Adult	Shelton Abbey Loughan House (18 years +)	1. Mountjoy (M & F) 2. Portlaoise 3. Arbour Hill 4. Limerick (M & F) 5. Cork 6. Training Unit

Today, only Cork, Mountjoy, Portlaoise and St Patrick's Institution are places of committal, to which prisoners are sentenced by the courts (and Limerick Prison for females). Prisoners can then be transferred within the prison system to other specialised institutions at the discretion of the Department of Justice (as delegated by the Minister). For adults, the possibilities include Limerick Prison, Cork Prison (a substantially renovated army detention barracks), Shelton Abbey, an "open centre" established in 1972, located near Arklow in Co Wicklow, and two Dublin institutions, both opened in 1975, Arbour Hill and the Training Unit which is adjacent to the Mountjoy/St Patrick's complex. Arbour Hill is another substantially renovated army detention barracks, now used to house prisoners serving long sentences. As the name suggests, the Training Unit specialises in employment-related skills (including AnCO certified courses) and was specially designed towards that purpose. It was intended for long-term prisoners nearing the end of their sentence and short-term prisoners who could complete a course or programme of courses while incarcerated. Its regime shares some of the features of an open centre (such as the availability of weekend release). The Training Unit is the first newly constructed prison since 1902, when the main section of Portlaoise Prison was completed.

Juvenile offenders, aged 17-21 (and sometimes 16 years old) can be transferred from St Patrick's Institution to Shanganagh Castle, near Bray in Co Wicklow, another innovation of the 1970s. Since 1983, Loughan House in Co Cavan has been an open centre for adults (18 years of age and above), though with more emphasis on security than in the Dublin centres. The building, a refurbished novitiate, had previously housed a juvenile open centre, a controversial "children's prison" (for 12-16 year old males) and then a Special School, in rapid succession.

Women can be accommodated only in two custodial units, one in Limerick Prison and the other a self-contained section of St Patrick's Institution (the ground floor and basement of one wing). There are no open centres or special units for females under age 18 or even under age 21.

The Irish prison system thus reflects a diversity of orientations towards the objectives of imprisonment, ranging from the larger facilities, which still conform to the basic tenets of the custodial model (albeit with a liberalised regime) to the rehabilitative and community reintegration emphasis of the newer institutions. There is at present no up-to-date description of the prison system. Substantial changes in the prison system render even the 1983 Council for Social Welfare report obsolete.

Given the diversity of institutional regimes, and consequently objectives, many evaluative issues will hinge on the distribution of resources and prisoners among the available institutions. This involves the amount of resources (trained staff, specialists, programmes, etc.) and number of prisoners allocated to each type of regime, and also the suitability of both resources and prisoners for institutional objectives.

Though the courts make the initial decision on which offenders are imprisoned, the Department of Justice and prison administrators exercise very considerable discretion in determining the actual length of time that is served. Through the Constitutional and statutory provisions outlined in Chapter 1, discretion as to release dates, conditions of release, and transfers among institutions have devolved to the Department of Justice officials as delegated by the Minister. Recommendations are made within each institution on these matters at review meetings in which a Department of Justice official participates. Remission of sentences achieved "by industry and good conduct" is formally based, as are all the other aspects of the prison regime, on the "Rules for the Government of Prisons, 1947", a statutory instrument (S.I. 320 of 1947). The standard remission is one quarter of the sentence, though here the by now meaningless distinction between "penal servitude" and "imprisonment" intrudes to make the situation more complex.<sup>10</sup> Such remission is not a right, though it must be allocated through "properly exercised discretion" (Byrne, *et al.*, 1981, p. 110). Prisoners do have the right of appeal to the High Court to seek redress for the application of the "Rules" to their prison conditions and release dates. They may also appeal based on Constitutional guarantees and statutes such as the Criminal Justice Act, 1960, which provides the authority for temporary release.

In practice, sentence length is an administratively rather than a judicially determined quantity. It is estimated, for example, that during 1983, some 1,330 prisoners were granted early release without supervision — a practice that is termed "shedding" (*Parliamentary Debates, Dail Eireann*, 24 November 1983, p. 355). Such decisions should obviously be subject to the same criteria of fairness, effectiveness and efficiency as are other major choices made within the criminal justice system.

The courts are one arbiter of these matters, if application is made to them by a prisoner. Since 1925, each prison has had a Visiting Com-

<sup>10</sup>Penal servitude is a relic of the era of transportation to "convict colonies". Like the distinction between imprisonment with and without hard labour, it is irrelevant to all but readers of the Annual Report on Prisons and to prison governors, who must by the "Rules" note the category each prisoner is in.

mittee with formal responsibility to inspect the prison monthly and report to the Minister for Justice on conditions obtaining within.<sup>11</sup> However, the committee reports are open to public inspection and are now published as part of the *Annual Report on Prisons*. Prisoners do not have recourse to the newly created Office of the Ombudsman, a prohibition specifically stated in the mandate given to that office (Council for Social Welfare, 1983, p. 49). Visiting Committees and officials from the Department of Justice are thus the only immediate forum of appeal to which prisoners have recourse.

Conditions generally in Irish prisons and places of detention and the treatment of individual prisoners are also subject to international standards, agreed by treaty. The European Convention on Human Rights offers one such form of relief to prisoners seeking redress. Ireland is also a signatory to the Council of Europe's "Standard Minimum Rules for the Treatment of Prisoners", rules inspired by the United Nation's own prescribed standards.

The 1947 Irish Prison Rules have little relevance for the prison system today (see, for example, the comments of the Chief Justice as reported in Byrne *et al.*, 1981, p. 9). They are but one of many anachronisms that hinder the operation of the criminal justice system. The Rules are neither appropriate for what the prison system now avows as its objectives nor do they recognise the importance of discretionary decisions on release dates. However, in 1983 they were modified in one crucial respect to meet contemporary realities. Statutory instruments of that year made it possible for two or more prisoners to occupy a cell if accommodation would otherwise be insufficient.<sup>12</sup>

Perhaps the final word on the current objectives of the prison system should be left to the Department of Justice. These are formally stated in the 1981 annual report (p. 29):

The principal objective of the prison system is to contain offenders committed to it by the courts. The degree of security or "regime" which is necessary to achieve this containment varies, of course, from prison to prison depending on the type of offenders in cus-

<sup>11</sup>Under the terms of the Prisons (Visiting Committee) Act, 1925 and another statutory instrument, the Prisons (Visiting Committees) Order, 1925, with a subsequent Order having been issued in 1972. The history of the post-Independence Visiting Committee system is outlined in *The Prison Study Group* (1973, pp. 82-84).

<sup>12</sup>The two instruments, which received little publicity, are "Rules for the Government of Prisons, 1983" and "Detention of Offenders (Loughan House) (Amendment) Regulations, 1983".

today. However, no matter how high the level of security in a prison, there is an obligation on the prison system to provide facilities for the offenders which will enable them as far as possible to utilise their time in custody to the best advantage and for their own self-improvement. The aim is to equip the offender with educational, technical and social skills which will help him to turn away from a life of crime, if he so wishes.

Surely these represent a reasonable set of objectives that the Irish prison system should be expected to meet. The *Annual Report on Prisons* might well be re-oriented towards information on the effectiveness and efficiency with which all the above objectives are being achieved each year.

### 3.V Conclusion: Coordination and Accountability in the Criminal Justice System

This chapter described the objectives of the criminal justice system and the manner in which responsibility for evaluating success towards those objectives is currently distributed in this country. One pervasive theme has been the lack of rationalisation and consolidation in three basic elements of the criminal justice system: the choices offered to decision-makers, the regulations for reaching choices in specific instances, and mechanisms for accountability in decision-making. The accumulated law and procedures of many centuries are no longer capable of providing those elements.

In the 1960s, the impetus to reform appeared to be present but was not followed through into the 1970s (Boyle and Greer, 1984, p. 22). The main legacy is the accumulation of reports by committees and commissions whose recommendations await implementation.

The response must in part take the form of a modern codification of the criminal law and of the statutory sentencing powers of the courts. It is unlikely that the current provisions can provide clear sentencing guidelines, either from the law or from the results of appeals. Similarly, many safeguards established to provide fairness and accountability in decision-making are by now far out of date: The Judges' Rules, which date from 1918, The Children Act, 1908, and the Prison Rules of 1947 are all inadequate, as are many other regulatory instruments mentioned in this chapter. The very structure of the Irish criminal justice system is sufficiently out of date to hinder the accomplishment of its objectives.

Finally, this chapter, like the criminal justice system, has concentrated on those accused or convicted of a crime, not on the victims of the crime.

At present, victims are participants in the criminal justice system as complainants, witnesses, or as recipients of monetary compensation from the state. Voluntary organisations also at present have but a minor role in the system. Making provisions for victims of crime and encouraging voluntary bodies to become involved in the criminal justice system, especially for young adults and adults, are two issues that merit attention.

## APPENDIX TO CHAPTER 3

### Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms

#### Article 5

- (1) Everyone has the right to liberty and security of person.  
No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- (2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- (3) Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to

release pending trial. Release may be conditioned by guarantees to appear for trial.

- (4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- (5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

#### Article 6

- (1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- (3) Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## CHAPTER 4

### SOCIAL CHANGE AND CRIME: RECENT TRENDS IN OFFENCES AND OFFENDERS

#### 4.I Introduction

This chapter is divided into three sections. The first offers an explanation for the rapid rise in the level of criminal activity and of fear of crime. It does so largely by reference to recent changes in Irish society and to how that change fits with the expectations of criminological theories. The second section examines the evidence from the post-1976 trends in Irish crime levels and compares what is found to the situation in England, Scotland, and Northern Ireland. In the third section, the characteristics of persons brought into the criminal justice system are analysed. Taken together, the three sections provide the context within which criminal justice policy is to be evaluated. The level of crime, the way crime is organised, and the kind of persons involved in crime represent the challenge the criminal justice system must meet.

#### 4.II Explaining Crime

That social and economic change is accompanied by both higher levels of crime and new patterns of criminal activity seems a near universal experience. As countries industrialise and become predominantly urban, we find the paradox that progress, the evaluation most would give to the broad sweep of modernisation, incurs an apparent cost in the form of a sharply rising incidence of property crime, higher levels of juvenile delinquency and female crime, and patterns of crime that are more sophisticated, more businesslike. In short, crime, too, modernises.

Ireland's situation seems broadly typical of those countries that industrialised recently, and rapidly. Over the past 25 years, newly industrialised nations have, while retaining levels of recorded crime below those found in countries that had industrialised in the 19th century, been marked by rapid increases in crime levels. The gap between the old industrial and the industrialising nations is thus diminishing, but very slowly. The sustained increases in crime in Ireland neatly commence in the mid-1960s, a decent interval of six or seven years after the commitment to large-scale industrial expansion.



But coincidence is not explanation. It does not necessarily indicate what factors might be regarded as causes. Why should the prosperous 1960s have begun a rapid increase in the level of crime, one that is unabated in 1984?

The typical scenario in Continental Europe has been described in this way (Shelley, 1981; Zehr, 1976). Before large-scale industrial development and the associated mass migration to cities, countries were characterised by crime patterns in which violence against persons and rural crime were dominant. Property offences were infrequent. Once urbanisation begins, two processes unfold in the cities. First, violence reaches a peak as the new settlers adjust to city life, responding with the tradition of violence of their places of origin. Second, as people make the transition to urban living, they respond to the abundance of property that surrounds them and to new standards by which they evaluate their relative position within society in ways that vastly increase the rate of property crime. As urban migration slows, crime stabilises, with property crime remaining at a high level and crime like homicide and assault declining to relative insignificance. Such violence as remains is generally associated with acquiring property: as in robbery. So industrial, urban society is characterised by high levels of property crime and low rates of personal violence. Once that point is reached, the level of crime may increase, but only slowly. Such stability, however, appears ultimately to be at risk as juveniles and women become involved in crime at rates never before experienced.

That scenario is applicable to England and less certainly to Scotland. However, it does not have great relevance to Ireland, which never went through the crucial process of massive migration from the countryside into the major urban centres. Emigration ensured that. More generally, the post-1958 revitalisation of Irish society emerged from industrial development that was later, more rapid, more geographically dispersed, and more state inspired than was the case for other Western societies. The problems confronting Irish policy makers in the late 1950s and early 1960s had as much, perhaps more, in common with the non-European post-colonial societies struggling to achieve national integrity. There is a similar affinity in the results of those policies, with a substantial proportion of the Irish population – particularly small farming families and families of unskilled urban workers – left behind in the general course of economic growth (Rottman and O'Connell, 1982; Rottman, Hannan, *et al.*, 1982, Chapters 2, 3, and 6).

If Ireland was, by and large, not subjected to the type of social dislocation that typically accompanies industrialisation process, with a

very low level of internal migration by international standards (Hughes and Walsh, 1980), then we need to look to other factors to explain the recent upsurge in recorded crime.

A study of Irish crime trends over the 1951-75 period (Rottman, 1980) found that the growth in crime was entirely concentrated in the post-1965 period. It concluded that the evidence strongly supports the theory that increased crime rates are consequences of the specific social structural change a society experiences. The mid-1960s in Ireland represented a watershed, breaking the long-standing pattern of stable levels of crime and abruptly establishing a twelve year succession of substantial increases in the number of serious property offences. Between 1964 and 1975, the Garda statistics show a 4.3-fold increase in housebreaking, a 3.2-fold growth in shopbreaking, a 7.5-fold increase in the number of stolen motor vehicles, and an 11.4-fold rise in robberies. The smallest increases were for assault, 2.3-fold and for the average value of property stolen in breaking offences, 1.8-fold. For all the property crime indicators, the 1951-63 increases were slight or negligible. The sequencing of the rise in crime was sufficiently consistent to justify a conclusion that in Ireland a "structural change" in criminal activity was one concomitant of the general break with Ireland's economic past that occurred in the early 1960s. A decisive break with the past occurred, not a process of gradual accommodation to change. The growth in opportunity, as manifest in the abundance of consumer goods, offered the strongest specific structural change that could be linked to the crime trends.

A comparison of urban and rural crime trends confirmed the distinctiveness of the Irish experience. Though the level of crime was higher in Dublin than elsewhere, measured on a per capita population basis, the post-1964 trends were quite evenly experienced in all parts of the country. Dublin, other urban centres, and rural areas had similar upward trends in those years. Such evenness is unusual as most post-industrialisation rises in crime began in the major urban centres and only after a substantial interval filtered down to small cities, towns, and villages.

For these reasons, the study concluded that Ireland did not fall within the well-identified syndrome of substantial changes in the level of pattern of crime that accompanies industrialisation and urbanisation in most countries (Rottman, 1980, pp. 146-149).

Japan and Switzerland are the two countries criminologists most often cite as having avoided the post-World War II growth in crime because of

distinctive patterns of economic and social change. Crime statistics for Japan suggest that the incidence of homicide, rape and robbery have in fact declined as have all major forms of property crime, over the 1960-75 period; only violations of motor vehicle regulations have increased (Shelley, 1981, p. 74). There is broad agreement on the major reasons for such a decline, so deviant from the usual experience, but criminologists vary in the weight they attach to the possible factors: (1) the homogeneity and resultant cohesiveness of the country's population, (2) the evenness with which the benefits of economic development — legitimate opportunities — were distributed, (3) the durability of traditional familial ties and controls, and (4) the highly efficient systems of policing and punishment, combined with excellent police-community cooperation.

Switzerland, the other exemplar in the criminological literature, contrasts sharply with Japan in its heterogeneous, culturally diverse, population, but never experienced a substantial in-migration to its major cities and is claimed to have integrated its young people more fully into adult society than most Western countries with a consequent lack of peer group pressures on adolescents (Clinard, 1978). So extraordinarily rapid industrialisation and urbanisation, in the case of Japan, and extraordinary affluence, in the case of Switzerland, did not inevitably lead to a "modernisation" of crime.

Ireland, too, has been cited as a country with little crime. In a book published in 1981 (Shelley, p. 70), a pre-modern, pre-industrial social structure is attributed to Ireland and used to explain a putative pre-modern pattern of crime:

A recent study of Interpol crime statistics reveals that the relationship between murder and larceny rates still appears to be one of the best indicators of development. These international statistics show that almost all the societies with high rates of larceny and low rates of murder were developed countries. In Europe, the only exceptions were Ireland and Italy, where strong family ties, the ages of the populations and continuing emigration cause both countries to score low in murder and larceny.

As a description of Ireland and crime in Ireland in the mid-1950s the quotation might possess considerable validity. Today, it rings untrue. It is as if two and a half decades of industrial development had not taken place.

A more realistic contribution to our understanding of the economic and

social factors underlying Ireland's crime problem was made by the Association of Garda Sergeants and Inspectors. It focused on the breakdown in the traditional forms of social control that once prevailed and the concentration of social deprivation in life chances, facilities, and amenities in particular areas. As they note:

Because of changed social circumstances and working conditions, poor planning, industrialisation, and large scale migration from rural to urban areas, new attitudes and pressures have been created and there has been a tendency for sections of the public to become alienated from the police. A shortage of manpower and resources have forced the police to develop high technology responses . . . thereby leaving less time to develop effective links with the public at large (*A Discussion Paper Containing Proposals for a Scheme of Community Policing*, 1982, p. 7).

That quote captures some of the quality of the change that Ireland has experienced and the proposals that follow in the discussion paper have great merit. But perhaps it gives too little emphasis to the existence of new rules of conduct, new forms of social control that tend to characterise urban life and life generally today. In other words, people have adjusted to changed circumstances — the current pattern of crime is largely attributable to the success with which new outlooks, new perspectives have replaced those that prevailed 20 to 25 years ago. Once that occurred, it is unlikely that we can move back, to impose the world of the village on to Dublin in 1984.

Also, this downplays the sheer abundance and ready availability of consumer goods and the importance that possession of such goods has come to assume for activities and opinions that people value. It is a change evident at all sections of society. It also relates to the growing importance in people's lives, especially young people, of networks involving a single age group.

The pattern of Irish economic and social change was also distinctive from the development typical model, but crime has increased persistently for the past 15 and more years. A number of factors are involved, and can be briefly summarised here:

1. The suddenness and rapidity of Irish industrialisation, achieved through a conscious act of will by government in the late 1950s, had wide-ranging effects on all of Irish society by the mid-1960s.
2. Industrial development policy sought to diffuse industrial

employment and avoid concentration of work and population in major urban centres.

3. The cessation of emigration was not replaced by massive immigration to Dublin. Moreover, those individuals who did migrate to Dublin were better educated and of higher occupational status than native-born Dubliners.
4. The changing age structure resulting from demographic vitality, the end of emigration, and the substantial returned migration of the 1970s: by 1981, the 15-24 age group represented 18% of the population, in contrast to its 15% share in 1951, a rise in numbers from 443,000 to 607,000.
5. A massive growth took place in the availability of mass produced consumer goods, which are portable, anonymous, and of growing symbolic importance to claims to be a particular kind of person (the motor vehicle being the most obvious example).
6. Opportunities did not only increase in terms of the numbers of goods worth stealing. Prosperity and demographic trends combined to greatly expand the number of potential targets of housebreakings: there were 726,000 private households in 1971 and 898,000 in 1981 (CSO, 1983, p. xiv).
7. The benefits of economic progress were unequally experienced. This is particularly evident in the social class patterns of educational participation and unemployment risk. Left without a realistic point of entry into the occupational positions created in the post-1958 period, successive groups of children have grown up in many urban working class neighbourhoods watching their older brothers and sisters enter the trap of early school leaving and high unemployment (Rottman and O'Connell, 1982).
8. These social class specific factors have been accentuated by housing policies by local authorities, which uprooted traditional working class urban communities and dispersed their residents to suburbs. Here public policy has reinforced the concentration of disadvantage. Dublin is more segregated by social class than other major European cities (Bannon *et al.*, 1981, p. 85).
9. The "troubles" in Northern Ireland have directly contributed to the Republic's crime problem by increasing both the numbers of some serious offences and adding a new dimension of sophistication and use of firearms.
10. There have also been indirect consequences of the situation in the North. First, it has affected public perceptions about crime, with part of the current anxiety reflecting a concern that what is now occurring in Belfast and Derry may one day

be experienced in Dublin and Cork. Second, quite apart from groups involved in subversive activities, the ethos of subcultures whose members base their shared identity around lawbreaking has changed. Changes in the beliefs and customs of those interpersonal networks have taken place, making crime more malevolent and violent, a change particularly evident in the increased use of firearms in "ordinary" crime.

11. The above factors (6-10) coincided with a sharply rising problem of drug abuse in urban areas (Bradshaw, 1983).

Chapter 6 will return to and expand on many of these points when it considers the relevance of social policy instruments to the problem of crime. For the present, however, they serve as an introduction to the review of post-1975 Irish crime trends and the comparison between crime levels here and in the United Kingdom.

#### 4.III The Changing Level and Pattern of Crime

This section of Chapter 4 updates some of the indicators used in the previous cited study of 1951/1975 crime trends. It focuses on two offences, burglary and robbery, and contrasts trends in the numbers of offences with trends in the amount of property loss sustained. Also, the trends are examined separately for Dublin, the combined figures for the four largest cities (Cork, Galway, Limerick, and Waterford), and the remainder of the country, which is labelled the non-urban areas. Reference will also be made to detection rates, as they assist in the interpretation of trends in "known offences".

Though burglary and robbery were selected as the most reliable indices of changes in serious criminal offences, changes in the relevant statute law and in the Garda statistics complicate a simple extension of the 1950-75 analysis to subsequent years. The Criminal Law (Jurisdiction) Act, 1976 repealed the sections of the Larceny Act of 1916, which had hitherto defined breaking and entering offences, and established two new offences: burglary and aggravated burglary. A burglary is

- (1) entering any building or part of a building as a trespasser with intent to
  - (i) steal anything,
  - (ii) inflict grievous bodily harm on any person,
  - (iii) rape any woman,
  - (iv) do unlawful damage, or if
- (2) having entered any building or part of a building as a trespasser one
  - (i) steals or attempts to steal anything,

- (ii) inflicts or attempts to inflict any grievous bodily harm on any person (O'Siochain, 1977, p. 162).

The offence is "aggravated" by possession of a real or imitation firearm, a "weapon of offence" ("any article made or adapted for use for causing injury to or incapacitating a person"), or explosives. These two forms of burglary are combined in the analysis. The new definition of burglary abolishes the traditional subcategories based on type of victim (house-breaking or shopbreaking) which were used in the 1951-75 analysis, which therefore cannot be updated.

Potentially, there is an overlap in what represents an armed robbery or an aggravated burglary, but over the 1976-81 period, a consistent classification procedure seems to have been adopted (though this was changed with the 1982 *Annual Report on Crime*). Unpublished information on the total value of property stolen through burglary and through robbery on geographic distributions was obtained through the co-operation of the Garda Siochana and the Department of Justice.

The basic information for examining changes in burglary and robbery offences can be found in Tables 1 and 3, respectively. A useful basis for comparison is between 1970-75 trends and those for 1976-81. For burglary, the 1970-75 total recorded increased by 69%; for the six subsequent years, the rise was 33.5%. In the case of robbery, the 1970-75 increase was 3.3-fold, compared to the 48.5% in 1976-81. We now examine the trends first for burglary and then for robbery in more detail.

The national pattern that emerges for burglary in Table 1, which can be more conveniently seen in Figure 2, suggests that in 1978 and 1979 the rise in burglary had temporarily halted, the first such pause since the mid-1960s. Very sharp increases after 1979 were registered leaving the total number of burglaries in 1981 to stand at 25,883, in contrast to the 19,386 that were recorded in 1976. That pattern is of particular interest in that it is mirrored in the trends in Dublin and the non-urban areas, and, to a lesser extent, in the "four-cities". It is also apparent in the trends for the total value of stolen property, again with considerable geographic consistency.

The trends in the number of offences taking place for property crime such as burglary need not be similar to trends in the total value of property stolen by burglars. For example, if the value of the stolen property rises more rapidly than do offence numbers, the "typical" burglary is probably becoming better planned, executed and more

Table 1

Burglary

Number Recorded

Year	State	DMA	4-Cities	Non-Urban
1976	19,386	10,404	3,097	5,885
1977	21,534	11,889	3,154	6,491
1978	19,362	10,862	2,908	5,592
1979	19,206	10,162	3,135	5,945
1980	22,485	12,525	3,111	6,849
1981	25,883	13,075	3,737	9,071

Total Value of Stolen Property  
(in 1976 prices)

Year	State	DMA	4-Cities	Non-Urban
1976	3,210,945	1,967,614	240,432	1,002,889
1977	3,525,793	2,282,899	266,754	976,140
1978	3,401,892	2,276,198	242,060	883,634
1979	3,424,685	2,318,719	249,837	856,129
1980	4,378,135	3,070,439	359,876	947,820
1981	5,515,406	3,733,868	334,474	1,447,064

Detections (%)

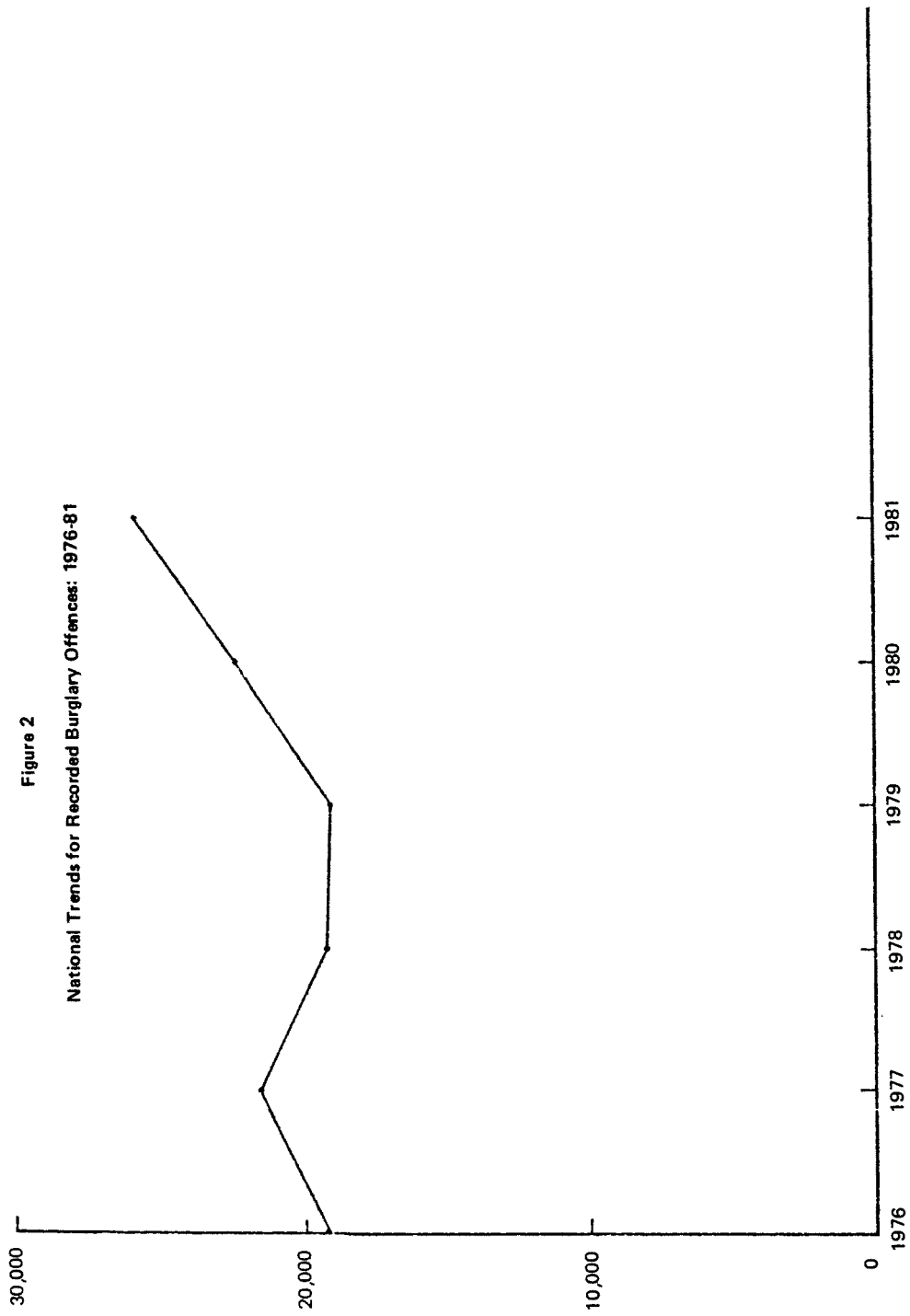
Year	State	DMA	4-Cities	Non-Urban
1976	45.6	48.9	41.4	41.9
1977	42.8	45.1	39.1	40.3
1978	44.1	46.5	44.4	39.3
1979	44.2	46.9	41.1	40.8
1980	41.7	42.6	37.4	42.2
1981	38.7	40.7	31.8	38.7

businesslike than heretofore. Such a change in the nature of the offence is as important, or more important, than any change in the number of burglaries.

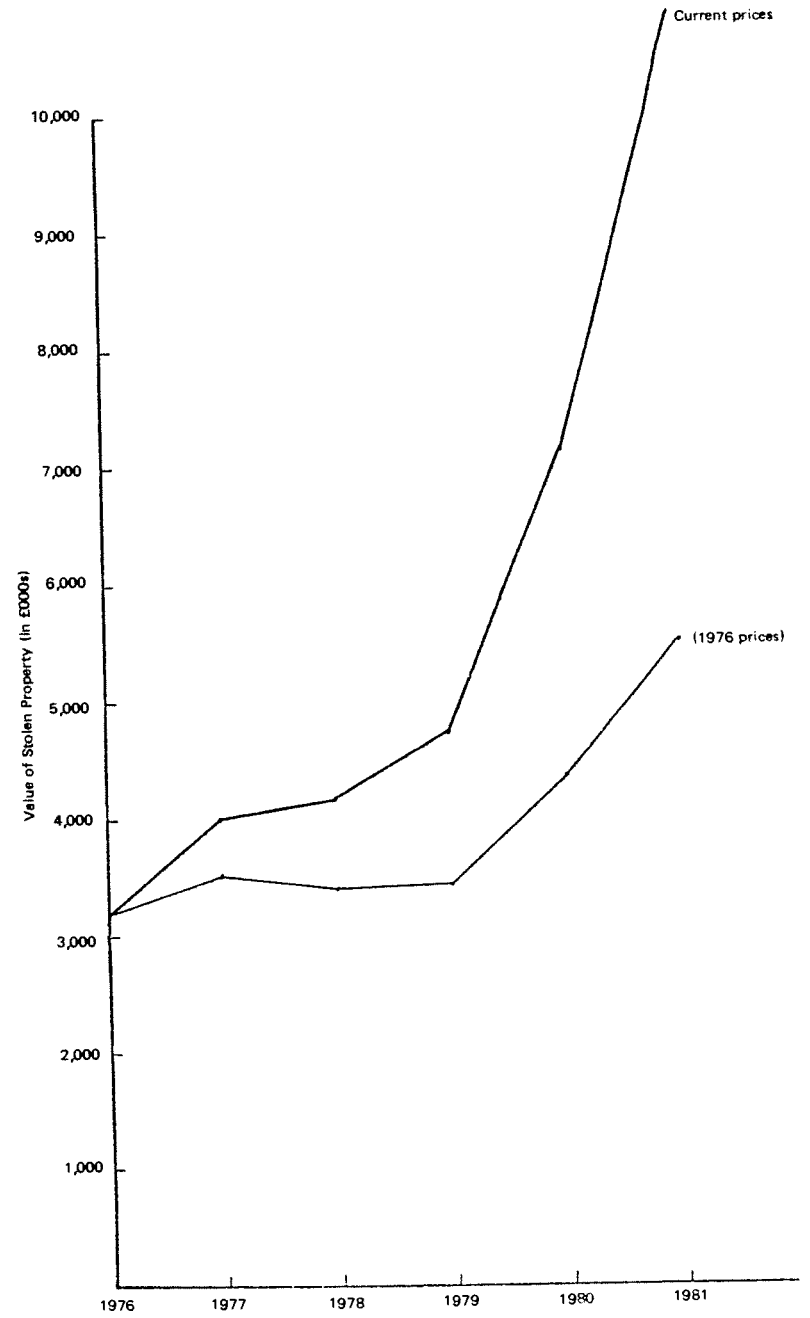
In contrast to the 1964-75 trends, after 1976 there is evidence of such a transformation (see Figure 3). Even adjusting for inflation, the total value of property stolen through burglaries grew by 72% over the six years, while the number of recorded burglaries increased by 6,497 — roughly one-third. So, on average, the loss inflicted through burglaries was rising more rapidly than numbers. This suggests an emerging pattern of more sophisticated crime.

That change, however, is primarily urban: outside of the five largest urban areas, the sheer increase in numbers of burglaries was the major change. Dublin was the location for 54% of all burglaries in 1976 and

**Figure 2**  
National Trends for Recorded Burglary Offences: 1976-81



**Figure 3**  
Total Value of Stolen Property in Burglaries, 1976-81



51% in 1981; the "four-cities" recorded 16% of burglaries in 1976 and 14% in 1981; the comparable proportions for the non-urban areas are, therefore, 30% and 35%. The trend in the value of stolen property was such that £68 out of every £100 lost through burglary in 1981 was in Dublin.

In interpreting the changing nature of crime in Ireland, it is therefore desirable to separate two strands: (a) that of the "typical" burglary or other property offence, which may increase in frequency either with or without a concomitant rise in the sophistication with which the offence is carried out and (b) an "elite" set of practitioners, who though few in numbers, may become established and exert a considerable influence on the crime statistics. The median – or middle value – of property loss is the most sensitive indicator as to which is typical, as unlike the average it is uninfluenced by a few spectacularly profitable incidents. Table 2 allows us to examine such a measure for the 1976-81 period, based on unpublished Garda statistics. The two left-hand columns present the median value of property lost in burglaries annually since 1976, shown in the actual values and in values deflated by the Consumer Price Index. It is the latter figure that should be of primary concern. With the exception of the substantial change in 1980-81, the middle ground evinced little movement after 1976. The typical burglary returned a real profit which stood constant at just below £60 in 1976 prices. Though a substantial loss for some victims, the value for all but cash would be far less if sold illicitly to obtain cash, thus leaving a rather small actual return for the burglar's effort. The 1980-81 rise brought the median loss to over £100 for the first time – £140 – and nearly one half again as high as the average found in 1976. More recent information suggests that this upsurge persisted over 1981-82.

The median figures exclude burglaries in which no loss of property occurred. The extent of such burglaries is itself of interest. It indexes the willingness of the public to report property crime to the Gardai and the Gardai to record it even if no financial loss occurred. It also measures the extent of breaking and entering as a form of mischief-making.

Though the human suffering that results from a housebreaking is not adequately reflected in the monetary loss, there is a basic difference between burglary without such a loss and a more purposeful attempt at illegal entry for gain. Table 2 strongly suggests that a consistent pattern of reporting burglaries exists, in which about one of every seven incidents reported to the Gardai did not involve any financial loss to the victim. Such reporting and its stability over time is reassuring in terms of the comprehensiveness of the official statistics on the level of such offences.

Also, had the incidents without property loss been taken into account, either the average or the median "cost" of a breaking offence, the magnitude of the loss sustained through the typical burglary would be substantially reduced.

Table 2

Median value of property stolen in burglaries\*

	Median (current prices)	Median (1976 prices)	Number involving no loss	Total recorded burglaries	Percent of all recorded without property loss
1976	£53.26	£53.26	2,212	18,694	11.8%
1977	£64.33	£56.60	3,039	21,124	14.4%
1978	£71.92	£58.80	2,815	19,020	14.8%
1979	£80.66	£58.25	2,926	19,139	15.3%
1980	£97.41	£59.51	3,283	22,161	14.8%
1981	£140.31	£71.19	3,908	25,571	15.3%

\* Excluding recorded burglaries in which no property loss was reported.

The statistics on property loss from burglary are thus reassuring for the 1976-80 period; thereafter, they introduce a cautionary note. It is clear that in the balance between more of the same form of crime and more sinister endeavours, continuity has prevailed, but a fundamental change may have occurred and simply not as yet been registered in the available statistics. In 1982 just under two-thirds of all burglaries in which property was taken involved a loss of more than £100. The comparable figure for 1980 was 49.2%, a rise that easily outpaced inflation.

There is also little indication that the public, in the face of rising level of victimisation, is becoming less zealous in reporting offences. In 1971 about 5% of all the burglaries recorded did not involve a loss of property, a percentage characteristic of the 1960s and early 1970s; yet in 1981, some 15% of recorded burglaries did not involve property loss. So it is difficult, at least for the offence of burglary, to argue that public indifference is leading to official statistics understating the growth in crime. The public is, by all indications, becoming more voluble.

Statistics on "detections" can also be found by returning to Table 1. Though reflecting more directly on the activities of the Gardai, detection rates do also provide an indication as to the nature of crime. High rates of detection are likely to obtain only where the level of sophistication and organisation in criminal activity are slight; in particular, it suggests a small number of relatively inefficient but prolific practitioners.

Detection rates for burglary are, therefore, indicative of both the predominantly unsophisticated form in which it has traditionally been practised in Ireland and to the magnitude of the change. Detection rates at the level claimed by the Gardai are likely only where (1) in a large proportion of all incidents those believed responsible can be identified immediately and (2) once someone is arrested a substantial number of additional offences can be cleared from information from the arrested person(s) and from knowledge about the current offence (see Reiss and Bordua, 1967, p. 43).

It is interesting in this regard that detection rates for burglary have consistently been higher in Dublin than in other parts of the country. Though there is a long-standing trend toward falling rates of detection, that differential and an overall high level of detections have been maintained. The influence of Garda activity on detection rates will be considered in the next chapter of the report.

Robbery, like burglary, is an offence that is both part of the imagery on which the public attitude toward crime is based and a reasonable index of both the prevalence and seriousness of crime. Essentially, a robbery occurs if a person "steals and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subject to force" (Section 5, Criminal Law Jurisdiction Act, 1976). In the *Report on Crime* an armed robbery is one in which a real or imitation firearm was the "force". The definition of what comprises a robbery was not greatly modified by the 1976 Act, allowing for a consistent 1951-82 data series.

Table 3 provides the necessary material for assessing change since 1975 in robberies, with Figures 4 and 5 summarising the trends in, respectively, number of offences and the total value of property stolen. Here the pattern is less clear than that for burglary, but nonetheless suggests a stabilisation in crime levels during the late 1970s. Unlike burglary, however, such a plateau has precedents in the post-1964-65 trends, in which a very sharp rise from 1966 to 1972 with 73 in the former year and 622 in the latter – was halted for a time.

Geographically, robbery is predominantly "urban" and more particularly Dublin-based. The 1976-81 increases in the number of robberies is attributable to Dublin, the bulk of property stolen was taken in Dublin, and both the numbers and real value of stolen property has been declining in the non-urban areas. The concentration of robbery in Dublin is such that it was the location for 68% of all recorded robberies and 66%

Table 3

Robbery

Year	State	DMA	4-Cities	Non-Urban
1976	916	626	78	218
1977	1,058	837	73	148
1978	925	731	76	118
1979	1,020	835	53	132
1980	1,146	945	76	125
1981	1,361	1,093	84	184

Total value of property stolen (in 1976 prices)

Year	State	DMA	4-Cities	Non-Urban
1976	767,496	503,520	25,815	238,161
1977	870,376	611,359	8,022	250,995
1978	1,762,738	802,084	145,054	815,600
1979	1,591,124	1,014,105	189,918	387,101
1980	904,993	451,087	21,705	432,201
1981	591,322	485,325	28,620	77,377

Detections (%)

Year	State	DMA	4-Cities	Non-Urban
1976	42.6	39.3	52.7	47.2
1977	33.6	30.9	50.7	39.9
1978	40.6	41.2	43.4	35.6
1979	40.4	40.7	30.2	42.4
1980	38.1	35.2	63.2	44.8
1981	38.2	36.9	52.4	39.7

of the total value of property stolen in 1976; for 1981, the comparable figures were 80% and 82%.

Whether measured in current prices or in prices adjusted for inflation, the total value of property stolen in robberies rose dramatically after 1976 and then declined even more dramatically after 1979. The consistency across the three types of areas is again strong. But in this instance levels of incidence and the monetary losses sustained are moving in opposite directions. As the number of robberies essentially remained unchanged, even declining somewhat, the value of the property stolen was increasing, and later, when the growth in levels resumed the extent of the loss declined. So whatever the degree of increased incidence, which in light of previous experience was relatively slight, there is little evidence to suggest that a more organised, sophisticated form of robbery was sustained for the full six years.

Figure 4

National trends in recorded robbery offences, 1976-81

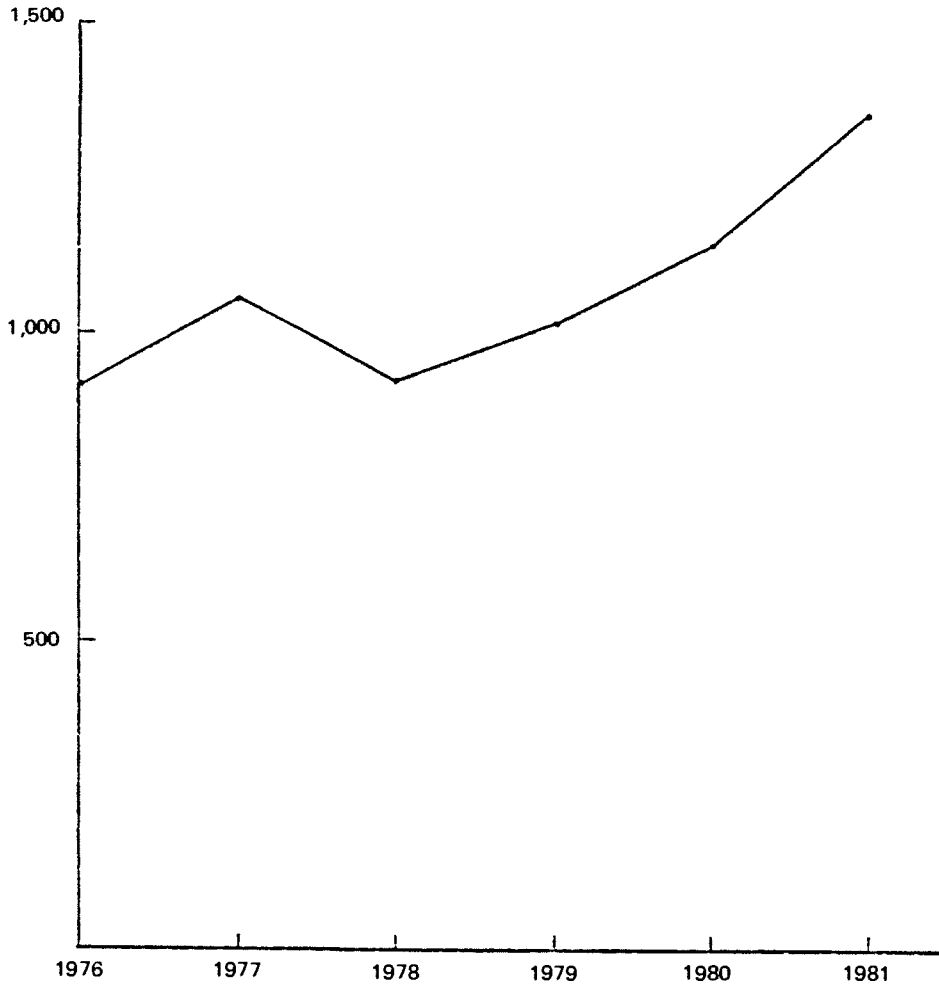
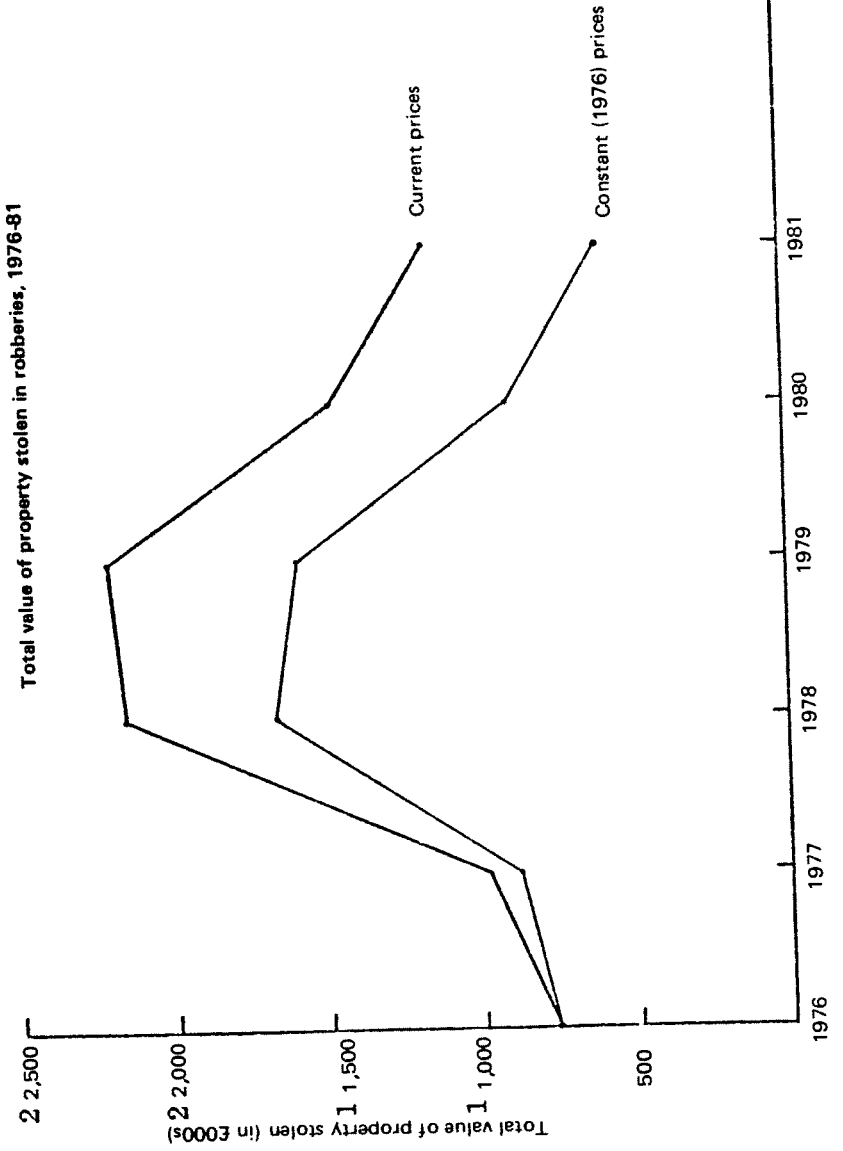


Figure 5

Total value of property stolen in robberies, 1976-81





Again, detection rates are informative about the nature of a category of offence. Over the 1976-81 period there is more evidence of fluctuation than of an actual trend toward lower rates of detection. Given the smaller number of incidents, fluctuation is, of course, more likely to be present than for an offence like burglary. But even viewed in the perspective of the 70% and higher rates recorded by the Gardai in the late 1960s, the current detection rates suggest a similar pattern as was described for burglary: a substantial proportion of robberies are such that can be readily attributed to particular suspects. It should, however, be noted that loss from an offence like robbery is likely to be highly skewed, with most incidents involving relatively trivial sums and a small number of robberies being responsible for a considerable share of the total value of the property lost through all robberies.

This analysis of the post-1976 crime trends confirms the continuation of the upward trend in the level and the seriousness of crime that first became evident in the mid-1960s. The strength of the trend is greater for incidence than for change in the nature and pattern of crime. Placed in the perspective of the experience since the mid-1960s, the trends are less alarming than when viewed on their own.

This section of Chapter 4 has analysed recent changes in the extent and nature of crime by examining trends in two major offence categories: burglary and robbery. The rationale for adopting such a limited focus was given in a previous study of crime in Ireland (Rottman, 1980). As will be seen in the next chapter, statistics on "known" and "detected" offences are difficult to interpret, even when used as indicators of police effectiveness. Selectivity is essential.

The 1976-81 trends suggest that the late 1970s continued the upward spiral evident since 1965, but at a more restrained pace than in the early 1970s. Continuity was also evident in the basic consistency in Dublin, other urban, and non-urban trends, and the tendency for the sheer rise in numbers to far outweigh any changes or increase in offence seriousness. Information on the average value of property taken by burglary and robbery and on detection rates suggest crime remains chiefly the province of relatively unsophisticated practitioners, who are notable more for the number of offences than for style or organisation. However this was less true for robbery, where the late 1970s saw a rise in the number of more efficient, more lucrative offences.

The geographic distribution of crime did not appreciably alter in the late 1970s. Dublin continued to have a far greater share of the country's crime than of its population, with one half of all burglaries and four-

fifths of all robberies occurring in the Dublin Metropolitan Area. For burglary, there was also a tendency for offences to involve a more substantial loss in Dublin than elsewhere.

Overall, therefore, recent trends in Garda crime statistics argue for concern but not for a sense of crisis. Much of the post-1976 rise in crime occurred in minor forms of larceny. Homicide, perhaps the most important of all indices of the magnitude of the crime problem — and also the most reliable as a measure of change over time — has not become more frequent over the past decade (see Rottman, 1980, Chapter 5).

Publication of the *Report on Crime 1982* provided less comfort. The number of burglaries recorded by the Gardai jumped from 25,300 in 1981 to 32,142 in 1982. Robberies increased from 1,361 to 1,883 between those two years.<sup>1</sup>

#### 4.IV A Comparative Perspective on Offences and Detections

Previous analysis of trends over time in the official crime statistics, summarised and updated in this chapter, identified a distinctive Irish pattern. That pattern of stable levels before, and large successive increases after, the mid-1960s, was associated with the shift in opportunities for crime, particularly as manifest in the abundance and symbolic importance of various types of property. This suggests that Ireland compared to the "old" industrial countries of Europe and North America will have a lower level of crime but a higher rate of increase in crime at present.

Comparisons based on police crime statistics confirm both expectations. Burglary and robbery statistics from the United Kingdom offer the most accessible comparative dimension. Familiarity with the countries involved, the basic similarity of the legal codes, and the extensive research that has been undertaken into the representativeness of English and Scottish crime statistics, all facilitate comparison. Four years — 1971, 1976, 1980 and 1981, are used and the comparison is limited to the total known breaking and entering offences, (burglary) and robbery offences. By adjusting numbers of offences into rates per 10,000 or 1,000 persons 15 years of age or older, the comparisons control for differences in population size and partially for age structure differences. Both 1980 and 1981 figures are included because of the considerable growth experienced in the UK crime statistics between 1980/81. Burglary rates are shown in Table 4 and those for robbery in Table 5.

<sup>1</sup>The rules for categorising incidents into either "armed robbery" or "aggravated burglary" for purposes of the *Report on Crime* were changed in 1982. Some types of incidents once entered in the statistics as armed robberies are now classified as aggravated burglaries, rendering the 1981-82 difference inexact for both offence categories.

Table 4

## International comparisons: burglary

	England and Wales*			Scotland			Northern Ireland			Republic of Ireland						
	1971	1976	1980	1981	1971	1976	1980	1981	1971	1976	1980	1981	1971	1976	1980	1981
Burglary:																
Number known	451,000	515,500	622,600	723,700	59,200	79,800	78,400	95,700	10,600	15,900	19,700	20,500	9,971	19,336	22,175	25,300
Number per 1,000 adults**	12.1	13.6	16.0	18.6	15.3	20.2	19.5	23.8	9.8	14.5	17.4	18.1	4.9	8.7	9.4	10.7
Detection	37%	34%	31%	30%	26%	20%	22%	20%	27%	16%	20%	22%	51%	44%	41%	38%

\*Offences known in 1980 and 1981 are not precisely comparable with earlier years because of changes in the counting rules "to improve the consistency by the police of the recording of multiple, continuous and repetitive offences."

\*\*1980 and 1981 population bases: 1980 estimates of population age 15 and older.

Turning first to Table 4, we find a clear difference in 1971 for burglary: there were twelve burglaries recorded for every 1,000 persons in England, 15 in Scotland, just under ten in Northern Ireland, and about five in the Republic. Police in England reported a "clearance rate" of 37% in that year, the Scottish police one of 26%, the RUC a rate of 27% and the Gardai a detection rate of 51%. By 1981, though the number of burglaries recorded in each jurisdiction had greatly increased, the gap between Ireland and the other countries had narrowed. So in 1981, in England, 19 burglaries were recorded for every 1,000 adults, in Scotland 27, in Northern Ireland 18, and in the Republic just under 11 per 1,000 adults. As reported incidence rose, detection rates declined, again with some deterioration in the advantage the Gardai had enjoyed in 1971. Police in England during 1981 reported a success rate of 30%, those in Scotland 20%, the RUC in Northern Ireland 22%; the Gardai in 1981 detected 38% of all known burglaries.

Table 5, which provides the comparisons for robbery offences, confirms the basic pattern found in the official statistics on burglary. In 1971 there were two robberies per 10,000 adults in England and Wales, six in Scotland, just under six in Northern Ireland, and 1.5 in the Republic of Ireland. While the English and Welsh police detected 42% of those robberies in that year, and the Scottish police and RUC respectively, 29% and 7%, the Gardai reported a detection rate of 48%. If we exclude Northern Ireland we find that the increases in the Republic were greater between 1971 and 1981, but that in 1981 the levels were roughly comparable, adjusted for population size, between England and Wales and the Republic and substantially below the level of Scotland. The detection rates in the Republic remained significantly higher than elsewhere: 38% in 1981 against the 25% claimed by the English police, the 26% by the police in Scotland, and the 15% by the RUC.

A similar assessment of Ireland's relative position was made by O'Reilly (1983, p. 23) who concluded that "our crime rate would have to rise by 60% or more before reaching that of our neighbours".

Crime victimisation surveys, in which a large number of randomly selected persons or families are asked (a) whether they had been the victim of various types of crime and (b) if so had reported that victimisation to the police, offer an alternative yardstick of the magnitude of the crime problem. Official crime statistics and victimisation surveys each have their limitations as measures of crime (Breen and Rottman, 1984a and b). Therefore, conclusions based on one measure will necessarily be inconclusive. We know, for example, that in the UK, though police burglary statistics over the 1970s registered a consistent and

Table 5

## International comparisons: robbery

	England and Wales*			Scotland			Northern Ireland			Republic of Ireland			
	1971	1976	1980	1971	1976	1980	1971	1976	1980	1971	1976	1980	1981
Robbery:	7,500	11,600	15,000	2,300	4,200	3,700	600	2,100	1,300	314	909	1,133	1,342
Number known			20,300			4,200			2,700				
Number per 10,000 adults**	2.0	3.0	3.9	5.9	10.6	9.2	5.6	19.1	11.5	1.5	4.1	4.8	5.7
Detection	42%	33%	29%	29%	20%	27%	7%	15%	20%	48%	41%	37%	38%

\*Offences known in 1980 and 1981 are not precisely comparable with earlier years because of changes in the counting rules "to improve the consistency by the police of the recording of multiple, continuous and repetitive offences."

\*\*1980 and 1981 population bases: 1980 estimates of population age 15 and older.

substantial rise (63% over 1972-81), annual victimisation surveys over the same period found an increase of about 10%. Both the public's propensity to report burglaries and the police to record those reports officially increased over the decade. The actual number of burglaries remained essentially stable (Hough, 1983, p. 5).

The recently completed 1982/83 ESRI Crime Victimisation Survey offers the first opportunity to draw conclusions independent of the Garda statistics.<sup>2</sup> The most pertinent findings for this study can be summarised as follows:

1. When compared to the results of the British Crime Survey (which refers to victimisation in 1981), Ireland has a rate of burglary per 10,000 households that is 1.7 times larger than that in England and Wales or Scotland and a rate of vehicle theft that is twice that in either UK jurisdiction. Minor forms of larceny, measured by theft of items from vehicles, were however somewhat less frequent in Ireland than in Great Britain.
2. The discrepant results from comparisons based on official statistics and victimisation surveys reflect differences in (a) the nature of crime as it affects the likelihood that households or commercial/institutional establishments will be the targets, (b) the manner in which police record offences, (c) the willingness of the public to report victimisations to the police.
3. In the comparisons cited above, the public's co-operativeness with the police is not a factor. The Gardai appear to be told of a higher proportion of victimisations than do their British counterparts.
4. Crime in the Republic is extraordinarily, at least in comparison to Great Britain, concentrated in the major urban centres, specifically in Dublin. Though there is no apparent difference among other Irish urban areas by size, the rate of victimisation in rural areas is generally very low, except when in close proximity to a major urban centre. Thus, though the change in crime levels noted in the Garda statistics extended beyond the five largest urban centres, it has not apparently diffused to rural localities.

<sup>2</sup>Between October, 1982 and October, 1983, 8,900 households in the Republic were asked if they had been the victim of six offences during the preceding 12 months: burglary, vehicle theft, theft of property from inside a vehicle, vandalism to household environs, theft of property kept outside the household, and theft from the person. If a victimisation had occurred, the respondent was asked for the number of incidents and the number of incidents which were reported to the Gardaí. For a full discussion of the survey and its findings, see Breen and Rottman, 1984b.

The ESRI survey challenges some beliefs about Ireland's standing relative to other countries. A single survey, carried out in the early 1980s, cannot indicate whether this is a recent development. But it does suggest that the Garda statistics are an inappropriate basis for making international comparisons, due to some distinctive features, many of them laudable, in how they are compiled. The survey also suggests that two types of crime – burglary of houses and car theft – have become substantial urban problems not only in public perception but by the standard of a comparison to British offence levels. It should be reiterated, however, that a victimisation survey is an alternative, not a definitive, measure of the amount of crime. After all, a survey captures people's own definition of whether a crime took place and what type of crime. The Gardai, if notified, may not have accepted that those perceptions corresponded with the requirements of the criminal law.

However, in the case of the above comparisons, much of the discrepancy between survey and official estimates of the amount of crime can be attributed to differences in the statistical procedures which the Irish, Scottish and English police use. Briefly, the official statistics for Scotland include all offences initially associated with a reported offence, while those for the Republic and for England classify each reported incident but once, under the most serious of the offences. The Irish statistics are unique in the extent to which the classification of incidents become updated subsequent to the initial entry. In Scotland or in England, an incident added to the 1983 burglary totals would remain so classified even were court proceedings resulting from that incident to be made under some other category. In the Republic, the entire incident would be reallocated if the change in offence category occurred prior to compilation of the *Annual Report on Crime*. Thus, the comparisons based on official statistics reflect technical differences in the way data are collected in the three countries. The Irish methodology is in many ways admirable, but it conflates two types of information: (a) the number of offences known to the police and (b) the outcomes of court proceedings. Both sets of information are important. But they require separate tabulations.

On balance, the ESRI survey leads to the conclusion that the incidence of some major forms of property crime is higher here than in Great Britain. The distribution of victimisation risk among the Irish population is also more unequally distributed. So in fact some types of households bear a higher risk and others a lower risk than their British counterparts.

Ireland's apparent low level of assaultive offences does not require revision. Certainly the level of homicide, which cannot be challenged

by the results of victimisation surveys, appears to be lower than in Britain and to be low by international standards generally (O'Reilly, 1983; Breen and Rottman, 1984b, Chapter 4; Rottman, 1980, p. 118).

#### 4.V The Socio-Economic Characteristics of Persons Entering the Criminal Justice System

This section summarises what is known about persons who are brought into the criminal justice system. A basic socio-economic profile of such persons should include differentiations by age, sex, social class background, marital status, living circumstances, and place of residence. At present, such information is available only for highly distinctive sub-populations of the group that is of interest: institutionalised juveniles (see the review of research in Burke *et al.*, 1981, pp. 34-48) or long-term offenders in Dublin inner city (from a survey conducted by the Prisoner's Rights Organisation in 1980; the findings are summarised in MacBride, 1982, pp. 100-110), and prison inmates (Irish National Council on Alcoholism, 1980; O'Mahony and Gilmore, 1983). It is not reasonable to generalise from such studies to what might be termed the population of "persons apprehended" – that is, those persons entering the criminal justice system.

Caution in drawing inferences is necessary because of the screening process that typically works at successive stages in the criminal justice process to retain those individuals charged with serious offences, those with records of previous involvements with the process, and those who lack conventional attachments to society (family ties, employment, etc). Selectivities may also tend to make it more likely that older, male, working class individuals are retained for further processing while their younger, female or middle class counterparts are dealt with through diversion outside the formal criminal justice system. Generally, the earlier the stage of the system that we study, the less that group will differ from the characteristics of the population at large. So we can anticipate that the least distinctive group will be that comprised of all persons who come into contact with the Gardai and the most distinctive will be persons incarcerated under a sentence of imprisonment.

In Ireland, at present, it is possible to use Garda records to derive a portrait of the second least selective group who fall under the jurisdiction of the criminal justice system: individuals the Gardai believe committed indictable criminal offences. The Gardai maintain records on the place of residence, age, sex, occupation, and "home circumstances" of all such persons. This extends to persons subsequently released with a caution or through diversion to a programme such as the JLO scheme, and who thus never enter the judicial process.

Two analyses were undertaken using Garda records. The first traces trends over the 1976-81 period in the ages and the place of residence of persons apprehended. The second consists of a far more detailed analysis of the approximately 20,000 Dublin residents who were "apprehended" for an indictable offence in 1981. It examines the full range of relevant information and does so both for the Dublin region as a whole and for specific "social areas" within the region. The full results of both analyses can be found in Appendix I, which is summarised in this chapter. It should be noted that the data being used was generated for administrative rather than research purposes. A discussion of the limitations to the socio-economic variables used in the analyses can be found at the start of the Appendix.

#### 4.V.a The Trend in Arrests, 1976-81

The total number of persons held to be responsible for an indictable offence grew over the 1976-81 period despite the falling detection rate: there were 31,540 such persons in 1976, rising gradually to nearly 35,000 in 1979, and thereafter increasing rapidly to 42,645 in 1981. Dublin residents consistently account for just under one half of the total (Appendix Table 1.2).

Persons younger than 17 represented a sizeable proportion of the total in each year ranging from a maximum of 44% in Dublin during 1978 to a low of 28% in Dublin during 1981 (Appendix Table 1.2). Fluctuation in the share of various age groups in the total of persons "apprehended" is therefore very pronounced, though only among those under age 30. In each year, there is a consistently low representation by persons over 30 in the statistics, about 14% of the total in Dublin and a higher proportion – 17 to 20% – in the rest of the country. Thus, any response to crime will necessarily be geared primarily toward finding the best dispositions for young persons. The statistics on persons apprehended suggest the magnitude of the problem in the sheer numbers of individuals that various age groups represent for the criminal justice system. In 1981, 5,752 persons under age 15 were brought into the criminal justice system, as were 6,474 persons aged 15-16, 12,314 persons aged 17-20, and 10,571 persons aged 21-29. Those numbers contrast with the 7,534 persons aged 30 or greater who entered the system.

Table 6 contrasts the age distribution of those "apprehended" in 1979 with the distribution of the full population as shown in the Census of that year. The disproportionate representation of the offence statistics is greatest for the 15-16 age group, which is over-represented by a factor of nearly five. Persons aged 17-20 form more than three times a greater share of the "apprehended" population than of the national population.

It follows that these age groups must be the primary focus of the criminal justice system. In Ireland, as in other countries, the ordinary process of transition from adolescence to adulthood brings a growing attachment to conventional institutions and responsibilities, particularly work and marriage. As was argued in Chapter 1, adulthood shifts the balance of attraction decisively in favour of conventional, lawful activities for most people. Only a small proportion of juvenile delinquents continue to be involved in crime as adults. The restrictions and insecurities of adolescence that stem from the denial of adult statuses, the "kicks" and excitement of trouble-making and the financial returns from crime all become less relevant by the late teen years. Adult status is achieved, and in most circumstances, the enjoyment and profit of conventional activities exceed what a continuation of crime can provide.

Table 6

Age distribution of national population and of persons apprehended for indictable offences: 1979

	Total population	Persons apprehended
0-9	20.6%	1.9% (668)
10-14	10.0%	17.5% (6,108)
15-16	4.0%	19.3% (6,764)
17-20	7.1%	23.6% (8,252)
21-29	13.3%	22.3% (7,801)
30+	45.0%	15.4% (5,403)
	100.0% 3,368,217	100.0% 34,996

The challenge in terms of young persons (say, under 17 or 18) is thus quite different than that posed by those in their late teens and early twenties. And the far smaller number of adults pose a totally different problem. More precisely, they pose several quite different problems. Most of those who remained involved in crime as adults tend to persist in crime, though for the most part their adulthood is more accurately characterised as one of being a "full-time prisoner" than a "full-time criminal" (Mack, 1975, pp. 185-194). Those individuals for whom crime is a continuous and lucrative activity are rare indeed. Criminal justice policies aimed at that group have little relevance to the vast majority of the individuals included in the statistics on persons apprehended.

The conclusions from studying the total pool of individuals "apprehended" for an indictable offence are reinforced when the offence of burglary is considered on its own. Table 7 provides the age distribution of males suspected of involvement in burglary offences for each year from 1977 to 1981. Those individuals represent a substantial proportion of the totals shown in the Appendix Tables: in many years, roughly one-third of all persons apprehended for an indictable offence.

The offence of burglary seems to be primarily attributable to young people. This fits with the information already presented on the value of property taken in burglaries and the high detection rate. Burglary of this variety, involving juveniles, presumably responding to opportunities as they find them, and carried out with little sophistication, presents a different challenge than burglary carried out in a more methodical manner (Shover, 1974). There is, however, a slight trend over the 1976-81 period toward an increased proportion of older persons among burglary suspects. This is true both in Dublin and in the rest of the country. Yet even in 1981, only one of three persons apprehended for burglary was aged 21 or older.

We lack the information to compare the ages of persons apprehended for an offence like burglary with those persons against whom court proceedings are taken. That is one of the main decision points in the criminal justice system. It is also an area of decision making and discretion which cannot at present be either researched or evaluated.

#### 4.V.b The Socio-Economic Characteristics of Dublin Residents "Apprehended"

The analysis of the 20,000 Dublin residents included in the 1981 statistics on persons apprehended suggests the presence of a syndrome of early school-leaving that culminates in unemployment. By the mid-teens, most of the young men coming to the attention of the Gardai and the courts have left school, the vast majority are unemployed. Eight of every ten males aged 17 or over brought into the criminal justice system are unemployed. It is necessary to stress that this is the socio-economic composition of persons at the initial stage of the system. The extent of early school-leaving and unemployment can only become greater were we to look at later stages in the system. Only a proportion, probably fewer than one half, of the persons apprehended will actually appear in court (see Chapter 4).

A more detailed look at the ages and occupations of males can be found in Table 8. If we look first at the total Dublin area, the youthfulness and marginality in the labour force of those entering the criminal

Table 7  
Age distribution of males arrested for burglary, 1977-81

Age	1977			1978			1979			1980			1981		
	Dublin	Non-Dublin	Total	Dublin	Non-Dublin	Total	Dublin	Non-Dublin	Total	Dublin	Non-Dublin	Total	Dublin	Non-Dublin	Total
0-13	8.6	14.4	11.2	9.9	17.3	13.2	13.4	17.0	15.2	10.2	16.5	13.3	6.5	12.9	9.9
14-16	32.8	36.9	34.6	40.1	29.1	35.1	32.3	31.9	32.1	26.4	31.7	29.0	20.6	27.4	24.2
17-20	23.3	23.4	23.4	25.0	26.5	25.7	29.2	24.8	27.0	26.4	27.0	26.7	32.6	30.1	31.3
21-24	12.8	11.5	12.2	11.4	10.8	11.1	12.3	11.9	12.1	20.3	10.0	15.3	15.0	11.3	13.1
25-29	14.6	6.3	10.9	5.9	7.8	6.7	6.0	7.1	6.5	6.4	6.3	6.3	13.9	7.2	10.4
30+	7.9	7.4	7.7	7.8	8.7	8.2	6.8	7.2	7.0	10.4	8.5	9.5	11.4	11.0	11.2
Numbers	6,256	4,981	11,237	5,788	4,807	10,595	5,273	5,217	10,490	5,826	5,567	11,393	6,071	6,771	12,842

Table 8

The ages and occupational status of males apprehended for indictable offences in 1981: Dublin Metropolitan Area\*

Occupational status	Total Dublin area			Inner City Dublin			Non-Inner City Dublin		
	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+
Student	36.8	2.5	0.3	33.1	3.8	0.3	39.1	1.9	0.3
White collar	0.1	1.2	3.3	0.1	0.4	2.6	0.1	1.6	3.6
Skilled manual	0.3	1.9	2.3	0.1	0.6	1.8	0.4	2.6	2.5
Semi-skilled manual	1.4	3.8	5.2	1.0	2.8	3.0	1.7	4.2	6.0
Unskilled manual	4.9	7.4	7.1	3.0	4.6	4.2	6.1	8.8	8.2
Unemployed	54.0	81.1	76.4	60.4	87.1	85.3	49.8	78.2	73.2
Other*	2.5	2.1	5.4	2.2	0.8	2.9	2.7	2.8	6.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	4,081	5,460	6,968	1,620	1,792	1,843	2,461	3,668	5,125

\*"White collar" combines the Garda categories of "clerical", "self-employed", "public service" and "professional". It is thus a generously defined middle class. "Other" combines "retired" with the actual number designated "other", and also includes persons obviously misclassified, (e.g., males with "housewife" as their occupation). The substantial proportion falling into the "other" category in the non-inner city area is largely attributable to one station for which it was the most frequently used category for those age 21 and over.

justice system emerges with great clarity. About one quarter are aged 16 or less, one third aged between 17 and 20, and only 42% were 21 years of age or older. At each age group, including those aged 16 or younger, the majority were unemployed. A pattern of early school leaving and either marginal employment – as unskilled or semi-skilled labourers – or unemployment is present. Only 37% of those aged less than 17 were still in school, while 54% of that age group were listed as unemployed. Eight of every ten persons in the 17-20 age group were unemployed, the remainder mainly in unskilled or semi-skilled manual work. That distribution was closely paralleled among those aged 21 or over: only one person in five was listed as having an occupation; 76% were recorded as unemployed.

The "inner city" as defined here (roughly the area within the canals plus sections of Glasnevin, Drumcondra, Kilmainham and Inchicore which fall within the jurisdiction of inner city Garda stations) contains at most 15% of Dublin's population but was the home for about one third of all persons apprehended. The picture that emerges for the inner city is a bleaker version of that for the whole Dublin area. They are younger than those coming from non-inner city neighbourhoods – 31% are less than 17 years old, 34% are aged 17-20, and only 35% are 21 or older – and the syndrome of early school leaving and unemployment is more pronounced. Less than one third of those 16 or younger were recorded as being in school and the stated occupation for 87% of the 17-20 year olds was "unemployed"; for those 21 or over, the breakdown between unemployment, manual work and white collar work was 85%, 9%, and 3%, respectively.

The same basic pattern can be found in local authority housing estates that have high or even moderate levels of social and physical deprivation (Bannon *et al*, 1981; Breathnach, 1976). There is, however, sufficient variation between areas to add weight to the call by the Association of Garda Sergeants and Inspectors (1982, pp. 14-15) to consider the community specific factors that may increase or decrease the probability of involvement in crime. In particular, there is some evidence to suggest that the proportion of young people who remain involved in crime after adolescence differs considerably among localities.

The living circumstances of persons apprehended indicated substantially fewer conventional attachments. When compared to the general population adults apprehended were far less likely to be living in a typical family situation. Over one-third lived either alone or in lodgings. Of those aged 21 or over and from the inner city, 39% of males and 57% of females were married; 42% of men and 69% of women over age 20 in

the rest of the Dublin area were married. In the general Dublin population, 71% of both men and women in that age group were married (the comparison is not exact as "persons apprehended" would tend to fall in the younger age groups rather than being evenly distributed through ages 21 and over).

The classification of "home circumstances" includes a category "itinerant". That category represented 3% of those apprehended in the 16 and younger age group, and it was used for less than one half of a per cent of the 17-20 year olds and 1% of the adults.

Females represented 16% of all persons apprehended. Generally, females were brought into the criminal justice system at a younger age than males: 31% were under age 17 (in contrast to 25% of males). A further one quarter of females were aged 17-20. As previously noted, there is at present no place of detention for women. They must be accommodated in the adult prison system.

Overall, the educational and labour force disadvantages of persons entering the criminal justice system are very substantial. Such high rates of early school-leaving and unemployment might be expected in a study of inmates of a prison or place of detention, but not in the most inclusive group that we can define: persons arrested. The proportion falling within 15-16 and the 17-20 age groups is also very high. The JLO scheme has been devised specifically for the former group; at present it is the 17-20 age group for which the criminal justice system is least prepared to make a non-custodial response. They essentially fall into a gap, too old for the special provisions devised for juveniles and yet obviously requiring facilities and programmes separate from those for adults.

#### 4.VI Conclusion

The challenge facing the Irish criminal justice system in the 1980s is formidable indeed. Previous sections of the chapter provided evidence attesting to the strength of the factors underlying the crime problem and the sheer dimension of the problem itself. Rising crime levels must be viewed in the context of the deeply rooted structural inequalities of Irish society and the massive shift in opportunities for committing crime. The availability, distribution, and symbolic importance of many forms of property, with the motor vehicle providing the best example, are the most immediate factors underlying the crime trends. In recent years, this has been exacerbated by an unprecedented problem of drug abuse.

There was also an indication as to the nature of the crime problem, which remains today more one of sheer numbers of offences than of seriousness and sophistication, though that too is changing. Crimes against persons, as opposed to property, apparently have not been as strongly affected by economic and social change, and remain at low levels, compared both to the recent past in Ireland and internationally.

The lack of educational credentials and work skills or experience among persons brought into the criminal justice system was very pronounced. Earlier studies had focused on groups for which such marginality and disadvantage would be expected: persons with substantial numbers of convictions and custodial sentences. The present study of personal characteristics suggests that this is accurate for the more inclusive group comprised of all persons "apprehended" for an indictable offence.



## CHAPTER 5

### THE PERFORMANCE OF THE IRISH CRIMINAL JUSTICE SYSTEM: THE GARDA SÍOCHÁNA AND THE COURTS

#### 5.I Introduction

This chapter, and the one which follows, describes and evaluates the current operations of the Irish criminal justice system. In doing so, it extends themes from Chapters 3 and 4. Chapter 3 outlined objectives for the system and its component agencies. It also noted the temptation to accept the easily measured activities and outcomes as the objectives on which performance is to be maximised. Chapter 4 reviewed the context in which the criminal justice system now works. It also contained material on levels of offences and detections that will be useful in evaluation. The present chapter is concerned with the Garda Síochána and the criminal courts; the prisons and non-custodial sanctions are described in the next chapter.

There is a substantial gap in Ireland between objectives, as given in Chapter 3, and what we can in fact measure. In particular, we lack information on the decisions made within the criminal justice system. The section that follows, therefore, reviews these information deficiencies as they affect an overall evaluation of criminal justice. Consideration of each specific agency will be prefaced by a review of any particular data problems that were encountered. For the most part, evaluations will be reserved for the final chapter.

#### 5.II Statistics for Evaluation

The quality of official statistics matters because the information at our disposal tends to determine where we focus our attention. Inadequate statistics are often a sign that policy makers have been asking the wrong questions. Outdated methods for collecting and making available official statistics are often a reflection of complacency and a failure to rethink objectives and policies in the face of change.

Reliable information is lacking in Ireland on the incidence and organisation of crime, on the numbers and characteristics of individuals arrested, on the outcomes of cases brought to the criminal courts, on the extent to which non-judicial alternatives to formal court proceedings are used,

and on the fate of persons incarcerated or placed on probation. There is an abundance of statistical tabulations, produced annually, but the information provided fails to meet the three essential criteria for information on criminal justice: (1) that it provides the public with an accurate indication of the problem and of what is being done about it, (2) that it allows for accountability and evaluation of what the police, courts, prison service, and Department of Justice have done, and (3) that it allows for rational planning.

The result is that public discussion on crime and criminal justice is often poorly informed, based on misunderstandings of the published statistics, or on ignorance, which could be easily corrected if the proper information was collected and published. At present, no one, not even the Department of Justice, has an accurate tally of what happens to those individuals who enter the criminal justice system; indeed, it would probably not be possible to combine the separate record-keeping practices of the various agencies involved into a meaningful set of statistics, such are the idiosyncrasies and deficiencies at each stage. Ideally, we should know precisely how many individuals reached each decision-making stage included in the flow chart presented in Chapter 1. Issues such as the present system of release on bail, court caseloads, and sentencing practices can only be approached if the decisions in the criminal justice system are monitored. Such monitoring should be introduced as a regular feature of statistical reports. At present, information inadequacies misdirect the attention of both those working within the criminal justice system and the public. For those within the system, what is visible to outsiders serves to form the definition of accountability; those activities and outcomes that are monitored in a quantitative manner will be emphasised.

To the general public and to administrators outside of the system, attention is similarly focused by the information used to describe the criminal justice system. Certain stages of the decision-making process are highlighted — offences known, detections, imprisonments — and others equally or perhaps more important, about which little is known, are ignored: diversion from the system, non-prosecution, plea bargaining, sentences, sentence consistency, and probation.

A mismatch between information availability and policy relevance is a common feature of criminal justice systems. It is, however, more acute in Ireland than in most countries. By and large, the collection and publication of information in Ireland reflects the quirks of nineteenth-century administrative practice. Though this adds an admirable consistency to some of the series of annual statistics, the result is that we

tend to think about and evaluate the criminal justice system and its component agencies in ways that were determined in the last century. As we shall see, it also leads to a substantial amount of misinformation being published in official sources.

There are four deficiencies common to the Irish criminal justice system's agencies. The first is the problem of the missing denominator. This problem occurs when we know, for example, the number of persons committed to prison, but do not know the total number of persons "at risk" of imprisonment — the total number of persons convicted. Similarly, we cannot make sense out of the number of persons involved in court proceedings unless we can express that number as a proportion of all persons arrested. So we need information on the number of persons at each decision stage in the criminal justice system. When that is done, it will be possible to answer basic questions such as the relative frequency that courts impose fines, suspended sentences, imprisonment, probation, etc.

The second problem is the use of descriptive categories at each decision stage that do not reflect the actual choices being made. Information on the courts, for example, does not cover the range of alternatives from which justices and judges actually choose. If the District Court routinely invokes a case disposition like "adjourned supervision", then court statistics must include such a category if court statistics are to serve a useful purpose.

The third problem is the absence of a common counting unit on which decisions are recorded. At root, a "crime" is an incident, which can involve any number of possible specific offences in statute or common law, any number of victims, and one or more "offenders" who each may be linked to one or all of the offences/victims. There is no simple or obvious way to reduce so complex a set of events and persons into a unit for processing information. Indeed, the exact combination of offences/victims/offenders that is used at each stage of the criminal justice process is a basic part of discretionary decision-making. Even where established guidelines exist, it is not necessarily true that any two gardai or two staff from the DPP's office would reach the same decision.

A fourth problem is that proceedings left unresolved at the end of a recording year are generally lost from the records completely or are simply merged into the next year's records. This completely obscures the actual decisions being taken. When these four deficiencies are added to the vagaries of 700 years of statute and common law offences, as described in Chapter 3, the statistical inadequacies are obviously massive.

This report does extend, in some important respect, the range of information about the functioning of the criminal justice system and the persons who enter it. But it does so within the constraints of current information gathering practices: (1) archaic categories for classification, (2) inadequate rules for classifying persons and offences into those categories, resulting in multiple entries, (3) no linkage between stages of the system, and thus an inability to establish what decisions have been made, and (4) a complete lack of information on some of the most common forms of case outcomes (a decision not to prosecute, conditional discharges, probation orders, fines, and suspended sentences). These serious limitations could not be overcome.

In correcting these information deficiencies, two constraints will be of particular importance. The first is simply the cost involved. It is simply unrealistic to propose, for example, a new coordinating unit for collecting and disseminating criminal justice statistics. The second constraint is that of protecting the privacy of the persons on whom records are being compiled.

In the light of these constraints, it is suggested that improvements at the level of each agency be implemented. If this were accomplished on an agreed basis among the agencies involved, it would not be necessary to undertake the expensive and intrusive process of linking files on individuals. Agreement would be needed on (a) the unit by which records were to be collated, (b) the categories which offences and persons are to be classified under, and (c) the manner in which proceedings "pending" at the end of the reporting year are to be included in the next year's records. Each agency might wish, for its own purposes, to produce more detailed information than the agreed format requires, but every agency's records should be capable of being merged into the common denominator and common categories.

Such an effort would only make sense if the information produced by each agency covered the most important decisions taken within its jurisdiction. One attempt at outlining those decisions was offered in Chapter 1 of this report. In essence, this involves specifying the possible outcomes for a person who reaches each stage of the criminal justice process.

When combined, the published reports, if so reformed, would provide a broad overview of the activities of the criminal justice system. Periodically, this would need to be supplemented by a process of randomly selecting a certain proportion of cases and ensuring that their full progress through the system was tracked. Such a procedure would allow

calculation of more precise measures, such as the length of delays at each stage. It would also conform to the two constraints noted previously: cost and the need to maintain privacy. Such an exercise could be done by personnel currently employed in record-keeping and there would be no need for a central data file on individuals. The main resource required would be the goodwill of all the agencies involved. If one were to opt out or not conform to the agreed format, the deficiencies would remain.

### 5.III Crime Control, Law Enforcement, and the Crime Rate

This section will review, in turn, garda strength, offence levels, and detections. The discussion will draw on material already presented in Chapter 4, and add additional international comparisons when relevant. Information on the Garda Síochána's budget will be discussed later in a special section on the costs of the criminal justice system.

#### 5.III.a Garda Strength

There is no conclusive evidence that the size of a police force is related to its effectiveness in controlling crime. Specifically, it is apparently not the case that as the level of policing rises, potential criminals make the rational decision to forego crime and pursue legal opportunities instead (Loftin and McDowall, 1982).

The research evidence also suggests that detection rates are little influenced by either the number of ordinary policemen nor of investigatory resources. For the overall level of crime, (1) research provides no indication that the level of crime in an area can be controlled simply through the allocation of additional resources to patrol effort (Heal, 1982, p. 16) or (2) that an enhanced investigatory capacity (in terms of forensic technicians and detectives) will greatly alter the success with which detections may be achieved. Investigatory police activity is apparently vital for linking the results of law enforcement work to the requirements of the legal system by accumulating evidence after a detection (see Reiss and Bordua, 1967:43). Obviously, a particular situation, such as a series of unsolved murders or rapes in a locality, will require the use of both substantial numbers of police and investigators. But as a general strategy, numbers do not correlate with effectiveness.

Given the findings of research on policing, it is therefore not astonishing that as Garda strength has expanded in recent years, the total of recorded offences, even for crimes like burglary and robbery, have increased and detection rates decreased. Also, more resources in the form of personnel and equipment, may simply encourage reporting of crime by the

public, and therefore lead to a greater proportion of all crime being recorded in statistics.

Table 9 charts the changing size and geographic distribution of the Garda Síochána from 1951 to 1983. The Garda force was substantially reorganised in the 1960s, a significant change that is registered in Table 9 only by the declining number of garda stations. However, the actual strength of the force did not increase until 1972-73, and did so in response to the special problems posed by concern over security. There was no overall increase in the general police presence. This is particularly clear in the relatively low proportion of Gardai in Dublin. In terms of formal allocation, 31% of the force was Dublin-based in 1965 and 34% in 1973.

Table 9  
Garda Síochána, 1951-83

Year	Garda stations	National Garda strength	Dublin Garda strength*
1951	810	6,904	1,483
1961	758	6,612	1,750
1962	754	6,531	1,768
1963	749	6,401	1,782
1964	746	6,452	2,031
1965	745	6,568	2,044
1966	742	6,545	2,110
1967	741	6,536	2,108
1968	740	6,546	2,098
1969	719	6,543	2,158
1970	703	6,532	2,307
1971	697	6,612	2,354
1972	697	6,961	2,444
1973	700	7,794	2,673
1974	700	7,990	2,643
1975	700	8,419	3,457
1976	700	8,449	3,319
1977	700	8,485	3,377
1978	700	9,182	3,828
1979	700	9,396	3,815
1980	700	9,693	4,089
1981	n.a.	9,722	—
1982	n.a.	10,009	—
1983	n.a.	10,869	—

\*All "Headquarters Officers" are included in the Dublin subtotal; the boundaries of the Dublin Metropolitan Area were significantly expanded in 1964.

Source: 1951-1980 *Statistical Abstract of Ireland*, various years; 1981-1983 *State Directory*, various years. Numbers before 1981 are as of 30 June; *State Directory* numbers refer to the start of each year and include recruits in training at Templemore. For 1981-83 separate Dublin figures are not given as the *State Directory* and *Statistical Abstract* allocations do not appear to be made on the same basis.

After 1972, the rise in the size of the force continued, reaching a total of nearly 11,000 in 1983. The retention of a substantial number of rural stations and the concentration of Gardai in border counties blunted the impact of so massive an increase in the number of Gardai available for duty. There was a gradual shift toward a greater urban presence, with 42% of all Gardai assigned to Dublin in 1980. However, that percentage is an overstatement, as it appears to include 658 Gardai in Headquarters (1980 *State Directory*), most with administrative responsibilities that are national in scope.

More recent figures on Garda deployment are not strictly comparable with the 1980 allocation shown in Table 9. However, we can derive the following allocation for early 1983 from the *State Directory* of that year: 786 Headquarters staff (thus based in the DMA), 98 staff for the Training Centre at Templemore, Co Tipperary, 493 recruits undergoing training, 3,562 Gardai assigned to the DMA Division, and 5,930 assigned to country divisions. So 37.5% of the force's divisional strength and 40% of total Garda personnel were stationed in Dublin.

This allocation gives Dublin a higher Garda presence per capita population than in the rest of the country, as the DMA is estimated to have contained 29.6% of the national population in 1982 (*Report on Crime, 1982*, p. 4). But if we use the number of offences as our base, Dublin's share of Garda strength appears rather differently. It follows from the earlier discussion of crime statistics that the total number of indictable offences is not a meaningful basis for comparing crime levels to Garda strength. Instead, specific offence categories should be used, categories that represent a type of crime, ignoring the often irrelevant indictable/non-indictable distinction. In 1982, 65% of burglaries of dwellings, 79% of vehicle thefts (larcenies and "unauthorised takings"), and 77% of larcenies from unattended vehicles took place within the DMA boundaries (source: unpublished statistics, provided by the Garda Síochána on request; cited in Breen and Rottman, 1984b, Chapter 3).

The trends in Garda strength understate to some extent the actual growth in effective personnel, as the number of civilian clerical staff has expanded at an even more rapid rate. This presumably allows more Gardai to be assigned to operational duties. The number of civilians in General Service and other grades has steadily risen since the late 1960s, standing at 230 in 1970 and an estimated 630 in 1984 (*Revised Estimates for Public Services, 1971 and 1984*).

In sum, though Garda strength and the amount of civilian support staff have dramatically increased in recent years, so has the crime problem.

Also, though there has been a substantial reallocation of Garda strength from the country divisions to the DMA over time, the force would appear to be facing four conflicting demands on deployment: security needs in border areas, the concentration of crime in Dublin, expectations on levels of policing quite irrespective of the distribution of crime, and the administrative needs of a larger, more differentiated force.

International comparisons provide one basis by which to evaluate the overall strength of the Garda Síochána. The number of police per 100,000 population in England and Wales, Scotland, and Northern Ireland suggests a range that we might expect the Republic's force to fall within. However, the comparison is necessarily imprecise. First, the nature of the four police forces differ, particularly in their use of auxiliaries and reserves. Second, the level of policing will be affected by the extent to which a country is urbanised, the magnitude of any special security problems, and the functions assigned to the police.

The forces of the three UK jurisdictions have substantial reserves or auxiliaries, while the Garda Síochána consists only of full-time regular members. Taking only the "regular police" we find 1971 levels of policing (per 100,000 population) of 200 in England and Wales, 210 in Scotland, and 267 in Northern Ireland. This compares to 222 Gardai per 100,000 population in that year.

By 1981, the level of policing had grown substantially in all cases. England had 247 police per 100,000 population, Scotland, 260; Northern Ireland, 486; while the level in the Republic had increased to 289.<sup>1</sup> Both in 1971 and 1981, policing levels in the Republic stood slightly above those found in England and Wales and in Scotland, with the difference actually growing somewhat over the ten years.

#### 5.III.b Crime Control Performance

It might appear that the changing incidence of crime is the most obvious basis on which to describe and evaluate the Garda Síochána. Chapter 4 summarised the relevant statistical evidence for the 1951-75 period and presented the evidence for subsequent years.

There are, however, good reasons for using such evidence cautiously. First, the level of known offences is open to contradictory interpre-

<sup>1</sup>UK police strength and population statistics are all from *Annual Abstract of Statistics 1983 Edition* (police: p. 77; population: p. 9 and 6 (N.I. 1981 figure)). Garda strength is from the *Statistical Abstract 1972* and the *1982 IPA Administration Yearbook and Diary*; population figures are from *Bulletin No. 40, Census of Population of Ireland 1981*, p. 5.

taking place in its jurisdiction. But through its crime control initiatives an effective force should also decrease the volume of law-breaking activity. So an increase in recorded crime is simultaneously evidence for effective law enforcement and ineffective crime control.

There is very strong evidence that the public is the main arbiter of what offences come to the attention of the police. Extensive research in Britain indicates that only about 15% of recorded indictable offences were "discovered" by the police, the remainder came to light either through the initiative of the victim or another member of the public (Burrows, 1982, p. 13). So the primary factor in determining what becomes a police statistic is public perception as to the seriousness and acceptability of the action prohibited by the law. The most authoritative summary of research on the factors that influence whether a crime is "discovered" was that prepared by Steer (1980, p. 21) for the Royal Commission on Criminal Procedure: "It is difficult, in the face of this evidence, to come to any other conclusion than that the police role in the discovery of known crime is relatively minor, that it is reactive rather than proactive." Steer's own study of the Oxford Division Police found that some 71% of offences were reported to police by the victim, 6% by an "interested party" such as a store detective, and 5% by witnesses. Most of the remaining offences came to light through police activity – an additional 3% as a direct result of patrolling or detective work, and 15% became known indirectly, while investigating another offence.

Though in many respects more consistent and more comprehensive in their coverage than those available for the United States or the United Kingdom, the statistics published in the Garda Commissioner's *Annual Report on Crime* (first produced in 1947) are frequently misinterpreted. The numbers for any year reflect the level of community concern, the degree of police effectiveness, as well as the amount of criminal activity occurring in that year.

Three basic points need to be kept in mind in using published crime statistics. First, the most frequently cited index of crime incidence is the number of indictable offences (those singled out by the English Parliament in 1849 and 1851 as ones that were sufficiently serious to merit a trial before a judge and jury). In their wisdom, this extended from murder and armed robbery to a 10p shoplifting and "public mischief". So the total number of indictable offences recorded for a particular year or quarter is of no interest as it is distorted by the predominance of petty forms of larceny and the exclusion of more

recently created offences, such as illegal sale of controlled substances.

A second basic consideration is that for record-keeping purposes the Gardai enter an incident only once in the *Report on Crime*, under the offence category regarded as the most serious. That classification will not necessarily be the same as that used in the courts, as proceedings may be commenced under a different, generally less serious, set of offences. The *Report on Prison* uses yet a third set of categories. Any incident involving a crime is likely to involve both "necessarily-included-lesser-offences", where an offence could not be committed without violating additional criminal laws (as in a robbery which perforce involves an act of theft), and "situationally-included-lesser-offences", which generally occur simultaneously with particular offences (Sudnow, 1965).

A third limitation to the interpretation of the number of known offences is that counting is usually based on victims, such that "a larceny, fraud, or forgery directed in a continuous series against one person or institution will count as a single offence" (Garda Síochána Code). So for some categories of offences, multiple offences may only be entered once. For other types of offences, such as murder and assault, the practice of counting the number of offences involved in an incident has varied from year to year, at times reflecting the number of victims, at times the number of incidents.

The only viable response to these difficulties is selectivity: adopting a set of offence categories where the known total is a reasonable approximation of the total number of such offences that, in fact, occurred and where an acceptable degree of consistency in classifying and counting can be assumed.

When making comparisons, over time or to other countries, the following possible extraneous factors should be considered:

1. Differences in the relevant statutes.
2. Public Attitudes
  - (a) tolerance of particular types of crime
  - (b) approval of and confidence in the police
  - (c) ease of reporting offences to the police
  - (d) inducements to report offences – insurance or other forms of compensation for injury or loss that require a police report.
3. Police Procedures
  - (a) classification rules

- (b) counting rules
- (c) resources (size of the force and its budget)
- (d) method of patrolling
- (e) detection rate
- (f) tolerance of particular types of crime
- (g) activities of "private" police-security firms, etc.
- (h) changes in police administrators.

Within these limits, the trends in offence levels over recent decades and the comparisons to British and Northern Ireland levels suggest that the crime problem in the Republic is serious but by no means unmanageable. It is reasonable to assume that some of the rise in recorded crime is attributable to growing public willingness to report offences, complemented by the requirements of insurance companies and the growth in the private security industry. All argue for more offences becoming officially noted and thus crime statistics.

The evidence is not, however, such that would justify an evaluation of effectiveness. The transformation from stable crime levels to an upward spiral occurred some six to seven years before the size of the Garda began to expand, and the spiral continued unabated as the number of Gardai grew by the thousands. There is thus no real evidence for a strong crime control effect from increased policing, though it remains possible that the force's expansion blunted what would have been a still more substantial rise in crime. Since the Garda presence in Dublin is low relative to the proportion of crime that occurs there, a case for the substantial reallocation of police resources can be made. Even though there is no firm basis for expecting a reduction in Dublin's crime level to follow such a rural to urban redeployment, it may be necessary if the public's sense of security and the delivery of police services are to be maintained in the capital.

#### 5.III.c. Law Enforcement

Law enforcement activities are those directed at apprehending suspects. Here, too, the evidence strongly points to severe restrictions on what policing can achieve. Police success in making arrests is highly dependent on public cooperation.

A detection is not necessarily the same as an arrest. When the Gardai are satisfied that they have identified the person(s) responsible for an offence, they will classify that offence as one that had been "detected". The format of the *Report on Crime* indicates that proceedings in court have been entered for the vast majority of "detections", but the distinction between suspicion, arrest (taking a suspect into custody), and

entering court proceedings is important. In the same way that the comprehensiveness of police statistics on offences known can increase, so can the standard needed before a "detection" is achieved. The police have considerable discretion both in what crime is recorded and in what crimes are defined as solved.

The public is also the major source of evidence that leads to an arrest. Of every seven crimes that lead to a suspect being detained in the course of a police investigation, six were solved on the basis of information provided by a member of the public (Mawby, 1979). The reality of police work, in sharp contrast to fictional portrayals, is that investigations are generally limited to information available immediately after an incident is reported. Only the most grave incidents will be pursued in the absence of such information: "The success of the police in the detection of crime depends, for the most part, on how much useful information the public is able to give the police about the circumstances of the events" (Steer, 1980). At most, only one of every four crimes solved depends on the inductive pursuit of a chain of evidence that leads to a suspect (see Morris and Heal, 1981, pp. 29-33).

The paucity of criminal justice research makes it difficult to determine how applicable this is to Ireland. The only relevant study undertaken to date, however, suggests qualified applicability. Of 291 indictable offences selected at random from those tried before the Galway District Court in 1978-81, the basis for detections was as follows: 19.2% were attributable to the Gardai having apprehended the person subsequently charged with the offence while the alleged offence was in progress, 33.3% of detections were based on a "statement of admission after caution" to the Gardai, 44.3% were due to the defendant having been "caught by the injured party", 2.1% were "seen by independent witnesses", and 1% resulted either from the investigation of another offence or from an accomplice's information to the Garda (Needham, 1983, Table 4.6). Thus, slightly under two thirds of indictable offences were "cleared" without recourse to investigatory effort by the Gardai.<sup>2</sup>

The categories used in the Galway study are not comparable to those used by Steer (1980) or the other English studies. Also, we do not know how many of the on-the-scene detections by Gardai were in response to a citizen's report of a crime in progress or the basis of the

<sup>2</sup>The means by which offences are discovered and detections made should not be equated with the evidence subsequently used in court proceedings (Steer, 1980, p. 98). Specifically, the role of statements of admission will be far greater as court evidence than as the basis for the original detection.

original suspicion that led the Gardai to seek a statement. Still, Needham's study strongly suggests that public vigilance and community support for the police are the primary determinants of crime detection.

Detection rates for burglary and robbery were vastly higher in the Republic than in the UK. That advantage was sustained throughout the 1970s, despite a tendency in all locations for the detection rates to fall during the decade.

Dublin enjoyed a similar advantage within Ireland, at least for burglary offences. The 1981 detection rate for that offence in the non-urban areas was 39%, in the four cities, 32%, and in Dublin, 41%. The detection rates for robbery were generally lowest in Dublin, but the difference was not great. Even if all the cautions that need to accompany comparisons of detection rates are considered, the level of detections in Dublin and in the Republic generally can only be evaluated as remarkably high.

Given the changes in the nature and amount of crime, it is difficult to see how it will be possible to return to the pre-1965 detection levels. Emulating the strategies of police forces in other countries is unlikely to offer assistance in doing so. There simply is no other European country which claims a higher rate of success in terms of detections.

The discussion in Chapter 3 on policing raised questions that cannot be answered at present in Ireland. It is possible to state definitely that the standard measures of Garda performance – offences known and detections – are as uninformative here as in other countries. But evaluative statements about current performance in terms of equity or effectiveness of crime control, law enforcement, and public assistance are not feasible. Any judgement would be informed speculation.

In broader terms, however, it is possible to find reasons for concern. It is unlikely that any police force can perform better in any of the above senses if its level of community support declines, or even if it is possible to meet any police objective well in the face of deteriorating public confidence. A police force that neglects its public assistance role will find it doubly hard to meet other objectives for this reason. It is worth considering whether the Garda's success relative to other countries might be attributable, at least in part, to the force's endeavours in public assistance and to generally strong ties to the community.

It is also likely that any improvement in effectiveness will stem more

from changes in the style of policing than from more Gardai, more Garda powers, or more technical equipment. Training of recruits and programmes for in-service training offer an opportunity for effecting such changes. The current 22-week training course for recruits at Templemore is brief by international standards, and should be extended in stages if an appropriate curriculum is developed. In recent years, the force has shown considerable innovation in extending or developing in-service training programmes for newly promoted sergeants, inspectors and superintendents at Templemore (in the recently established Garda College for the latter two ranks).

The force has been less energetic in making provisions for a meaningful period of probation for new members. The 1979 Report of the Garda Síochána Committee of Inquiry noted that "there do not seem to be any formal arrangements for the practical 'on the job' training of recruits after they leave the Training Centre" (p. 10). Perhaps in the 1950s and earlier such an abrupt transition from Training Centre to police work was reasonable. Today, it is simply not acceptable, especially for those recruits who find themselves in Templemore one day and on duty in Dublin the next. The recent practice has been to assign groups of Templemore graduates either to the DMA or to country divisions, without making any distinction in the training programme offered.

## 5.IV The Criminal Courts

### 5.IV.a Measuring Justice

The courts at all levels of jurisdiction are notably reticent about their activities. A few tables in the *Statistical Abstract of Ireland* indicate the court caseloads and the outcome of cases commenced in a particular year. But such information is totally insufficient for even the most elementary description of what the courts are doing and what decisions they are reaching.

This insufficiency follows from the lack of detail in the statistics and the failure to maintain a consistent series which follows a case from beginning to final disposition. The tables in the *Statistical Abstract* are based on *persons* (with separate tabulations for indictable and non-indictable offences) and classify each person according to the stage their case was at on 31st December. A case commenced in 1982 but still pending in a court at the end of the year will never reappear in subsequent *Abstracts*.<sup>3</sup> In recent years, as the number of cases being

<sup>3</sup>The *Annual Report on Crime* also provides information on the processing of cases. Though in many respects more helpful in terms of the categories used for classification, it is again not



processed has increased, so has the proportion appearing in the categories "committed for trial and still awaiting hearing" in the jury courts or "still pending" in the District Court. Exactly one half of all persons facing indictable offences fell into those categories in the 1979 statistics. The 1980 *Abstract* sheds no light on their eventual fate.

This residual of cases not completed makes it difficult to interpret the outcomes for those cases that were brought to final adjudication during the year. The completed cases are not representative of all court proceeding as the residual has two components. It contains both (1) cases begun late in a year and therefore not resolved and (2) more serious, complex cases that take longer to be adjudicated. Therefore, it is incorrect to use the pattern of outcomes in any one year's statistics as a portrait of decisions in the criminal courts.

Criminal court records are currently maintained in a bewildering variety of forms. In the Dublin area, record-keeping for persons arrested or charged with an offence while in custody is totally separate from records on persons charged via a summons. All records on court appearances and outcomes for persons arrested are entered on a "charge sheet" that accompanies the person as they move from courtroom to courtroom. Where a court appearance follows on a summons, the records are entered in a ledger, which also accompanies the defendant within the District Court.

Justices are the main record-keepers in the District Courts, making handwritten notations on decisions made at each court appearance and the eventual disposition of a case. Should a defendant be diverted for trial before a higher court or the Special Criminal Court, the records also switch jurisdiction. The higher courts maintain their own records on court decisions and case outcomes.

A person who managed to penetrate this labyrinth of forms, short-hand entries, and ledgers would be none the wiser as a result. It will still be necessary to find some rational basis for grouping combinations of persons and offences into units for analysis. This follows from the use by the Gardai and the courts of a narrowly legalistic basis for defining what is a case.

possible to produce outcomes for a single year's cases. Further, court information is given for cases which will include multiple offences while outcomes are shown for "persons convicted or against whom the charge was proved and order made without conviction" under one offence heading. Before 1974, the statistics on non-indictable offences did permit a direct comparison of persons charged and convicted. The *Annual Report on Crime* and the *Statistical Abstract* have been compiled on the same basis since 1976 for indictable offences.

The "charge sheet" offers a good example of the difficulty. One sheet can contain from one to a half dozen separate charges that are being brought against an individual or a group of individuals. The legal basis for this is that a charge sheet is filled in for each victim. If a person were to be charged with driving while intoxicated and in possession of a stolen vehicle that contains property thought to belong to a friend of the vehicle's owner, three distinct "charge sheets" would result. One would be for the public, the putative victim of the violation of the Road Traffic Act prohibition on driving while intoxicated, and one for each individual whose property is alleged to have been misappropriated. Passengers in the vehicle at the time of the driver's arrest might be included in the two latter charges. If the Gardai involved in the arrest encountered resistance from the suspects, other charge sheets might result, each charging all or some of the individuals in the vehicle with, perhaps, three offences under Section 38 of the Offences Against the Person Act, 1861: assault, resisting arrest, and obstructing a peace officer.

Maintaining adequate records is surely a reasonable criterion of court effectiveness and efficiency. The Irish criminal courts do not fare well in such an evaluation. More importantly, the inadequacy of the court records makes all other evaluative efforts extremely limited.

As was noted in Chapter 1, other sources of court information were sought to partially offset the deficiencies of the published statistics. Through the co-operation of the Department of Justice and the Garda Síochána, information was obtained on criminal court cases in the Dublin Metropolitan Area (DMA). This consists of (a) the status in June, 1983 of all instances in which a resident of the DMA was held by the Gardai to be responsible for an indictable crime during 1981, (b) unpublished Department of Justice statistics comparable to those eventually to appear in the 1981 *Statistical Abstract* and (c) information on the progress through the District Court of all cases involving indictable offences arising from one DMA Garda station in the first half of 1980.

There is only one comprehensive set of statistics on criminal court proceedings in Ireland. This is in the form of a random sample of 899 cases — representing 5% of the total — dealt with by the Galway District Court between August, 1978 and July, 1981. Both indictable and summary offences were included, maintaining a ratio of one indictable offence for every two summary offences. This information was collected by the Faculty of Law, University College, Galway and made available for this study by Professor Kevin Boyle and Michael Needham. As a result, it will be possible to analyse the judicial process in that particular



jurisdiction and gain insight into the actual decisions being taken by the courts on a case basis (a more detailed look at the Galway District Court can be found in Appendix II; the full study can be found in Needham, 1983).

#### 5.IV.b The National Pattern

Before turning to the Dublin and Galway material, the national pattern will be examined insofar as the published statistics permit. The most recent court statistics are for 1981. Table 10 presents a summary of that information, along with comparable statistics for 1976-80.

Looking first at 1981, we find a total of 937 completed jury proceedings. In these, 845 individuals were convicted (90.2% of the total), while 38 acquittals were recorded. The remaining cases were disposed of by other options, such as a decision not to pursue a case. For 381 proceedings, there was as yet no definitive outcome and the cases remained "committed for trial and still awaiting hearing". The District Court in 1981 completed proceedings on 11,248 individuals charged with indictable offences, 10,331 (91.8%) resulted in either a conviction or an order of "proved" without a conviction,<sup>4</sup> there were 445 cases dismissed, with the remaining cases being otherwise removed from the judicial process. At the end of 1981, 17,587 proceedings were listed as "pending", to reappear in the courts during 1982. That represents 61% of the 28,835 proceedings begun in 1981. The District Courts in 1981 also dealt with prosecutions of 474,809 persons charged with non-indictable offences: of those persons, 329,434 were convicted summarily or were held to have had the charge proved against them but without conviction (Probation of Offenders Act, 1907), 125,575 had the charge "dismissed" or withdrawn, and the remaining 19,800 individuals fell into the "adjourned/other" category. So in all, 69% of persons brought before the District Court for non-indictable offences were found "guilty". However, many, perhaps most, defendants whose cases were "adjourned" were being given the benefit of a disposition that would not result in a record of conviction.

Table 10 also contains the main descriptive statistics for the actions and caseloads of the criminal courts for the five preceding years, 1976-80. If we place the 1981 figures in relative perspective to that period, we find that in contrast to the trends in either crime incidence or Garda activity and resources, the basic pattern for the courts is stability. The total caseload of the criminal courts grew only slightly over the 1976-81

<sup>4</sup>The category labels are not very informative but it is likely that this would include all uses of the Probation of Offenders Act and exclude "adjourned" supervision.

period, and that of the jury courts in fact diminished. Within the District Court, the total caseload did not expand at all over 1977-79, with the growth concentrated in the two subsequent years. Still, the overall growth in the sheer number of cases requiring adjudication is at first glance alarming: in 1977, 410,833 proceedings were placed on the criminal court schedule and in 1981, 504,999 proceedings, a rise of 94,000 in five years.

Table 10

Proceedings against persons commenced 1976-81

	1976	1977	1978	1979	1980	1981
<i>I. District Court</i>						
<i>A. Indictable:</i>						
Total Proceedings	19,332	21,196	21,759	22,499	25,779	28,835
Convicted/Order Proved	7,661	7,321	9,996	9,683	9,416	10,331
Acquitted	401	466	619	679	458	445
Adjourned/Other	409	337	561	502	383	472
Pending	10,861	13,162	10,583	11,635	15,522	17,587
<i>B. Non-Indictable:</i>						
Total Proceedings	n.a.	388,226	346,248	338,150	402,812	474,809
Convicted/Order Proved	n.a.	294,594	271,540	267,825	320,823	329,434
Acquitted/Withdrawn	n.a.	70,296	54,490	53,954	63,726	125,575
Adjourned/Other	n.a.	23,336	20,218	16,371	18,263	19,800
<i>II. Jury Courts</i>						
Total Proceedings	1,677	1,411	1,327	1,328	1,003	1,318
Convicted	762	682	773	832	552	845
Acquitted	69	49	50	56	35	38
Adjourned/Other	39	24	58	80	25	54
Pending	807	646	446	360	391	381
<i>III. Information refused</i>	19	15	66	41	32	31

Source: *Statistical Abstract of Ireland, 1979* and unpublished statistics provided by the Department of Justice (1980 and 1981 statistics).

Two factors mitigate the concern that might be induced by such a rising burden on the courts. First, a rising caseload is not associated with a growing court backlog, as indexed in the proportion of cases that are "pending" at the end of a year. The most substantial backlog for the District Court was registered in 1977, in which 62% of the proceedings commenced in calendar year 1977 were not concluded by 31st December. Though the percentage pending is again high in 1980 and in 1981, there is no clear pattern in which the situation is becoming more acute. The calendar year is in any event an arbitrary period for collating legal statistics – that a case continues into the next year has no judicial significance in itself. And within the jury courts the trend is toward both a diminished usage, relative to other forms of disposition, and a

diminished backlog: 48% of the cases commenced before the higher courts in 1976 were still pending at the start of 1977; 29% of cases entered in those courts during 1981 overspilled into the next year.

The second mitigating factor is the nature of the offences that form the bulk of the District Court's caseload. Most proceedings before the District Court concern the manner in which a motor vehicle has been used by its owner. In general, such proceedings can only be regarded as nominally criminal, for there is no assumption of unlawful intent on the part of the defendant — there is nothing inherently criminal in the action involved (illegal parking, defective car lighting, no tax disc, etc.).

Nationally, nearly 70% of all District Court proceedings are road traffic offences, two of every three involving a parking offence. The share of such cases in urban court caseloads is higher still. Road traffic cases accounted for some 116,000 of the 123,000 criminal proceedings in the Dublin District Courts in the 1981-82 legal year; 70,500 of these were parking offences. All of the latter proceedings were held in one Court, which specialises exclusively in their adjudication (statistics on road traffic offences were provided by the Department of Justice; there are now two "traffic courts").

The small number of jury trials — equivalent to only 4% of all proceedings for indictable offences in 1981 — is a feature found in all the common law countries. Research in the United States consistently finds that 90 to 95% of all criminal cases are ended by the defendant pleading guilty, often as part of an agreement negotiated between prosecution and defence counsel (Silberman, 1978, p. 383). This procedure is called plea bargaining, and generally takes place outside of the courtroom. In effect, the prosecution offers to reduce the charge(s) to less serious offence(s) or to drop some of the charges pending against a defendant. The defence, in turn, pleads guilty and does not contest the prosecution's case.

There has been no research on the extent of plea bargaining in the Irish criminal courts. Kevin Boyle (1980, pp. 22-23) suggests that a similar, though perhaps tacit, form of negotiation does take place: "since most defendants before criminal courts admit their guilt, the main activity in criminal courts is not the trial of persons for alleged offences but sentencing them for crimes to which they plead guilty". This is certainly unlike the widespread, assembly line plea bargaining that has been found in large American cities. The role and powers of the prosecutor in Ireland differ considerably from those of their American counterparts (Ryan and Magee, 1983, p. 283). But the undesirable features of

plea bargaining — pressure on the innocent to plead guilty, a lack of judicial supervision, and a reduction of charges in serious offences — are sufficient to caution vigilance (the only detailed discussion of the issues relating to Ireland is in Ryan and Magee, 1983, pp. 283-290).

That jury trials are infrequent and most defendants plead guilty do not diminish the fundamental importance of judge and jury to the legal system. The right to request a trial before a justice or before a judge and jury represents the ultimate protection for the public against arbitrary prosecution in all common law countries. The role of the judiciary is to make an impartial decision based on the claims of the defence and the prosecution. Also, even where plea bargaining is widespread, it is knowledge of what would be likely to happen if a case were to go to trial before a judge and jury that determines the standard around which negotiations take place.

In Ireland, the difficulty is that the criminal courts are operating in a manner that allows little direct scrutiny of their decisions. Whatever the quality of justice that is being administered, this lack of accountability is unfortunate and may, in the long run, prove damaging to the prestige of the judicial system. Public opinion tends to be formed by the exceptional case that makes headlines, not by the typical level of performance.

#### *5.IV.c Court Proceedings in 1981: Evidence from Dublin Residents*

Though the statistics in Table 10 do speak to an important issue, that of court caseloads, they can also serve as an example of where the kind of information that is readily available deflects our attention from more vital issues. Specifically, court statistics fail to tell us anything about the fate of the majority of persons brought into the criminal justice system for non-traffic offences. This requires a broader view, incorporating the decision to bring a case to court. It is possible to obtain such a view from the information on the 20,000 Dublin residents who in 1981 were regarded by the Gardai as responsible for an indictable offence. That information is also more current than that for Table 10, as it reflects the status of 1981 proceedings in mid-1983.

The basic flow through the criminal justice system can be seen in Table 11. The proceedings are classified by the sex and age of the person involved, and for each group of persons the table indicates what percentage was dealt with at each stage. Again, the classification and the updating of information is the responsibility of the Gardai concerned, and the results do not form a totally consistent record-keeping system. The pattern is nevertheless of interest, especially given the absence of

Table 11

The status in June, 1983 of proceedings against persons in the Dublin Area apprehended for indictable offences in 1981  
(percentages in parentheses)

	Males		Females	
	Aged 0-20	Aged 21+	Aged 0-20	Aged 21+
Total apprehended	9,560 (100.0)	6,965 (100.0)	1,751 (100.0)	1,422 (100.0)
Caution/No proceedings	↓ 585 (6.1)	↓ 16 (0.2)	↓ 93 (5.3)	↓ 10 (0.7)
Awaiting court proceedings	↓ 4,244 (44.4)	↓ 3,044 (43.7)	↓ 1,005 (57.4)	↓ 510 (35.9)
Court proceedings commenced	↓ 4,731 (49.5)	↓ 3,905 (56.0)	↓ 653 (37.3)	↓ 902 (63.4)
Court jurisdiction	Summary 4,559 (47.7)	Summary 3,695 (53.1)	Summary 622 (35.5)	Summary 810 (57.0)
	Indictment 172 (1.8)	Indictment 210 (3.0)	Indictment 31 (1.8)	Indictment 92 (6.5)

any other information to examine. For juveniles, a clear decision not to pursue court proceedings is made in 5-6% of all cases. For juvenile males, a further 44% had not yet begun court proceedings; that is true for 57% of juvenile females. The category involved excludes cases that are currently pending in the courts – it is unlikely that at so late a stage proceedings will begin for most of the cases included. Thus, we find that court proceedings have begun for 56% of adult males and 63% of adult females; court proceedings have been started for one half of juvenile males and 37% of juvenile females. Overall, a court decision seems likely for only one of every two proceedings.

In highlighting what appears to be a significant proportion of criminal cases that are diverted away from the courts, no evaluation is implied. The reality of the pattern in Table 11 is important in terms of how one describes the criminal justice system. An evaluation of its desirability will depend on the extent to which decisions not to enter the courts conform to basic criteria of fairness and appropriateness. How that can be done will be discussed later in this report. What is intended at this point is to demonstrate the existence and relative significance of this part of the criminal justice system. Similar patterns have been documented for most Western countries (see, for example, the report of the US President's Commission on Law Enforcement and Administration of Justice, 1967).

A more detailed look at the final stage shown in Table 11, that of the criminal courts, is possible. Most proceedings occur within the District Court, and the distribution of those cases by the possible outcomes can be seen in Table 12. Two "outcomes" dominate the table: convicted and still pending. The high percentage of convictions and relatively low percentage of cases pending for adult females are presumably reflections of the types of offences involved, such as shoplifting and other forms of minor larceny. We cannot be certain of that, however, as the table refers to all indictable offences. Similarly, we cannot be certain that the cases classified as pending will ultimately be distributed among final outcomes (e.g., convicted, dismissed, etc.) in the same way as those cases that have been resolved. But it would appear that where a case reaches the courts, a finding of guilt is the most frequent outcome.

This is also true in the higher, jury courts. There cases pending form a far smaller proportion of the total, which may reflect more zealous updating of cases that reach that level. Only 27% of proceedings in the higher courts were shown as still pending, while convictions were shown for 79% of all proceedings that had reached a final decision. (Other outcomes were 6.3% acquitted, 3.6% nolle prosequi, 7.1% adjourned

Table 12

The status in June, 1983 of proceedings against persons in the Dublin Area apprehended for indictable offences in 1981: District Court proceedings

	Males %		Females %	
	Aged 0-20	Aged 21+	Aged 0-20	Aged 21+
Convicted	39.8	41.1	34.2	59.0
Dismissed	2.0	2.5	2.1	2.3
Charge proved/No conviction	0.8	0.7	2.6	3.1
Charge withdrawn	0.9	0.9	0.8	0.6
Adjourned sine die	0.9	0.8	2.9	0.7
Pending	54.9	51.9	56.4	31.6
Information refused	0.3	0.2	0.5	0.1
For trial	0.3	1.7	0.0	0.7
Pending appeal	0.1	0.2	0.5	1.7
Total	100.0	100.0	100.0	100.0
N	4,559	3,695	622	810

sine die, and 4.1% "taken into consideration" – the latter two outcomes might be more accurately merged with the cases resulting in a conviction.)

One factor of potential relevance in understanding court statistics is that the courts have been slow to expand the numbers of their front line personnel, in marked contrast to the rising strengths, and thus budgets, of the Garda Síochána and the prison service. When in the mid-1960s the court caseload stood at less than one half its present level, there were 35 District Justices (Bartholomew, 1971, p. 31); if we include the Chairman of the Adoption Board, there are currently 45 District Justices. This issue merits more detailed consideration, which will appear in the appropriate section on the financing of the criminal justice system (Appendix IV).

An evaluation of the efficacy of the number of court personnel and of the picture shown by statistics on caseloads and case outcomes depends on an understanding of how the courts in fact operate. A more dynamic, but very selective portrait of the flow of cases through the District Court emerged from a special study of all cases initiated during the first six months of 1980 through "charge sheets" – that is, through arrests – in one of the Dublin Garda Stations. For 199 cases, it was possible to trace their progress through the District Court. All 199 cases were tried in the District Court, though the conviction and/or the sentence was appealed to a higher court in 28 cases. The number of

District Court appearances ranged from one to 14, with three being the average. The length of time from first to last District Court appearance ranged from one day to 319 days with an average of 48.7 days. For the 28 cases in which an appeal was made, the average length of time from initial court appearance to the appeal decision was 81.3 days, with a range from 18 to 173 days.

#### 5.IV.d The Workings of the Galway District Court: 1978-81

Knowledge about the workings of the Galway District Court can shed light on three important areas: (1) the time factor in processing court cases, (2) the manner in which criminal cases are processed, in terms of the form of prosecution and the defence put forward, and (3) the outcome of cases, both the disposition and, if relevant, the sentence by the court. The information cited was collected for a LL.M. Thesis in the Faculty of Law, University College, Galway (Needham, 1983) under the supervision of Professor Kevin Boyle. In addition to providing all the statistical material cited in this section, the thesis offers the most comprehensive description of the jurisdiction and procedures of the Irish District Court.

The first issue is the length of time a case remains before the District Courts. This should be considered in the amount of court time (as shown in the number of appearances in court) and the number of days from first appearance to final disposition. Table 13 provides the relevant information on adjournments. Three possibilities are in effect present. A case, especially one involving a non-indictable offence, may be fully dealt with at the initial court appearance. This occurred for 285 of the 899 cases examined – 32%. The second possibility is that a case will be placed before the courts at an initial appearance and then fully dealt

Table 13

Adjournments in the Galway District Court: August 1978-July 1981

Number of adjournments	Number of cases	Percentage of cases
		%
None	285	31.8
One	287	31.9
Two	156	17.3
Three	104	11.6
Four	30	3.3
Five or greater	37	4.1
Total	899	100.0

Source: Needham, 1983, Table 4.9.

with at the date set at the initial appearance. A further 32% of all cases involved two such appearances. So for just over one third of all cases, two or more adjournments were granted, though four or more adjournments were found in only 4% of the cases.

Thus, if the experience of the Galway District Court can be generalised to other jurisdictions, court appearances are handled in a fairly economical manner. Table 14 poses that question in months. We know that for just under a third of all cases there is no time lag between first court appearance and an outcome. For the remaining cases, which it will be recalled include both summary and indictable offences, there was considerable diversity, though only a small minority – 2% – extended beyond a full year. In all, one half of the cases were brought to conclusion within two months, and three quarters within four months. Just under 12% of the cases required more than six months to be processed through the court.

Table 14

Duration of cases in the Galway District Court: lag between first appearance and case outcome, August 1978-July 1981

Time lag	Number of cases	Percentage of cases
No time lag	285	31.8
Less than one month	85	9.4
One to two months	119	13.2
Two to four months	224	24.9
Four to six months	81	9.0
Six to nine months	60	6.7
Nine to twelve months	28	3.1
Over twelve months	17	1.9
Total	899	100.0

Source: Needham, 1983, Table 5.1.

Given that indictable offences accounted for only one in three of the sample of 899 cases, this suggests that a substantial proportion of all indictable offences will indeed be continued from one calendar year into the next. Though speed is by no means the most appropriate criterion for evaluating the courts, it is clearly relevant, not only in terms of efficiency, but also in terms of fairness.

The study of the Galway District Court is also informative about the manner in which cases are processed. Among other contributions, such knowledge is useful in understanding the basis of the lag in processing cases through the courts. One important consideration is whether the defendant was in custody at the time of the first court appearance.

Just under one half of all cases (46%) were initiated by an arrest; the remainder were dealt with by a summons. Of those arrested, roughly two-thirds (69%) were released on bail by the Gardai and instructed to appear in the District Court on a specified day – this represented 31% of all cases. In 128 instances (14.2% of the total), the defendant was brought to court while still in custody. So for a significant minority of cases commenced with an arrest, the defendant was not given bail prior to the first court appearance (38% of those charged with indictable offences).

Defendants charged with an indictable offence must give their consent if their case is to be tried before the District Court. The alternative is to elect to be tried before a jury in the Circuit Court. Most do offer their consent: 90% of all defendants facing charges for an indictable offence in the Galway court did so. For a minority (2.4%), such an option is not available, trial before the higher courts being mandatory. If such cases are excluded, we find that 92% of defendants opted for a summary trial before a District Justice. Such a decision is readily understandable, as the District Court is restricted to a maximum sentence of 12 months imprisonment; the Circuit Court can impose more lengthy sentences as mandated for each offence.

All defendants make choices regarding legal representation and their plea. Both the defendant and the Justice have a say in the form of legal representation selected. Under the terms of the Criminal Justice (Legal Aid) Act, 1962, a District Justice must advise a person who potentially faces a sentence of imprisonment of the right to legal representation and the availability of free legal aid if he or she lacks the means to engage their own solicitor. The division between free legal aid, privately engaged representation, and no representation was 17%, 57%, and 26%, respectively. In no instance was a request for free legal aid refused by a District Justice. In all, three quarters of the defendants had legal representation. For indictable offences, legal aid was granted to 49.5% of defendants, 31.3% of defendants were represented by their own solicitor, and 19.2% were without legal representation.

A second basic decision is how to plead before the court. Here again we find three main options: plead guilty, plead not guilty, or, if the District Justice does not feel the evidence justifies conviction on the original charge, plead guilty to a lesser offence. The second option was the most frequently taken, with 51% of all defendants pleading not guilty. Guilty pleas to the original charges were entered in 46% of the cases, while 3.6% plead guilty to a lesser charge. At the initial stage, therefore, there is an equivalence between those pleading guilty and those

contesting the charge. But for defendants accused of indictable offences, 31.3% pleaded not guilty and 2% pleaded guilty to a lesser charge.

Both the prosecuting Garda and the defendant can produce witnesses to influence the court's findings or the sentence. In the Galway District Court, the Garda in charge of a case was the sole witness in the vast majority of cases: 710 out of the 899 surveyed or 79%. In many of those instances, a plea of guilty would have been entered, and the witnesses' evidence was for the benefit of the District Justice in imposing sentence. In 8% of the cases no witness was called; here a guilty plea would always have been made by the defendant. That leaves only one of every eight cases (12.7%) in which either a civilian witness or a medical or other witness was called.

Defendants charged with non-indictable offences, the vast majority of all defendants, have the choice of whether to appear in person if they are summoned. However, less than one quarter (23%) of those charged with a non-indictable offence were in fact absent from the court at the time of the hearing.

The experience in the Galway District Court can also enlighten us about the outcome of cases. The most basic outcome is that of the decision on guilt or innocence, though it has already been noted that about one half of all defendants plead guilty initially. For the 899 Galway cases, convictions were recorded for 76.6% of the defendants, acquittals for 15.7% (including all instances where charges were withdrawn or evidence of procedural errors found) while 7.7% were convicted on a lesser or reduced charge. Thus, the ultimate divide between convictions and acquittals is 84 to 16 – a ratio of more than five to one.

Table 15 indicates the range of punishments dispensed to those found guilty. An actual sentence of imprisonment was imposed in 7.5% of all punishments, a suspended sentence in 7.7%, and fines were the sentence in 85% of the relevant cases. As can be seen, fines tended to be quite low – the vast majority were for less than £50. Sentences of imprisonment, in contrast, were predominantly for two or more months. For indictable offences, the percentages of those convicted receiving imprisonment, suspended sentences, and fines, were 11.2, 13.3, and 34.8, respectively.

In 209 instances – 28% of all convictions – the District Justice did not impose any form of punishment. More than half of these were applications of the provisions of the Probation of Offenders Act, either without conditions or under supervision from the Court Welfare Officers.

Table 15

Distribution of punishments imposed by Galway District Court: August 1978-July 1981

Type of punishment	Number of cases	Percentage of cases
A. Imprisonment:		
(1) Less than one month	1	0.2
(2) Over one month to six months	29	5.3
(3) Over six months to one year	11	2.0
(4) Suspended	42	7.7
B. Fine only:		
(1) Up to £20	309	56.4
(2) Over £20 to £50	96	17.5
(3) Over £50 to £100	25	4.6
(4) Over £100	35	6.4
Total sentences imposed	548	100.0

Source: Needham, 1983, Table 7.5.

In 109 instances the Act was invoked without condition and in 21 instances supervision was required for a specified period. Though this is not tantamount to a formal conviction, it does have clear legal consequences for the individual should they find themselves again before the courts. In the remaining 79 cases, the District Justice either adjourned the case with liberty to subsequently re-enter and thus lead to a punishment (32 cases), sent the case to a higher court for sentencing (seven cases), or marked the charge as proved and taken into account with other charges (40 cases).

About one half of the cases were linked to other charges against the defendant. Given that the subsidiary charge is rarely withdrawn (only in 6.4% of the cases with additional charges), it appears that formal plea bargaining is at most infrequent. This reinforces the general absence of instances in which the main charge was reduced on a plea of guilty. However, many subsidiary charges are taken into consideration during sentencing (as occurred in 113 or 25%) of multiple offence cases, and others are dismissed (10%) or struck out (7%). Finally, just over half of the additional offences were dealt with by the imposition of a fine, after the Justice had determined that the charges were sustained. It appears that for some common types of offences such as assault and larceny, a clear package of ancillary charges is typically brought by the Gardai to the District Court. One offence or more offences will be withdrawn before conviction, often necessarily, as components of the package – e.g. larceny and receiving stolen property – are contradictory in the criminal act they describe.

Not all cases tried by the District Court remain so confined. Appeals can be taken to higher courts, and this was done in just under one of every ten cases in the Galway sample (9.5%). Of the 85 appeals, in 25 cases the District Justice was affirmed by the Circuit Court, 18 convictions were reversed, and in 42 cases the magnitude of the penalty was appealed and the sentence reduced in the higher court.

#### 5.IV.e *The Questions that Remain*

Notwithstanding the preceding analysis, little is in fact known about the Irish judicial system. The reticence of the Irish courts is far from unique. Compiling a uniform and comprehensive set of judicial statistics is difficult. But the problem lies deeper. Writing about what they term the "abysmal state of judicial statistics" in the United States, Eisenstein and Jacob (1974, p. 714) have suggested that "organisational incentives lead court systems to obscure rather than clarify measures of their productivity". The courtroom is the arena of professionals who appear to have little faith in the ability of the general public to comprehend the day to day workings of the courts. The workings of the Irish criminal courts are cumbersome, difficult to comprehend, and slow. In contrast to the Gardai, the court staffs and the judiciary have shown little initiative in changing structures to fit changed circumstances. The main sign of such adaptation is in the rapidly expanding use of the services of the Probation and Welfare Service, both as a source of "pre-decision" reports and in supervision orders. In 1980, the courts requested 777 reports and placed 1,121 persons under supervision; the 1981 figures were 1,164 and 1,465, respectively. This work, along with supervision of persons granted "full temporary release" from prison, family law cases, and an assortment of other supervisory responsibilities, was undertaken by 57 Probation and Welfare Officers assigned to the District Courts.

## CHAPTER 6

### THE PERFORMANCE OF THE IRISH CRIMINAL JUSTICE SYSTEM: THE PRISONS

This chapter begins with a review of what is known about the link between court sentences and prison committals. The trend in prison committals over recent years is then examined, followed by an international comparison of prison populations, and a discussion, again with a comparative dimension, of prison staffing. For statistical purposes, "prisons" refers to the adult prison system and "places of detention" only to St Patrick's Institution (which replaced the borstals) and Shanaganagh Castle. The accurate distinction, however, would be between five prisons (Cork, Limerick, Mountjoy, Portlaoise and Arbour Hill) and the five "places of detention" (The Training Unit, St Patrick's Institution, and the open centres).

The chapter also covers the prison-based activities of the Probation and Welfare Service, including after-care. After-care refers to forms of release with supervision and/or support, such as placement in a hostel or workshop.

#### 6.1 **The Courts and Prison Sentences**

Persons sentenced to imprisonment form a relatively tiny proportion of those processed through the courts. Exactly how small, we do not know as we are unable to determine the number of persons who belong in the relevant denominator. *The Annual Report on Prisons and Places of Detention* provides comprehensive statistics on persons committed under sentence to the prison system, providing the numerator. In 1982, that totalled 3,511 (627 of whom had been sent to prison either in default of a fine sureties or for contempt of court). It would be convenient, but inaccurate, to assume that those imprisoned are drawn from those individuals apprehended for indictable offences. At least 649 of the prison committals under convictions in 1981 were for non-indictable offences ranging from soliciting to offences under the Fisheries Acts. But in other cases, such as assaults, we have no way of knowing whether the offence was indictable or non-indictable. Moreover, the prison statistics use their own set of offence categories.

Of the 2,728 individuals sentenced to imprisonment, 72 of those sent to the adult prison system were convicted of burglary, as were 14 of the 783 committed to detention in St Patrick's Institution. The former institutions, however, also received 399 persons convicted of what would appear to be lesser forms of burglary ("trespass with intent" or "trespass and larceny") and the latter institution some 209 persons convicted of these two offences. The Gardai do not compile statistics under those headings. And of course, these statistics exclude, for the most part, defendants aged under 17 and all those aged under 16.

It is not possible in any year to equate offences with the length of sentence imposed nor to compare the original sentence of the court with the length of imprisonment. We do know that typically sentences to imprisonment and detention are comparatively short: 44% of the sentences to the adult prisons and to St Patrick's Institution were for less than six months; 31% received sentences ranging from six months to one year; 19% were sentenced between one and two years; and only 7% received sentences of two or more years (percentages are for 1981; see Table 17).

Clearly, a prison sentence is imposed on only a small proportion of those brought before the courts and even of those convicted. The importance of the prison system cannot, however, be minimised to a comparable degree.

#### 6.11 The Prison Population: Recent Trends in Imprisonment

The most basic information to know about any prison system is (a) the number of new prisoners received by the system during a year and (b) the average daily prison population during that year. To be useful, this information should be available separately for prisoners committed on remand and those committed under sentence.

That information is basic as it allows us to understand the factors underlying trends in prison population. If we know the number of receptions into a prison system and the average daily prisoner population, it is possible to calculate a third statistic, the effective sentence length. This follows from the relationship: size of the prison population = number of receptions x sentence length (Pease, 1980). For example, the formula for the adult prison population of England and Wales in 1981 would be  $24,282 = 34,002 \times .714$ , with the .714 representing the average effective sentence length of seven tenths of a year (Fitzmaurice and Pease, 1982, p. 578).

The size of the prison population in any year thus depends on the

frequency with which sentences of imprisonment are made and the severity of those sentences. We can calculate the implications of any proposed policy change, such as the introduction of diversion programmes or mandatory minimum sentences for the number of prisoners who will be confined. From international comparisons, we also know that there is considerable diversity in the pattern of prison use. Some countries have high rates of reception (measured as new prisoners per 100,000 population) but low average sentences. Denmark is an example. Other countries have sentenced prison populations (again on a per 100,000 population basis) that are high by international standards, though their courts use imprisonment less frequently. Here, England makes a good contrast to Denmark.

The logic of the formula is that changing the effective sentence length will produce a far more dramatic alteration in the size of the prison population than will any change in the level of receptions. So a Draconian policy of harsh sentences without remission will require a massive programme of prison construction. No policy of diverting persons convicted of minor offences to non-custodial alternatives can hope to accommodate the demand for cell space created by a substantial rise in the average effective prison sentence (Pease, 1980). One prison cell can in the course of a year house 12 prisoners with effective sentences of one month or only one prisoner serving a sentence of a full year in prison.

*A Report on Prisons and Places of Detention* has been published annually since 1928. Though it has expanded from 36 pages in 1971 to 147 pages in the most recent report, that for 1982, it does not provide the information needed to calculate the formula cited above. Satisfactory information on committals under sentence is provided, giving "receptions", but the statistics on average daily population merge remand and sentenced prisoners (though occasionally the data on St Patrick's Institution is suitable for deriving the prison population formula).<sup>1</sup>

<sup>1</sup>The *Report on Prisons* suffers from a format that is poorly thought out, inconsistent in its application within each report, and subject to arbitrary changes from one report to the next. Tables often refer to subpopulations that are of no apparent interest (such as those omitting prisoners serving sentences of "penal servitude") and the descriptive categories are often poorly chosen or difficult to understand (as in the choice of offences). The crucial distinctions between remand prisoners, those sentenced to imprisonment, and those imprisoned on default are made for some purposes and not for others. The format for the adult prisons often differs from that used for the places of detention. No information is given to the user on how particular statistics are generated. If these criticisms seem harsh, the reader is directed to the *Statistical Abstract of Ireland, 1980*. We find in Table 238, for example, that the average number in custody in 1975 was 458; the 1976 average jumps to 1,049. Equally peculiar "leaps" in numbers are found for a category in the analysis of committals to prison in the same table. Some of the anomalies have obvious sources, as when figures for St Patrick's Institution are incorrectly included with the adult prisons. Others, such as the origins of the highly volatile "committed and acquitted" category of committals defy explanation.



Table 10 traces the recent changes in the level of receptions to prison, as indicated by the number of adults and juvenile offenders committed on conviction. It also provides the average daily numbers in custody for those years, though that average includes both remand prisoners and those committed on conviction. Statistics on "total receptions", remand and sentenced, would not be meaningful as the remand figures involve double counting of persons.

Over the 1971-82 period, the rate of receptions into the Irish prison system did not greatly change. This was particularly true in the adult institutions. There were 2,157 sentences to prison in 1971, 2,102 in 1976 and 2,101 in 1982. Committals to St Patrick's Institution fluctuated over the period, but the 1971 and 1982 figures are virtually identical. There is no evidence, therefore, of a change in the use of imprisonment as a punishment by the Irish courts.

Though marred by the inclusion of remand prisoners, the average daily custody statistics tell a different story. In the adult prison system, the average daily population rose from 679 in 1971 to a peak of 1,000 in 1980, dropping back to 933 in 1982. This reflects (a) the accumulation in Portlaoise Prison of prisoners serving lengthy sentences and (b) a change in the effective sentence length for other categories of prisoners. The first factor is readily apparent. In 1982, the Special Criminal Court made 44 committals to prison (less than 2% of all committals); Portlaoise Prison housed 195 prisoners on the average day, 20% of the total (about 40 prisoners in Portlaoise serve as a work party and are kept separate from the main prison population: *Report on Prisons 1982*, p. 12).

There is also evidence to support the second trend, that of a rise in the average "effective sentence". This is apparent in the usage of Mountjoy Prison over recent years, with the number of "receptions" changing very little, the number of alternative institutions to which prisoners can be transferred increasing, and yet the average daily population in Mountjoy rose from 427 in 1976 to 463 in 1982.

Table 17 traces the distribution of sentences to prison by length of sentence between 1971 and 1982. Such tabulations necessarily include individuals who might more properly be considered as separate from the main prison population: persons sent to prison in default of sureties or for contempt of court. The format of the *Annual Report on Prisons* also requires that sentence length be considered separately for those sentenced to imprisonment (Table 17a) and those sentenced to penal servitude (Table 17b).

Table 16

Committals to and average daily population of prisons and places of detention: 1971-82

Year	Committed on sentence: adult prisoners				Committed on conviction: juvenile offenders*		Average daily in custody**	
	Sentenced without fine option***	In default of fine	Debtors/Contempt of Court	Total	Males sentenced to St Patrick's Institution	Adults	Juveniles	
1971	2,157	317	105	2,326	767	679	214	
1972	2,513	401	105	2,769	649	780	255	
1973	2,165	307	92	2,360	682	717	246	
1974	1,960	397	111	2,303	617	717	244	
1975	1,937	393	94	2,238	626	763	256	
1976	2,102	378	99	2,378	530	832	217	
1977	1,737	351	98	2,039	589	798	231	
1978	1,902	305	100	2,178	570	939	240	
1979	1,765	260	68	1,955	508	951	189	
1980	1,946	374	84	2,250	647	1,000	215	
1981	1,770	350	137	2,146	641	991	205	
1982	2,101	456	171	2,569	783	993	243	

\* Juvenile offenders: a person aged 17-21 (and in rare instances a 16-year old) may in lieu of a sentence to imprisonment or penal servitude be sent to St Patrick's Institution and from there transferred to other institutions (in recent years, Shanganagh Castle and Loughan House).

\*\* Averages include persons committed on remand before trial or sentencing as well as those committed under sentence.

\*\*\* Includes sentences of death and of penal servitude.

Table 17a

**Length of sentence of those committed to prison including St Patrick's Institution or places of detention 1971-82**  
(excluding penal servitude sentences)

Year	Length of sentence														Total			
	Period not specified		Less than 1 month		1 month less than 3 months		3 months less than 6 months		6 months less than 9 months & 9 months less than 12 months		12 months less than 18 months		18 months less than two years		2 years and over		No.	%
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%		
1971	2	0.1	361	10.9	725	21.9	755	22.8	1,017	30.7	380	11.5	38	1.1	29	0.9	3,307	100.0
1972	2	—	428	11.6	832	22.6	890	24.2	1,110	30.1	348	9.4	37	1.0	37	1.0	3,684*	100.0
1973	1	—	295	9.2	697	21.8	815	25.5	976	30.5	330	10.3	33	1.0	50	1.6	3,197	100.0
1974	2	0.1	353	11.7	588	19.5	646	21.5	887	29.5	448	14.9	34	1.1	52	1.7	3,010	100.0
1975	3	0.1	330	11.1	550	18.5	645	21.7	975	32.8	405	13.6	23	0.8	44	1.5	2,975	100.0
1976	8	0.3	308	10.1	534	17.5	623	20.4	1,002	32.8	515	16.8	27	0.9	40	1.3	3,057	100.0
1977	4	0.1	288	10.7	485	18.0	473	17.5	815	30.2	486	18.0	42	1.5	108	4.0	2,701	100.0
1978	3	0.1	287	10.2	455	16.1	509	18.1	954	33.9	442	15.7	41	1.5	127	4.5	2,818	100.0
1979	11	0.4	253	10.0	457	17.9	424	16.6	783	30.7	413	16.2	37	1.5	169	6.6	2,547	100.0
1980	4	0.1	310	10.3	538	17.9	550	18.2	927	30.7	505	16.7	42	1.4	143	4.7	3,019	100.0
1981	32	1.1	266	9.3	452	15.8	527	18.5	889	31.2	491	17.2	47	1.6	148	5.2	2,852	100.0
1982	18	0.5	298	8.7	499	14.5	513	14.9	1,083	31.5	715	20.8	52	1.5	265	7.7	3,443	100.0

\*Includes 74 prisoners transferred to St Patrick's and thus possibly counted twice in the table.

Table 17b

**Length of sentence of those sentenced to 'penal servitude'**

Year	Sentence												Total	
	3 to 5 years		6 to 10 years		Over 10 years		Life		Total		No.	%		
	No.	%	No.	%	No.	%	No.	%	No.	%				
1971	24	61.5	9	23.1	—	—	6	15.4	39	39	100	100		
1972	42	71.2	13	22.0	—	—	4	6.8	59	59	100	100		
1973	42	85.7	3	6.1	2	4.1	2	4.1	49	49	100	100		
1974	47	62.7	15	20.0	1	1.3	12	16.0	75	75	100	100		
1975	47	62.7	22	29.3	—	—	6	8.0	75	75	100	100		
1976	27	51.9	14	26.9	9	17.3	2	3.8	52	52	100	100		
1977	45	60.8	21	28.4	3	4.1	5	6.7	74	74	100	100		
1978	37	62.7	9	15.3	8	13.5	5	8.5	59	59	100	100		
1979	27	50.0	22	40.7	2	3.7	3	5.5	54	54	100	100		
1980	23	71.9	4	12.5	4	12.5	1	3.1	32	32	100	100		
1981	32	69.6	6	13.0	4	8.7	4	8.7	46	46	100	100		
1982	31	45.6	17	25.0	8	11.8	12	17.6	68	68	100	100		

Even with these complications, it is clear that the courts have changed their sentencing practices in recent years. Two possibilities are that the courts applied longer sentences than previously for a type of offence or came to use the prison sentence more sparingly for only those serious offences likely to attract a long sentence, such offences comprising an increasing proportion of the courts' caseloads. Probably both tendencies underly the 1971-82 change in sentencing. That change is amply clear in Figure 6, which is based on Table 17a. In 1971, some 56% of all prison committals were for less than six months. This had fallen to 46% by 1977 and 38% by 1982. The sentence range of six to 12 months remained unchanged over that period, but sentences of one to two years increased from 13% of the total in 1971 to 22% in 1982, though the trend was not always consistent. Sentences of two years or more represented just under 1% of the total in 1971, 1.7% in 1974, 4% in 1977, 4.6% in 1980, and 7.7% in 1982. Unfortunately, the categorisations used for sentence length makes it impossible to distinguish between sentences from the District Court and courts of higher jurisdiction (the District Court can sentence a person to prison for a maximum of 12 months, a range that covers all but the last two levels in Table 17a). It would therefore appear that the change toward higher sentences applies to all court levels, but with a particular significant change occurring in long sentences administered by the Circuit Court and Central Criminal Court. The trend in sentences of penal servitude tends to confirm this, though the pattern over time is less clear.

The potential significance of such a change in sentencing practice is clear from Pease's formula. Those persons sentenced to long periods of imprisonment still represent a small proportion of new prison receptions in the course of a year, but will form a vastly larger share of the prison population at any given time. This creates enormous pressure on cell accommodation within the prison system.

This was clearly apparent by the early 1980s. In 1981, 2,146 males were committed to the adults prisons and places of detention; the daily population of male prisoners ranged from a low of 794 to a high of 1,102 (the number of cells or cubicles available in those institutions being 1,021) averaging 968 for the year. For females, in that year the prison population ranged from 12 to 36 and averaged 23, with 42 cells or cubicles available. St Patrick's Institution averaged 176 prisoners in that same year (ranging from 188 to 164, with 218 cell spaces available), with an average of 29 at Shanganagh Castle (*Annual Report on Prisons, 1981*, pp. 77 and 95). By 1983 the pressure on space had grown even more acute, with a daily prison population of 1,620 (*Seanad Parliamentary Debates*, 8 March, 1984, p. 1000). This rise, in conjunction with

Figure 6  
Length of sentence of those committed to prison and places of detention, 1971-82



the estimated 1,330 prisoners given unsupervised full temporary release during that year and the use of "special leave" to relieve overcrowding (to be discussed later in the chapter), would appear to be the inevitable culmination of an average higher judicial sentence length that must be controlled by administrative action to shorten the "effective sentence" served. Even with that action, the average prison population is growing at an alarming rate.

Thus the current usage of the prison system leads to several undesirable results: overcrowding, an unavoidable mixing of long-term and short-term prisoners (though specialised units within the prisons mitigate this to some extent), prisoner numbers that fluctuate markedly during the year, and a prison culture that will be dominated by prisoners serving long sentences, as they provide the continuity.

The evaluation of the prison system cannot be based simply on the numbers of individuals being incarcerated or even by the more detailed statistical breakdowns of the length of sentence, recidivism, or offences. The performance of the prison system will be limited by external factors such as the selectivity with which imprisonment is imposed, in such a way that those imprisoned are compared with all those potentially imprisoned — that is, who were convicted. We know that the proportion imprisoned is small, but know little about the relative weight that offence type, prior record of offences, employment status, or age have on which persons are incarcerated.

The extent of recidivism in the Irish prison system is very substantial. This may reflect both the selectivity with which imprisonment is used by judges and/or the limitations of a custodial regime as a deterrent to further involvement in crime. The evidence is too sparse to do more than note the phenomenon — interpretation cannot be reliably made on its basis, and comparisons to other countries will not be reliable. In 1981, exactly two-thirds of males sentenced to the adult prison system had a record of an earlier imprisonment. Four or more previous imprisonments were on the records of 42% of those imprisoned during 1981. One or more earlier imprisonment was found for just over half (55%) of females sentenced to custody in 1981.

### 6.III Irish Prison Populations in Comparative Perspective

The Republic of Ireland has a level of prison use (committals) that is somewhat below the European average and an average daily prison population considerably below the European norm. Thus, though the rate of prison committals in this country is just below that of England, sentencing policies and policies on release dates differ so as to produce

a far lower daily prison population here. This conclusion is based on international comparisons that express receptions and prison population as rates per 100,000 national population. Such comparisons, of course, do not hold constant differences in the type of offenders on which the courts pass sentence and prison officials decide release dates.

International comparisons of prison populations, like those of crime rates, are rarely straightforward. It is, in fact, extremely difficult to obtain even approximate comparisons, as countries differ in, for example, the point at which the juvenile prison system ends and the adult prison system begins. Also, each country's official prison statistics has its idiosyncrasies.

Again, as with crime rates, the most reliable comparisons that we can make for Ireland are to the prison systems of England and Scotland. Expressing the levels of prison receptions to the equivalent to the Irish prisons *and* places of detention and using a base of the relevant population group (17 and over in England and in the Republic, 16 and over in Scotland) we find the following recent levels of committals:

Table 18

Imprisonment rates per 100,000 population "at risk"

	Republic of Ireland (1981)	England and Wales (1981)	Scotland (1980)
Males	206	245	427
Females	8	13	16

Sources: Population: Republic of Ireland, *Bulletin No. 40*, Census of Population of Ireland, p. 5; England and Wales and Scotland, *Annual Abstract of Statistics 1983*, p. 10; Prison Committals (sentenced with option of fine): Republic of Ireland, *Annual Report on Prisons, 1981*; England and Wales, *Annual Abstract of Statistics, 1983*, p. 81; Scotland, *Prisons in Scotland, Report for 1980*.

The reception rate to Irish prisons and places of detention is therefore lower than that in England and half that in Scotland.

Such comprehensive comparisons cannot be made to other countries. However, the reception rate of prisoners aged 21 and over and sentenced without a fine option can be calculated for a range of European countries. As rates per 100,000 population, the following reception rates were present in the late 1970s: England and Wales, 69; Scotland, 129; Northern Ireland, 60; France, 19; The Netherlands, 127; Sweden, 121; Switzerland, 100; and the Republic of Ireland, 52 (Republic of Ireland figure from *Annual Report on Prisons, 1980*; rates for other countries, from Fitzmaurice and Pease, 1982, p. 578).

Comparisons based on the average daily prison population are more difficult. First, as was noted earlier, the Irish prison statistics do not differentiate convicted prisoners from those awaiting trial or sentence. Second, countries differ in the kinds of institutions that are regarded as within the prison system proper (as where some institutions fall within the control of the Department of Health).

A reply to a Parliamentary question in the UK House of Commons both provides the relevant data for the Republic of Ireland and allows for some of the organisational differences. The comparisons are for the mid-1970s and provide average prison populations per 100,000 population for "convicted" and "unconvicted" prisoners, as well as the total prison population (Table 19). Ireland has a comparatively low prison population under sentence, with only Italy and The Netherlands recording lower levels. France and Denmark have rates slightly higher than the Irish rate.

Table 19

Average daily prison population per 100,000 of total population in Western Europe (c. 1975)

Country	Convicted prisoners	Unconvicted prisoners	Total	Convicted as percentage of total
Federal Republic of Germany	69.0	23.4	92.4	74.7
United Kingdom	78.3	9.0	87.3	89.7
Belgium	63.8	15.2	79.0	80.8
Luxembourg	62.7	11.5	74.2	84.5
Italy	30.3	30.2**	60.5	50.0
France	41.9	17.1	59.0	71.0
Denmark	40.9	17.7	58.6	69.8
Republic of Ireland	34.5	3.4	37.9	91.0
Netherlands	9.4*	13.2	22.6	41.6
England and Wales only	72.6	12.0	84.6	85.8

\*Includes many who have been sentenced by lower court but await a definitive sentence from a higher court.

\*\*A further 29 people per 100,000 have been convicted to serve prison sentences but are at liberty awaiting prison space.

Source: Parliamentary Debates (Commons), 20 April, 1978. Written answers, as reproduced in K. Pease, *Prison Populations: Using Statistics to Estimate the Effects of Policy Changes*, Milton Keynes, Open University Press, 1980, p. 10.

The range of comparative information on "prison demography" was greatly expanded in 1983 through the efforts of the Council of Europe's Committee for Co-operation in Prison Affairs. A biannual data-gathering exercise commenced, which attempts to make available material on the rate of committals and average prison population for all 21 Council of Europe members. The initial findings were published in the December, 1983 *Prison Information Bulletin*. They remain quite tentative, as even

the most rigorous data-gathering exercise cannot overcome basic structural differences between prison systems that render comparisons difficult. For example, Denmark has a queueing system for persons committed to prison for short sentences. In 1981, that queue contained some 11,000 individuals, a number that is nearly four times the size of the country's average daily prison population (Council of Europe, 1983, pp. 30-31). Similarly, Ireland in recent years had adopted a policy of granting prisoners "holidays", better termed "special release", as a form of temporary release, with relatively large numbers of prisoners at any given time being on release to alleviate overcrowding. This is in addition to those given full temporary release without supervision for the same purpose. Denmark's queueing system and the Irish system of "special release" may well be paralleled in other countries, but this is not evident from the collated demographic statistics.

Appendix III reproduces some of the information derived from the Council of Europe's inquiry of 1 September 1983. From that material and other studies of European prison systems, it is possible to distill the following comparative evaluations. Ireland stands somewhat below the Council of Europe average in terms of committals (expressed as rates per 100,000 population) and considerably below the average for daily numbers incarcerated. As noted, this latter figure is somewhat artificially lowered, due to the practice of "special release". If only sentenced prisoners were considered, Ireland's daily prison population would rise above the average for the 21 countries, particularly if "holidays" and "shedding" (full temporary release without supervision) were added, but its standing in terms of committals would be unaffected. The low committal rate partially reflects the fact that Ireland has one of the lowest usages of committal on remand; (while awaiting trial or sentence).

Total committals to prison in Ireland in 1982 represented a rate of 188 prisoners per 100,000 population, compared to rates of 212 in Belgium, 378 for Denmark, 137 for France, 200 for Germany, 215 for Holland, 292 in Norway, 147 in Switzerland, and 316 in the United Kingdom. These figures are more current than those previously cited, but are less useful than those derived from Fitzmaurice and Pease (1982) as they include both remand and sentenced prisoners and also are distorted by national differences in age limits for entry into the prison system.

The average daily prison population is a less secure basis for comparison among countries. Yet it is clear from the Council of Europe statistics that Ireland has a shorter average "effective sentence" than most of the countries for which data are available. This follows from the difference

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between Ireland's ranking on committals and on its daily population. Rates of average prison populations include Ireland's 42 per 100,000, Belgium's 65, Denmark's 60, France's 69, Germany's 100, Holland's 28, Norway's 47, Switzerland's 62 and the UK's 88. If we exclude prisoners on remand, it appears that (see Appendix III) Ireland is roughly in line with the levels of prison population found in France, Norway, and Switzerland, well above that found in The Netherlands, and substantially below Austrian, German and UK levels.

Taken together, the international comparisons suggest (a) a moderate use of imprisonment as a penalty in Ireland, though perhaps typical or higher than typical given Ireland's likely standing in terms of persons convicted per 100,000 population and (b) a tendency toward the use of imprisonment for short sentences.

#### 6.IV The Prison Service

The Irish Prison Service grew from an authorised strength of 377 in 1971 to 1,525 in 1983. Table 20 follows the annual pattern of change over those years. Security requirements in Portlaoise and Limerick Prisons, the opening of five new institutions, and an expanded range of programmes all contributed to this extraordinary expansion in the ranks of the Prison Service. The antiquated structures of the three largest institutions (Mountjoy, St Patrick's and Portlaoise) also contribute to the high staff to inmate ratios in the Irish prison system, reflecting the need to maintain constant visual supervision when prisoners are out of their cells.

Still, the staffing level is noteworthy. Even allowing for the need to cover other than the main shift and to allow for holidays and sick leave, the number of staff on the day shift must generally be one officer for every three prisoners. This level can, of course, be an opportunity, permitting programmes that in other prison systems would be impossible due to a lack of supervisory staff.

The standard method for measuring prison staffing levels is the ratio of prison officers to the average number of prisoners confined daily. Tables 16 and 20 provide the necessary information, yielding ratios of officers to inmates of 1:3.0 for 1971, 1:1.7 for 1976, and 1:0.96 for 1982, the most recent year for which information is available. The Prison Service includes both administrative and specialist staff (e.g., for training and for prison work programmes). Thus, the ratios just cited are based on the number of prison officers and exclude senior administrative and specialist grades.

Table 20

Staff numbers in the Prison Service

Year	Total Prison Service				Prison Officer Grade		Total authorised numbers**
	Numbers 1 January	Recruits	Net Increase*	Numbers 31 December	Numbers 1 January (a) Regular Grade	(b) Senior Grade	1 January
1971				295	281	18	377
1972				477			
1973				568	550	41	731
1974				588	550	41	731
1975				711	552	41	734
1976	711	117	63	774	581	45	843
1977	774	160	107	881	630	62	903
1978	875	320	217	1,092	915	91	1,183
1979	1,094	135	49	1,143	881	84	1,232
1980	1,143	362	301	1,444	1,046	121	1,443
1981	1,444	74	46	1,490	1,037	131	1,451
1982	1,490	118	65	1,555	1,168	149	1,607
1983	n.a.	n.a.	n.a.	n.a.	1,149	133	1,525

\* Number recruits less retirements and resignations.

\*\* Authorised numbers include all "departmental grades" in the Prisons and Places of Detention. Sources: Total Prison Service from *Annual Report on Prisons*, various years; Prison Officer Grade, *State Directory*, *Directory of State Services*, various years. Discrepancies are as shown in the Reports. There was no *State Directory* in 1972. Total Prison Service numbers 1971-75 were provided by the Department of Justice.

A comparison to the staffing levels in England and Wales is instructive. In prisons for males, the 1982 staff:inmate ratio was 1:2.7 and in prisons for females, 1:1.7 (Home Office, 1982, p. 26).<sup>2</sup> These ratios represent a rather significant rise in staffing levels in British prisons since the start of the 1970s. In 1971, the ratio for all male prisons in Great Britain was 1:3.5 and in female prisons, 1:2.3 (UK, CSO, 1983, p. 182).

The comparison may be affected by the different security needs in the two prison systems, but the levels of overtime work are quite similar. The average overtime in the basic grade of prison officers in English prisons was 14 hours per person weekly in 1981 (Home Office, 1982, p. 17).

<sup>2</sup>All ratios are standardised to include only members of the prison officer grade directly involved in supervision of inmates. However, the Irish prison system makes far less use of civilian clerical staff than does its UK counterparts. Prison officers in the Republic are defined as the total number in the grades of Chief Officer II, Assistant Chief Officer and Prison Officer, and thus excludes officers in the "industrial", "trades" and "works" section.

The distinctive security requirements at Portlaoise and Limerick prisons of course distort the staff to inmate ratios in the full prison system. However, the staffing levels in all the Irish adult institutions exceed substantially those in the English prison system. For example, Portlaoise Prison on 31st October 1983 confined 199 prisoners (about 40 of whom are to serve as a work party and are kept separate from the main prison population) and had 296 basic grade custodial prison officers. This gives a staff:inmate ratio of 1:0.7. The ratio for the other prisons were: Mountjoy, 1:1.6; Limerick, 1:0.5; Arbour Hill, 1:1.2; and Cork, 1:2.0 (*Parliamentary Debates*, 22 November 1983, p. 148). In all, Portlaoise and Limerick prisons house about one-fifth of all prisoners and are staffed by more than one-third of the total prison officer numbers. These ratios are not, of course, comparable to those cited for the England prison system, as they include only the basic grade of prison officers.

If such high staffing levels are needed, the cost alone suggests that the greatest possible returns should be received. That return should be in the form of training, educational, recreational, and counselling activities that require a large staff presence.

The current policy on training for prison officers makes such a return unlikely. Recruits to the prison service received ten weeks of training until 1982 when two additional weeks were added "to provide a greater emphasis on practical first-aid skills, and to allow a greater involvement by the Department's Psychologists" (*Report on Prisons, 1982*, p. 33). Of the 12 weeks training, seven weeks is classroom instruction and five weeks "on the job" training. This coincided with a greater use by the prison system of specialist courses run by outside bodies (such as the Eastern Health Board and the Institute for Public Administration), and specialised in-service training programmes within the prison system. Though commendable, these developments are quite meagre in relation to the need created by the introduction of non-custodial institutions and the rates of pay within the Prison Service.

As the Council for Social Welfare recently noted (1983, p. 43) more training and a higher standard of educational qualification will not resolve the current frictions within the Prison Service. There are deeply rooted problems of management structure, both within the Service and in the lines of authority between the Department of Justice and the Service, and inherent conflicts within the very role of prison officer.

In a major study of the role of the Irish prison officer (of which only a summary has been published — McGowan, 1980), the central pro-

blems were identified. These are dissatisfaction with discipline and promotion procedures, and a perceived failure to delegate supervisory responsibilities (a) to lower levels within the service and (b) to the prison authorities. Conflicting demands being made on the individual prison officers in terms of how to relate to prisoners were to "be friendly but not too friendly; apply the rules but not in all cases; be informed but keep your distance" (McGowan, 1980, p. 266).

The Council for Social Welfare report identified the industrial relations problems of the Prison Service as a fundamental barrier to any improvement in the prison system. This is certainly the case. No innovation will have much chance of success if its introduction must pass through the mire of misunderstandings, grievances, and distrust that presently exists. The Council held out a solution: "Essentially what is required is that some way be found to enable the officers (to) make a more positive contribution to the rehabilitative efforts taking place in prison, and to restore to them a sense of status — a feeling that the work, which after all they carry out on behalf of the community, is recognised and valued by that community" (p. 45).

The Probation and Welfare Service also has a presence in the prison system. In 1982, 57 officers were assigned to the prisons, 37 of whom were to work in the Intensive Supervision Scheme. In England and Wales in that year, 5,800 probation officers worked in the courts and prisons, as opposed to the 27,000 staff in the Prison Service. The comparable figures for Ireland are 155 and 1,555 respectively.

#### 6.V Prison After-care

Prisoners who have completed their full sentence minus remission have left the jurisdiction of the criminal justice system. Their continued participation in such programmes or employment or accommodation as might have been arranged prior to release would be entirely voluntary.

Under the terms of the Criminal Justice Act, 1960 (Section 2), the Minister for Justice has broad authority to grant early releases under a variety of circumstances. The most sweeping is "full temporary release" which is generally for what would have been the duration of the prison sentence. Such releases are either granted under Probation and Welfare Service supervision (624 instances in 1982) or without such supervision (1,631 instances during 1982). Of the latter, 1,298 cases were early releases to relieve overcrowding in the prison system (*Annual Report on Prisons, 1982*, p. 124).

Other forms of release are for shorter periods. "Day-to-Day" release is



designed to facilitate prisoners who have employment or are engaged in training. Such a form of "working parole" is continuous, but involves returning to the prison at night and at weekends. Open centres have schedules of short-term release, generally for weekends, as part of the prison regime. In other institutions, such releases or shorter one-day releases would be granted on an individual basis, either for compassionate reasons or to assist a prisoner in finding work or for a similar specific purpose.

Decisions on all forms of release are administrative. As was described in earlier chapters, the main decision-making body is a review group which meets within each institution. Formally, however, the Governor has substantial authority as delegated by the Minister for Justice. The Prisoners (Temporary Release) Rules, 1960 allocates the responsibilities:

The Governor or other officer in charge for the time being of a prison may, subject to the directions of the Minister and subject to any exceptions which may be specified in directions of the Minister, release temporarily for a specified period a person serving a sentence . . . (quoted in Byrne, *et al.*, 1981, p. 110).

With the pressures of overcrowding and the general rise in prisoner numbers, the ability of the Probation and Welfare Service staff to use these arrangements to facilitate re-integration of prisoners into the community has been down-graded as a priority. In addition to the practice of "shedding" prisoners to make room for new arrivals, temporary release is used to make space available by having a constant stream of prisoners released on one week or ten day "special releases". When one group returns, others must be sent out on short-term release to replace them or those returning given "full temporary release".

This practice and the apparent success with which it has operated (measured by the rarity of breaches of release conditions) suggests both the need for more supervisory personnel and the potential for greater use of non-custodial alternatives to incarceration. The need for more personnel follows from the large caseloads forced onto the Probation and Welfare Service and particularly the inability to continue operation of the Intensive Supervision Scheme. Given the extent of the personal problems of many prisoners heightened in the last few years by drug abuse, the responsibilities of the Service as liaison officials, counsellors, and participants in review meetings are vital. Early release may in many cases be as effective or more effective a disposition than serving a full sentence, but the paucity of supportive resources makes it impossible for the Service to meet its objectives as outlined in Chapter 3.

Necessity may here prove to be the source of innovation. The extensive use of full temporary and short-term release to alleviate prison overcrowding provides evidence of a substantial number of prisoners for whom custody is unnecessary.

In addition to personnel, the main resources available to provide support for prisoners after release are in hostels and training centres or workshops. The number of persons for whom these facilities can currently cater is extremely limited, particularly in light of the very large number of ex-prisoners being released annually from the prison system. Those facilities must also accommodate persons given Probation Orders by the courts. In 1981, for example, of 139 individuals placed in hostels by PWS, 37 were on release from prison (Report, 1981, p. 41).

To date, these facilities have largely been developed by voluntary groups often with the financial support of the Department of Justice and the assistance of the Probation and Welfare Service. The number of places in such facilities and the range of activities they encompass have grown considerably in recent years. After-care remains, however, the most undeveloped part of the criminal justice system. Only a small proportion of ex-prisoners receive material support to assist their adjustment to life outside. The Probation and Welfare Service has had most success in finding initial placements for newly released prisoners: in 1981, 213 were placed in employment and 498 in training programmes (Report, 1981, p. 29). The duration of these placements is not known. But given the economic situation, the numbers are encouraging. For many prisoners, though, such placements will be difficult to sustain unless support is available in the form of accommodation and participation in programmes comparable to the Jervis Street Drug Centre and The Coolemine Therapeutic Community. The problem of drug abuse is one which now confronts all the agencies of the criminal justice system. It requires a response different from more traditional problems such as alcoholism, but that response has yet to emerge.

## CHAPTER 7

### SOCIAL POLICY AND CRIMINAL JUSTICE POLICY: CHOICES FOR THE 1980S

#### 7.1 Introduction

This report contains a number of basic premises. Perhaps the most basic is the claim that the structure of opportunities in Irish society represents the main social policy issue relevant to the level of crime. Disadvantage in the educational system, labour market, and living conditions increase the probability that persons from particular social groups will become involved in serious, repetitive crime. The result is that the *rates* of criminal activity, arrests, court appearances, and imprisonment in some categories and groups are higher than in others.

A second premise is that inequalities in the distribution of resources, statuses, opportunities and life chances (to use Donnison's phrase) set limits on the potential effectiveness of criminal justice policies. Criminal justice policies will be subsidiary to larger issues of social policy. Two examples may clarify this premise. We have known for some 20 years (Glaser, 1964) that the availability of secure, respectable employment is one of the best predictors of success among ex-prisoners. Yet the ability to use this policy measure is greatly restricted by (a) barriers to apprenticeships and (b) the structure of the labour market itself.

Proposals to initiate a programme of community policing in Irish urban areas will be similarly restricted. It is difficult to envisage how such a scheme can succeed apart from a full community development programme, such as that proposed by Bannon and his colleagues (1981). The resources of many urban areas are too sparse to make the community a viable unit on which to base a response to the problem of crime. Yet it is in those areas with the least resources that the problem is most severe.

A third premise is that the work of the criminal justice system consists of making decisions. The quality of the decision-making processes and the choices available set an upper limit on what the criminal justice system can achieve in crime control, law enforcement, or adjudication.

This leads to a fourth premise. When viewed as a decision-making apparatus, the links among the component agencies of the criminal justice system become clear. A maldistribution of resources among agencies will adversely affect the performance of the system as a whole. More policemen without improved diversionary programmes, more convictions without more Probation and Welfare Officers, or more prisoners without better after-care facilities are all self-defeating policies.

This chapter applies this perspective to the Irish criminal justice system. The section that follows offers an evaluation of that system's current performance, based on material in the preceding chapters. The next section considers constraints on policy in criminal justice inherent in Ireland's social structure. The concluding section of the chapter provides recommendations on the main areas of choice now facing decision makers.

#### 7.11 Evaluating the Irish Criminal Justice System

Preceding chapters examined in detail the current activities of the Garda Síochána, the criminal courts, and the prison system. The Office of the Director of Public Prosecutions and the Probation and Welfare Service were also considered.

That examination was more descriptive than evaluative. Information relevant to the most important questions about criminal justice could not be obtained. However, in this section evaluations will be stated about the current performance of the criminal justice system and its main component agencies. Those conclusions are based on the perspective outlined in Chapters 2 and 3, the discussion on crime and offender characteristics in Chapter 4, and the data from Chapters 5 and 6.

##### *7.11.a Criminal Justice as a System*

The lack of coordination among the agencies of the criminal justice system is clear. It is manifest in the haphazard manner in which statistics are collected, tabulated and made public. But that is merely a pointer to the severity of the problem. The problems confronting the criminal justice system have grown enormously over the past 15 or so years. So has the amount of money being spent on criminal justice. The result in 1984 is a system with a maldistribution of resources among its component agencies. This is particularly apparent in the meagre allocation of personnel and expenditure to the Probation and Welfare Services, to the courts generally, and to the Office of the Director of Public Prosecutions. It is also apparent in the low availability, though enhanced over recent years, of non-custodial programmes and after-care services available to the courts and Probation and Welfare Service.

Yet it is on those sections of the system that some of the heaviest demands are being placed.

The Irish criminal justice system has also failed to respond to the growing complexity of the problems it faces. This is evident, for example, in the lack of innovation in, or commitment to, special programmes for young adults. Innovative programmes and expenditure tends to be aimed more at juveniles (in legal terms, children and young persons). There is a gap in-between, the late teens and early twenties, an age group which merits special attention. More generally, the response of the criminal justice system has tended to be one of seeking to do more of the same, rather than to encourage either specialisation or innovation. The Garda Síochána, for example, developed the JLO Scheme and established specialised units but its operational strategy has been to put its faith in greater numbers. Increased personnel must be so deployed as to improve the rate of detection and public satisfaction with the force; otherwise it contributes little to the objectives of policing.

Of course, since the 1970s the security problems associated with Northern Ireland have diverted a substantial amount of both resources and concentration away from more mundane concerns (New Ireland Forum, 1984, pp. 77-79). But it is perplexing that the common problems raised by the North have not led to greater coordination among the various agencies that form the criminal justice system.

#### *7.11.b The Garda Síochána*

The level of policing in Dublin and other urban centres needs to be increased. However, such an expansion must await the development of a satisfactory form of urban policing. Numbers alone are relatively unimportant. Their proper deployment is what will matter. This can result in a more effective police presence than is currently being achieved. Devising a strategy for patrolling urban areas merits the urgent attention of the Garda authorities. It appears that the Garda Síochána has yet to establish a comfortable balance between the demands of crime control, law enforcement, and public assistance. In particular, the unique urban pressures for a "public assistance" role from police forces are not fully appreciated by the Garda authorities. Police effectiveness is heavily dependent on cooperation from the public and the extent of that cooperation will be strongly influenced by how well the force performs in its public service provision role.

Urban policing is a complex and difficult job. It requires both a substantial amount of dull, routine work and the ability to respond swiftly and competently to a diversity of demands. It is most unlikely that the

training programme in Templemore adequately prepares Garda recruits for that responsibility. An extended programme of "on the job" training is needed.

A strategy for urban policing, a correct balance between police tasks, and adequate training are essential if the Garda Síochána is to retain its greatest asset. This is the apparently high level of public support and cooperation which the force enjoys, as evident in the high rate of detections relative to other police forces and the results of public opinion survey (Fogarty, 1984, p. 161). Retaining that support is vital. Proposals to change the nature of the force, such as transforming it into an armed force, should be weighed against the potential damage to the vital link to the community.

The pressures currently placed on the Gardai due to the rise in the volume of crime and security concerns, suggest that some of the current responsibilities of the force might be at least partially dropped. In particular, the role of the Garda as prosecutor should be restricted. The number of minor offences has grown enormously in recent years. At the same time, the complexity of many other common offences, such as burglary and fraud, has also grown. The expanded workload and responsibility of prosecution now makes the establishment of an independent prosecuting authority essential.

The DPP's office has responsibility for reaching independent decisions on (a) whether to prosecute and if so (b) what charges to enter in serious offences, a responsibility made difficult to define and implement by the vagaries of statute law. The DPP's office has a professional staff of six, and does not itself prosecute cases in the courts. The DPP's role in supervising pre-trial investigations and carrying out court prosecutions should be greatly expanded. This could take the form of a unified prosecution system centred around the DPP's office, in which all indictable prosecutions are either supervised directly by its staff or subject to guidelines issued by the DPP. For example, the guidelines could specify that immediately after an accused has indicated that he or she intends to opt for a jury trial, the DPP should be notified. This is not the case at present, the result of which is that flaws in a prosecution are not detected until they are too late to remedy.

The process of transferring Garda clerical responsibilities to civilians should also be encouraged.

#### *7.11.c The Criminal Courts*

Given the relatively simple procedural rules and the use of Gardai as

prosecutors in most instances, the delays that are so apparent in the District Courts are difficult to understand. The courts continue, set in their ways, unperturbed by the change around them.

At present, the restriction of the District Court to a maximum of one year as a prison sentence makes it extremely popular among defendants charged with indictable offences. Kevin Boyle has described this as a form of "statutory plea bargaining" (see Appendix II). This may change if, as is currently under consideration, that maximum is raised to a two year sentence for offences committed while on bail. If so, the current deficiencies of the District Court will become even more apparent. Those deficiencies are manifest in slow and cumbersome decision making and administration, as evidenced in the "cases pending" statistics, and in procedures and settings that do little to instill respect for the law or for the Court.

The District Court has at its disposal a rather formidable range of verdicts and sentences. When implemented, Community Service Orders will expand that range. Given the options now available, it may no longer be desirable to retain the option of a prison sentence within the District Court for cases that have not first been referred to the Office of the DPP. In 1982, 80% of all committals under sentence to the prison system were from the District Court; this was true for 90% of all committals under sentence to St Patrick's Institution. The distribution of responsibility among the criminal courts is another issue that deserves immediate consideration. A streamlined District Court, which dealt swiftly and simply with cases, should be sought. The interim reports of the Committee on Court Practice and Procedure have provided the necessary foundation for doing so.

The District Court also makes extensive use of fines. At present, the enforcement of those fines by the courts is highly unsatisfactory. Less than three quarters of fines are in fact paid (see Fitzharris, 1981). More efficient administrative machinery, coupled with ways of ensuring equity in levelling and collecting fines, might make fines a more attractive sentencing option.

The most serious deficiency of the courts is perhaps in providing information on what they decide. It is serious not because it hinders research, but because it renders accountability impossible and inhibits the development of guidelines on the appropriate sentence for a type of offence.

#### 7.11.d *The Prison System*

Like the courts, the prison system makes insufficient use of services that could be provided by the Probation and Welfare Service. That, however, is more a general criticism of the criminal justice system. There are far too few Officers to meet the needs that are present and the PWS has expanded so rapidly of late that organisational problems are inevitable.

As was noted earlier in this chapter, the Irish prison system is characterised by overcrowding, nineteenth-century buildings, and a high staff to inmate ratio. It has been beset by apparently intractable problems of industrial relations.

Despite this, the prison system has undertaken substantial change in the last ten or so years. It has established a number of new institutions, run along new regimes, and greatly expanded its use of provisions for early release. These are desirable developments. However, they do not respond to the basic question of whether most of what is being done within the prison system might be done more effectively and efficiently in the community. The Intensive Supervision Scheme suggests that it can be, though a final judgement must await evaluation of the Scheme's success rate and sufficient resources to allow its reimplementation.

The current restrictions on cell space offer an opportunity. Without permitting overcrowding, the prison system should aspire to its present size as a maximum. This will, of course, depend on forces outside of the prison system itself in large measure. Specifically, the courts need to develop a sentencing policy that bears on some relationship to the capacity of the prison system, and the Probation and Welfare Service needs to expand to take up the supervisory responsibilities involved.

From the arithmetic of prison populations, we know that any increase in the "effective sentence" length in the Irish prison system will create a crisis. That crisis has in many respects already arrived. Its present manifestation owes more to the accumulation of long term prisoners in Portlaoise Prison than to the trend toward a longer average "effective sentence". But both factors are evident. The response to date has been to vastly expand the use of early release without supervision. Such a mockery, in which the courts pass sentences that are not implemented, or only partially implemented, is hardly desirable. It would be better to match sentence policy with prison capacity, setting present cell capacity as the absolute maximum. The current range of options open to the courts in Ireland makes that feasible.

### 7.11.e Criminal Justice Expenditure

Expenditure on the criminal justice system has risen so dramatically in recent years that it today forms a major constraint on policy alternatives: there is little scope for or prospect of real increases in what is spent, and consequently cost effectiveness – efficiency – will be an important criterion in making choices.

A detailed analysis of the main components of criminal justice expenditure over the 1960-84 period can be found in Appendix IV. For the purposes of this final chapter, two points are of particular relevance. First, criminal justice expenditure has tended to grow at a rate slightly below that of public expenditure generally. Even so, the amounts involved are today very substantial. The estimates for 1984 anticipate expenditure of £224 million on the Garda Síochána, £9.3 million on the courts of Justice, and £35 million on the prison system. These sums exclude all capital expenditure and also some £30 million in current expenditure which is scattered among the estimates for other votes but which directly relates to the operation of the criminal justice system.

Second, if criminal justice expenditure has not risen especially rapidly relative to other government services, the trends have favoured some components of the system more than others. In the early 1960s, expenditure was divided such that the Gardai spent nearly 90% of the criminal justice budget, the courts less than 7%, and the prison system about 4%. Subsequent trends left the prison service significantly more advantaged, the Garda Síochána with a real increase in resources and the courts with a diminished share of expenditure. In the early 1980s, the Gardai were responsible for about 84% of that expenditure, the courts for 3%, and the prison system for the remaining 13%. An analysis of expenditure confirms that the development of the Irish criminal justice system has not been balanced. In particular, the prosecutorial, non-custodial, evaluation, supervisory, and after-care components of the system have not been allocated resources commensurate with their increasing responsibilities.

## 7.111 Social Policy, Inequality, and Criminal Justice

### 7.111.a Inequality and Crime in Ireland

A strategy to cope with crime in Ireland will need to succeed in the face of very deeply rooted inequalities of opportunity and life chances.

High unemployment presents the most obvious challenge. At present, one fifth of the youth labour market is unemployed. Their ranks nearly doubled between the beginning of 1980 and mid-1983, an increase that

was twice that of older workers (Sexton, 1983, pp. 3-4 and 64). Were this risk of unemployment evenly distributed among social groups and categories, it might lead to a prediction of an equivalent rise in juvenile delinquency, which would subside as employment prospect improved. But the risk of unemployment is structured to coincide with the basic inequalities in Irish society: by social class and by place of residence (Breen, 1984b, Bannon *et al.*, 1981).

There is a clear and strong connection between social class background, educational participation, and youth unemployment in Ireland today. The geographic concentration of the resulting advantages and disadvantages within the Dublin area is more pronounced than in other major European cities or even parts of inner London (Bannon *et al.*, 1981, p. 85).

Social class differentials in educational participation are also more intense here than in Great Britain (Rottman and Hannan, 1982, pp. 62-63), though the difference is more apparent for boys than for girls. To summarise the magnitude of the inequalities, one can look at the recent experiences in schooling and employment of the two extremes of the social class system, upper middle class (higher professional and large-scale proprietorial) families and the families of unskilled or semi-skilled labourers. Children from the former backgrounds nearly always complete the leaving certificate: 86% of boys and 96% of girls did so in 1981. Only 4% of boys from such backgrounds and none of the girls had left education before completing the inter cert. If we look at "lower working class" families, as defined above, we find a rather different situation. There, 26% of boys and 46% of girls achieved the leaving certificate standard, while 45% of boys and 28% of girls had left school without an inter cert. (Hannan and Breen *et al.*, 1983, p. 366).

The experiences of cohorts of young people leaving education in recent years, as recorded in the three annual surveys conducted by the National Manpower Service since 1981, provide firm evidence that educational disadvantage translates directly into labour force marginality. The unemployment rate among those without a post-primary certificate was 29%, for those with the Group Cert, 19%, for those with the Inter Cert, 14%, and for those who completed the Leaving Cert, 8% (Breen, 1984a). The disadvantage imposed on those with poor educational attainment is magnified in times of economic recession. Traditional avenues of working class careers, such as through apprenticeships, become closed off, with working class children experiencing competition from better educated children of middle class families, who are forced to "trade down" their educational credentials when searching for a job (Breen, 1984a).

It is in such a situation, an unemployment trap from which many early school leavers will not find an exit, that unemployment comes to have a plausible connection in the probability of involvement in crime. To the extent that educational policy has contributed, however unintentionally, to the middle class domination of all higher levels of education, it potentially added a layer of avoidable crime in Ireland to our current crime problems. Social disadvantages, if geographically highly concentrated, tend to form a syndrome that persists over generations. The residents of such areas will be the last to receive the benefits of general improvements in economic and social conditions. As Bannon and his colleagues (1981, p. 71) note about Dublin: "One of the consequences of the spatial grouping of social characteristics is that areas become identified with problems and the mere presentation of a person's address may be sufficient to categorise that person".

The marginalisation of many inner city neighbourhoods was proceeding apace in the more prosperous 1960s and 1970s. Chronic unemployment has persisted, largely impervious to the national economic climate. Many residents of many such areas and their children have no realistic expectation of entry into stable employment, however poorly paid (Bannon *et al.*, 1981, pp. 262-263).

It is in this social policy context that criminal justice policy must be framed. If the Gardai, the Probation and Welfare Service, or other agencies proceed to implement strategies that do not merge with traditional social policy instruments of redistribution, community regeneration, and service provision, they are unlikely to succeed. Indeed, in the NESC report *Urbanisation: Problems of Growth and Decay in Dublin* (pp. 323-324) it was argued that a response to crime was necessarily one component of the proposed programme of city regeneration: "The success of regenerative programmes for the Inner City requires a complementary programme of community management, community welfare and the necessary controls to realise the fruits of effort".

This report associates such structural inequality with a degree of "avoidable crime", crime that is attributable to economic and social processes that have marginalised categories of persons. This association is particularly strong where processes have geographically concentrated that marginalisation. So it is not unemployment or an inequalitarian educational system in themselves that are the fundamental causes. Rather, it is the structured inequalities that bear with great intensity on multi-deprived groups and communities. After all, the very timing of the rapid and sustained rise in crime makes a simple unemployment/crime

link questionable. There is some evidence to suggest that major forms of property crime, such as house-breaking and robbery, rose more rapidly subsequent to years with high unemployment than would otherwise have been the case, but the relationship is slight (Rottman, 1980, pp. 77-81). At least from the 1960s through to mid-1970s — when unemployment was cyclical, not endemic — it is more reasonable to associate rising crime with growing prosperity and its unequal distribution.

### 7.III.b *Applying Social Policy to Specific Criminal Justice Issues*

A principle of complementarity between social policy and criminal justice policy needs to be applied before it is useful. This section examines some of the major issues in which choices will be required from criminal justice policy-makers.

There are three particularly urgent problems that will lead criminal justice policy-makers into areas that are of traditional concern to social policy. These problems will be outlined before turning to specific policy issues, as they affect several if not all the issues on which choices are being or will need to be made. These are (a) the lack of community based facilities and of community support for creating such facilities, (b) the absence of "community" as a viable unit in many urban areas, and (c) establishing accountability for decision-making.

The first problem is the availability of facilities and programmes suitable either for non-custodial sentences, with and without supervision, or for ex-prisoners on temporary or permanent release. This problem is most acute for the Probation and Welfare Service. Their 1980 Report (pp. 62-63) noted that

much of the work of the Service is carried out within the community. A feature of the work of the Service involves co-operating with and encouraging voluntary community groups to provide hostels, workshops and day-centres for offenders under supervision. Unfortunately there is often a reluctance by the local community to allow the establishment of such projects in their areas.

The 1981 Report again notes "misguided fears" which despite the excellent record of already established projects hinder the development of community facilities (p. 51).

This dual problem of a lack of facilities (like day-centres, hostels, and workshops) and resistance to establishing new facilities is common to many traditional areas of social policy. As demand for spaces grows for

such facilities in, say, mental health care, existing facilities are found to be inadequate and new facilities difficult to establish.

Communities also rarely meet the expectations of those who optimistically seek solutions by drawing on local resources and capabilities. Multiple-deprivation leaves localities without the institutional or voluntary resources that are the rationale for devolving problems like crime to the community level. There are few if any groups within most urban communities that can claim to be broadly representative of local residents. Generally, people's terms of reference have shifted away from locality specific identities to now dispersed networks of kin, friends, work, and leisure time interests. Essentially, the task of revitalising community spirit is one in which Gardai and Probation and Welfare Officers can participate but not initiate or even lead. Local authority housing policies, for example, may either foster or impede the growth of "community" identity in an area. People must be motivated to participate as members of a community (Bannon *et al.*, 1981, p. 307).

A blueprint for such a revitalisation has been put forward (Bannon *et al.*, 1981). If that report, like others before it, is relegated to the bookshelves, then community criminal justice will simply be another factor in the spatial inequality within urban areas. Some communities will be able to avail of such efforts, others will not. Whatever benefits that result will be disproportionately taken by those areas already advantaged. The challenge has been stated in this way:

In the areas of social policy – education, health, policing and welfare, this report favours a Community Development approach in which people are encouraged to maximise their potential and to develop institutions, facilities and procedures through which to help themselves and channel assistance from outside agencies. In health and justice, the report sees a need to expand a community care approach. In relation to education the report calls for a comprehensive programme to help alleviate the problems of deprivation. (Bannon *et al.*, 1981).

The success of community criminal justice presupposes the implementation of such a broader policy.

The third traditional social policy issue that will confront criminal justice policy-makers is that of establishing accountability. It was clear in Chapters 3, 5, and 6 that many, perhaps most, of the decisions currently being made within the criminal justice system are essentially unsupervised. Inadequate information is but a minor part of the problem.

The real dilemma will be to retain the options of non-intervention and non-prosecution, on the one hand, and ensure that basic standards of fairness are followed in their use, on the other.

This problem is again one that can be found in administrative decisions in areas like health, housing, and social welfare. Such decisions often have profound consequences for persons. If a decision cannot be reasonably predetermined by a set of objective criteria, accountability becomes problematic.

The possession of considerable discretion by the Gardai is in line with the role of all Western police forces. Police everywhere must decide what incidents to treat as a crime and what suspects are to be brought into the criminal justice system proper. Non-intervention and cautions are both effective and efficient as decision alternatives. Their use should therefore be encouraged. But decision-making authority imposes responsibilities. It is likely that demands will grow for review of decisions by the Gardai and by officials of the prison system. The courts are already active in reviewing some of these decisions. There should, however, be an internal basis for dealing with disputes over the exercise of discretion. Abuses of discretion should in the first instance be subject to internal review mechanisms, but should these prove unsatisfactory, a more formal, external authority will have to be established to ensure that standards of fairness are maintained.

So these three problems translate into three main challenges in the years ahead. The first will be to design community based alternatives to court proceedings and sentences that are both effective and acceptable to the community. Under that heading will be included both the need to make formal procedures for and to expand the use of responses that do not require a court's sanction. The Juvenile Liaison Officer Scheme is an obvious model, but building on that experience to cater for young adults and adults will be difficult.

There will also be a need to make greater use of supervisory rather than custodial sentences. The use of imprisonment for minor offences (such as petty larceny, drunkenness, and possession of drugs) or for short periods of time can rarely be justified. Most of the cost of incarceration is in the form of salaries, and given the uneven distribution of prison service staff among institutions, it is not meaningful to compute an overall cost of keeping one prison cell occupied for a year. The minimum cost, however, would certainly be above £20,000.

Investment in the Probation and Welfare Service and in community-



based facilities, such as hostels, day-care centres, and training programmes are urgently needed. Both the Service and the range of facilities need expansion as a priority. Spending on other areas should take second place, with the exception of spending required by pressing security requirements.

In 1983, Community Services Orders, a sentencing alternative developed in Australia, were approved by the Oireachtas. Their use awaits a Ministerial Order. Essentially, the Orders will be used by the courts to impose a fixed programme of community work as a sentence. Finding suitable work and obtaining community acceptance of the idea will be difficult. This is evident from the experiences reported thus far by the Probation and Welfare Service.

The second challenge stems from the problems of using urban areas as "communities" in a programme to respond to what has been termed here "avoidable crime". It is here that the insufficiency of an approach to crime that is limited to the criminal justice system becomes most apparent. Criminal justice policy is necessarily subordinate to Irish social policy generally.

The third challenge follows from the first two. By what decision-making process will individuals be selected for diversion to different parts of the criminal justice system? Who will make the decisions? What safeguards will be established for accountability? How will the fairness, effectiveness, and efficiency of new programmes be evaluated and monitored? The decisions made on the use of alternative dispositions will have to meet the dual objectives of ensuring the protection of the community and fairness to the individual. Social justice requires both that justice be done, determining culpability and responding in measure with the actions involved, and that all affected, including the public generally, can be satisfied that justice is done. It is for this reason that the development of decision-making arrangements will be as important and difficult a challenge as selecting alternatives to the courts or to imprisonment for those brought before the courts. The present safeguards, such as access to the High Court, are remote from the actual decision-making process which they review and both prohibitively expensive to use and slow to render judgement.

### Conclusions to Chapter 7

#### 7.IV Areas for Choice in the 1980s: Recommendations

Two actions take logical precedence in any agenda for decisions on criminal justice policy. The first is to remove from the bookshelves and

seriously consider the many reports submitted by committees established in recent years to look at aspects of the criminal justice system. The Committee on Court Practice and Procedure, The Task Force on Child Care, The Criminal Legal Aid Review Committee, the 'O'Briain Committee, the Interdepartmental Committee on Mentally Ill and Mal-adjusted Persons, and the two inquiries into the Garda Síochána — the Conroy Commission and the Ryan Committee — were all established to make recommendations on areas highly pertinent to issues discussed in this report. Other reports, such as the NESC Report on urban problems (No. 55), also contain recommendations that relate directly to those issues. Until the political will is found to consider and implement those recommendations, it is unlikely that another report can have much impact.

The second priority is a reformed and codified criminal law, specifying offences and penalties in a coherent manner based on contemporary ideas on the seriousness of and the appropriate court jurisdiction for the various offences. The sentencing powers of the courts should be similarly brought together in a consolidated code, stating the alternatives available to the courts.

These two recommendations, implementation of existing Government established inquiries and a consolidated criminal law and sentencing code, are relevant to all the component agencies of the criminal justice system. Other recommendations will be presented in the course of discussing the choices facing decision makers in each agency.

#### 7.IV.a *The Garda Síochána*

Though the Garda Síochána has a record of "clearances" or "detections" that is enviable by international standards, it has not adapted satisfactorily to contemporary conditions in inner city areas. The main exception to this is the JLO Scheme. There are obvious limits to how far the Gardai should go in adapting to the conditions they find, but a balance is needed between enforcing the law and maintaining the respect, however grudging, of *all* sections of a community. In implementing a plan of community policing, the most difficult phase will be of finding a way to incorporate not only those groups most likely to be or to fear becoming victims of crime, but those groups whose members have the highest risk of becoming involved in crime. This is a dimension to the challenge of community policing that has not been well thought out. Community policing is not a way to circumvent problems between young people and Gardai in an area by appealing to adults and local dignitaries. It simply moves those problems and tensions to centre stage.



Community policing essentially involves two components. The first is connected to a basic shift in our thinking about the control of crime toward policies that limit the opportunities for crime. It seeks to alter the situation in which crimes occur, rather than to deter or control potential criminals directly. Community policing builds on this approach by assisting the community to see how it currently facilitates crime and what practical steps can be implemented to curtail that contribution.

A second, and generally less well-developed, component of such proposals is an extension of informal or limited intervention responses to individuals who are brought into the criminal justice system (the only available programme at present is the JLO Scheme). Greater involvement by the Gardai in such programmes will necessarily expand the contact of the Garda Síochána with non-criminal justice agencies, and require substantial investment of resources and exceptional skills, as well as motivation. But a form of community policing that downplays the second component takes the risk of weakening rather than strengthening the most vital relationships the Garda have in an area: with the groups most at risk of becoming seriously involved in crime. Proposals for community policing should be revised to take this second component into account.

More specific recommendations, some already stated in the body of the report, are:

1. An extension of the training period for recruits in Templemore, followed by a further training at the end of the recruits' probationary period in the Force.
2. Special training as preparation for recruits who are to be deployed in urban centres.
3. The use of the probationary period as part of the new Garda's training.
4. A modern system of safeguards at the pre-trial investigative stages of the criminal justice system, involving a revision to the old "Judges' Rules" and implementation of the O'Briain Report.
5. A broader mandate for the JLO Scheme, including its extension to second offenders (Burke *et al.*, 1981, p. 68 and 181) and to older age groups.
6. A reduction in the prosecutorial responsibilities of the Gardai, leaving more of the burden for court preparation and court presentation to an independent prosecution authority. This could be introduced on an experimental basis by expanding the role currently played by the Office of the DPP and the State Solicitors Office in serious offences.

7. The issue of an independent police authority should be resolved, preferably in a way that removed all decisions on appointments from the political arena.
8. The main responsibility for assuring that breaches in discipline do not occur within the Force rests with the Commissioner. Recommendation 59 of the O'Briain Report, however, makes a clear case for a new Complaints Tribunal, with an independent element, and this should be implemented as a safeguard both for the Gardai and for the citizen.
9. A redeployment of Garda strength in favour of Dublin can be justified as necessary if a satisfactory level of public service is to be maintained.

The Garda Síochána has in the past shown a considerable willingness to innovate and experiment. This is evident in crime prevention programmes, and, of course, the Juvenile Liaison Officer Scheme, but also in their in-service training programmes for newly promoted officers. As was noted before, there has been less development in the area of "on the job" training during a new Garda's probationary period. It was also noted that the Garda Síochána lacks a clear policy of urban policing. Establishing such a policy is an urgent priority.

In all of this, the Gardai can draw on a tradition of public good will. It is, however, a non-replaceable resource. Once expended, it cannot be easily recreated. Maintaining that good will and good name should be a constant consideration. Its continued existence is a prerequisite for successful implementation of schemes like community policing and for the continuation of the cooperation from the public at large on which both reports of crime and detections of crime depend.

#### *7.IV.b The Criminal Courts*

There is a mismatch at present between the share of the criminal justice burden a section of the system bears and the resources allocated to it. In particular, the supervisory capacity of the courts, as manifest in the Probation and Welfare Service, though vastly increased in recent years, remains deficient. Most of the options for the future — hostels, community service, work release programmes, diversion before trial, pre-sentence assessments, and probation — will require an expansion of that part of the criminal justice system. There is also scope for freeing some resources to this end. The current arrangements for processing non-indictable cases in the courts could potentially be streamlined. A combination of computerised issuing of summonses (which is already underway in the Dublin District Court) and fixed penalties for defendants who wish to plead guilty rather than contest the case should ease

the burden on the courts. Even one District Justice specialising in parking violations seems excessive.

Non-custodial sentences and new forms of supervision under the Probation of Offenders Act need to be extended in their range and in their use. The courts have to some extent taken an initiative in this area, creating the option of "adjourned supervision" and in adapting "conditional dismissals" and general adjournments to the needs of particular individuals. The current alternatives offer considerable scope in sentencing. When implemented, Community Service Orders will add another penalty of the first instance which the courts can use as a sentence. At present it is impossible to describe, let alone evaluate, the manner in which various Justices and Judges use those alternatives currently available.

One choice available to the criminal justice system is to revise the powers of the District Court to impose custodial sentences. This need not take the form of an outright prohibition, but a requirement that each custodial sentence be justified in writing. If an offence is sufficiently serious to merit such a sentence, it would appear sufficiently serious to have led the DPP to refuse disposition within the District Court, even on a signed plea of guilty. Clearly such an equivalence is not currently in force. The District Court's jurisdiction over the offences of manslaughter and rape should be ended, and its jurisdiction in other offences like robbery should be used only when "minor" is an accurate label.

The use of fines also offers opportunities. Their use, however, demands innovation. At present, only 73% of fines imposed in the Dublin District Courts are paid (Fitzharris, 1981, p. 47). This mostly reflects outmoded forms of record-keeping and poor follow-up practices. Still other fines, as was noted in Chapter 6, result in imprisonment through default of payment. The Scandinavian countries have demonstrated the possibilities of adapting fine payments to the financial circumstances of the individual offender (Glaser, 1984), making such an inefficient practice unnecessary. The cost of incarceration makes it extremely unlikely that any fine will compensate the State for the expense of even one day's imprisonment.

More specific recommendations on the courts are:

1. An extension of the amount of consultation within the judiciary. We have a small group of decision makers, doing very similar work, who do not talk to one another about that work on a regular basis. Provision for such discussions is made in the Courts (Supplemental Provisions) Act, 1961.

2. A system of published reports on the results of appeals in criminal cases. This could form part of the *Annual Survey of Irish Law*, proposed by Boyle and Greer, 1984.
3. Consolidated statute law, published appeal decisions, and consultation by members of the judiciary will all promote a more consistent, clearer sentencing policy. As described by Boyle and Allen (1983, p. 186) such practice depends on the emergence of sentence ranges appropriate to each level of offence gravity. This arises from the experience of justices and judges, their knowledge of what other members of the judiciary are doing and the results of appeals. In this way, a "normal sentencing range" develops for each common offence, and that range serves as the starting point when imposing sentences.
4. The speed with which cases are processed by the courts should be enhanced within the limits of other "due process" guarantees. Generally, a streamlined set of procedures should be possible for the District Court, reducing the number of court appearances typically required and the amount of legal jargon used in the proceedings.
5. Newly appointed members of the judiciary should be offered some form of preparation for their criminal law responsibilities. Similarly, the current members of the judiciary should be offered special courses or seminars on newly emerging concerns of the criminal justice system: drug abuse offers the most recent example.
6. In imposing sentences, an indication should be given as to the rationale. This might be tied to the idea of normal sentencing ranges, with the requirement that sentences outside of that range must be specifically justified as required by the facts of the case before the courts.
7. The increased use of Probation and Welfare Service reports before sentencing should be further encouraged.
8. The various elements of the prosecution function should be placed under the effective control of the Director of Public Prosecutions. Either by direct involvement or by clear policy guidelines, the Office of the DPP should oversee the manner in which cases are investigated and court proceedings entered.

#### 7.IV.c *The Prison System*

Imprisonment has reached or gone beyond a maximum level of usage. It is neither desirable nor feasible to extend the use of the imprisonment sanction in Ireland except in the most extraordinary of circumstances. In choosing where to apply that sanction, prison should be a sentence of the last resort, to be imposed when all alternatives have

been tried and failed or are otherwise inappropriate. It is not that imprisonment is currently being utilised in a manner which flagrantly violates that principle, but rather that the alternatives have been too few and inadequate. That lack of alternatives is highlighted particularly by the recent spate of early prison releases, necessitated by overcrowding. There should be more emphasis on use in the first instance, of schemes like the now abandoned Intensive Supervision Scheme, as a step, midway between incarceration and unsupervised discharge, or as an alternative to incarceration.

The deficiencies of nineteenth-century structures, such as Mountjoy and Limerick Prisons and St Patrick's Institution, suggest that any programme of prison construction must be oriented towards replacement rather than addition of prison space. In any case, there is no prospect of additional cell capacity becoming available before 1987. The courts, Probation and Welfare Service, and prison authorities should ensure that policies over the rest of this decade make it unnecessary to expand the average daily prison population.

A plan in which the prison system intended for the late 1980s was outlined might provide an opportunity to come to grips with long-standing industrial relations problems. Given the size of the prison service, opportunities exist in the Irish prison system that are not available in others due to staff shortages. It is possible, though not certain, that a reallocation of prison staff within a prison system that had clearly defined objectives, might facilitate programmes such as training and recreation and not reduce security. The ambiguities of the role of prison officer were noted in Chapter 6. Part of the difficulty is that the prison system itself has set several objectives without clearly indicating the priority among them generally or as allocated between institutions.

Finally, there is a clear need to make a greater commitment to preparing prisoners for release and to supervision after release. It makes little sense to confine someone to prison unless sufficient resources are devoted to those counselling and supervisory tasks which are currently performed by a very small number of Probation and Welfare Officers. The need to expand the Service is clear. But the most desirable administrative structure for the Service needs to be determined. At present, the staff of the Service is divided between the prison system, supervision of prisoners on full temporary release, the courts, and other, often civil, responsibilities. A review comparable to the one that led to the 1979 reorganisation is needed.

In view of the above, it is recommended that:

1. The size of the current prison population should be taken as an absolute maximum beyond which new accommodation within the prison system should be for replacement.
2. Special facilities geared toward the problems of drug abusers should be established, consistent with the preceding recommendation on the total cell accommodation within the prison system.
3. The number of Probation and Welfare Officers working within the prison system should be expanded.
4. The Prison Rules of 1947 should be updated to correspond with current conditions and the intended future development of the prison system.
5. After-care facilities should be expanded to meet the growth which has occurred in recent years in the size of the prison population.
6. Prison officers should be given an opportunity to develop specialist skills or should be recruited from persons with such skills. The training programme currently offered to new prison officers should be extended in length and the current trend toward in-service training further encouraged.
7. In terms of after-care, and also non-custodial sentences such as Community Service Orders, the potential resources of what is termed the "third sector" of the economy should be mobilised. This "involves a partnership of public, community and voluntary organisations to meet certain community needs — generally in the social field — such as day care, housing, community health centres and rehabilitation centres. Finance is provided by the State... but the management of the services and recruitment of staff are left to the groups themselves" (Conniffe and Kennedy, 1984, p. 267). If this can be developed, the cost of direct service provision can be avoided as can some of the problems of a still more rapidly expanding Probation and Welfare Service.

#### *7.IV.d Evaluation Studies and Research*

The sheer cost of programmes within the criminal justice system makes it imperative that they be subjected to continuous evaluation. As was noted in Chapter 2, this requires that clear objectives have been established. The second requirement is that accurate records be maintained. Accuracy demands not only rigour in collecting and tabulating the outcomes of each programme, but also appropriate categories for classification. Evaluating the effectiveness of programmes such as the JLO

Scheme or the Intensive Supervision Scheme will also require independent monitoring of rates of success and failure. At a minimum, when agencies evaluate their own programmes a regular audit of the evaluation should be conducted by another organisation. The capability for such an auditing procedure is already available from sections of the Department of the Public Service and the Department of Finance. All evaluation exercises should be subject to an appraisal before they begin. Major new programmes should be examined at the outset to make certain that an evaluation of outcomes will be feasible and then subjected to a full evaluation within two years, preferably by another agency.

Suggestions were made in Chapter 5 for immediate steps that would improve the quality and range of criminal justice statistics available both to decision makers and the general public.

In addition, it can be recommended that:

1. Each agency that publishes statistical information should compile a manual explaining precisely how the information is compiled. Where changes are introduced into that methodology, it should be noted in the first report which is affected by the change. Where the statute law itself changes, the report for the year in which the change was implemented should note how the statutory changes have been incorporated into the report format.
2. Research is urgently needed on a number of topics. These include: (a) the processing of cases through the Irish criminal courts, with Needham's Galway study providing a useful model;<sup>1</sup> (b) the process by which offences are discovered by the Gardai and how the resulting information is translated into the crime statistics; (c) the success of existing innovative programmes such as the "Rural Policing Scheme" and such forms of "neighbourhood watch" programmes or of community policing as are introduced. This will require monitoring both by the official crime statistics and victimisation public attitude surveys; and, studies of the social organisation of crime in Ireland, dealing with the subcultures mentioned in Chapter 2.
3. An improved set of criminal justice statistics would facilitate decision-making and planning within the criminal justice system. Analyses could specify the resource costs and requirements of alternative strategies and the trade-offs, say between a revived Intensive Supervision Scheme and more cell accommodation, could be stated with precision.

<sup>1</sup>One such study has already been undertaken in the Dublin Circuit Criminal Court by P. Tormey (UCD) and the author.

## APPENDIX I

### The Socio-Economic Characteristics of Persons Entering the Criminal Justice System

A socio-economic profile of persons entering the criminal justice system should, at a minimum, provide the distribution by age, sex, social class background, living circumstances, and places of residence. At present, such information is available only for highly distinctive sub-populations of the group that is of interest: institutionalised juveniles (see the review of research in Burke *et al.*, 1981, pp. 34-48) or long-term offenders in Dublin inner city (from a survey conducted by the Prisoner's Rights Organisation in 1980; the findings are summarised in MacBride, 1982, pp. 100-110). The Council for Social Welfare (1983, pp. 10-16) compiles all this material. It is not, however, reasonable to generalise from such studies to what might be termed the population of "persons apprehended" — that is, those arrested in any particular year.

The advisability of caution in drawing inferences follows from the screening process that typically works at successive stages in the criminal justice process to retain those individuals charged with serious offences, those with records of previous involvements with the process, and those who lack conventional attachments to society (family ties, employment, etc.). Selectivities may also tend to make it more likely that older, male, working class individuals are retained for further processing while their younger, female or middle class counterparts are dealt with through diversion outside the formal criminal justice system. Generally, the earlier the stage of the system at which we examine the characteristics of those under its jurisdiction, the less that group will differ from the characteristics of the population at large. So we can anticipate that the least distinctive group will be that comprised of all persons who come into contact with the police and the most distinctive will be persons incarcerated under a sentence of imprisonment.

In Ireland at present it is possible to derive from Garda records a portrait of the second least selective group who fall under the jurisdiction of the criminal justice system: the pool of individuals who are held to be accountable by the Gardai for an indictable criminal offence. Specifically the Gardai maintain records on the place of residence, age,

sex, occupation, and "home circumstances" of all persons taken into custody. This extends to include persons subsequently released with a caution or through diversion to a programme such as the JLO Scheme, and who thus never become part of the judicial process. The price for such comprehensiveness is the inevitable problems that arise in using information gathered for bureaucratic rather than research purposes. Places of residence are differentiated by the areas under the jurisdiction of the 700 Garda stations. These may include parts of any number of other geographical units designated for other administrative purposes, with the consequence that, especially in the Dublin area, it is not feasible to correlate information on population of an area to the numbers of characteristics of those of its residents who fall into the category of "persons apprehended for an indictable offence". Though the use of indictable offence to define inclusion into the group of interest yields some 42,000 individuals in 1981, it remains an arbitrary criterion, one biased toward those accused of minor forms of larceny.

Another cautionary note follows from the use of administrative records. A single individual may appear within a year's records as any number of persons apprehended: the information file is maintained on offences, and one individual can reappear as frequently as his or her name is linked to an offence during a year. The result is a portrait of persons apprehended that is weighted disproportionately to reflect the characteristics of persons with multiple arrests.

Finally, the information on socio-economic characteristics is based on evaluations made by the Garda who filled in the relevant form (known as the C.2). The accuracy of information on a person's occupation or home circumstances will therefore vary depending on whether they are known to the Garda concerned; also, the basis for drawing distinctions such as those between "skilled", "semi-skilled" and "unskilled" occupations may vary among Gardai or between Garda stations. In many respects, therefore, the information available is far from perfect — it provides a broad indication, no more, of the nature of the group we wish to study.

The analysis that follows is based on the 16,539 males and the 3,173 females resident in the Dublin area who, in 1981, were held to be accountable for an indictable offence (women represented 16.1% of Dublin residents apprehended). Their localities of residence were defined by the boundaries of the 43 Garda stations within the Dublin Metropolitan Area (DMA). To facilitate the presentation and interpretation of the analysis, the tables describing the characteristics of individuals entering the criminal justice system will provide information

on all DMA residents and on two amalgamations of Garda stations: the inner city and the DMA excluding the inner city.

Such a crude delineation of areas is mandatory as the 43 Dublin Garda stations have boundaries that tend to disregard those that define the 196 wards that constitute Dublin County Borough, Dun Laoghaire County Borough and the Dublin Suburbs. The inner city as defined in Table 8 (in text) is an approximation to the definition used by Deirdre O'Connor (1979, p. ix) for her study of housing in Dublin's inner city. Of necessity, it is overly inclusive, drawing in on the north side parts of Glasnevin and Drumcondra and on the south side parts of Kilmainham and Inchicore. O'Connor's inner city had a population in 1971 of 131,503; the same area was the home of 266,000 persons in 1936 (1979, p. 11). By overspilling the Royal Canal and following the Grand Canal further than the South Circular Road, the area defined by the eight inner city Garda stations — Pearse Street, Harcourt Terrace, Kevin Street, Kilmainham, Store Street, Fitzgibbon Street, The Bridewell, and Mountjoy — is both more extensive and more prosperous, but generally remains within what Bannon and his associates (1981) defined as their inner city and "twilight area", parts of the Dublin region with substantial disadvantages, both physical and social.

Given the long-standing trend of attrition in the size of the inner city's population, it is unlikely that even the more generously defined eight-station inner city can in 1981 have contained more than the 15.4% of the total Dublin region population found by O'Connor based on the 1971 Census results. A more precise estimate of the current resident population for the eight-station area is not possible. However, the eight station area was the residence of 32% of Dubliners apprehended in 1981.

In addition to this eight-station inner city, attention will also be placed on those stations containing substantial sections of local authority housing estates, differentiating to the extent possible between the older, established ones and some of the newer estates and high rise developments. In this way, it will be possible to approximate what Bannon and his associates have described as the "two broad Social Areas which are almost totally dominated by indices of relative but multi-dimensional deprivation — Social Area One, the Inner City, and Social Area Five, the Local Authority Estates" (1981, p. 155).

The ages and "occupations" of males apprehended in 1981 can be found in Table 8. Taking the total Dublin area first, two characteristics of persons brought before the criminal justice system in Dublin emerge

with extraordinary clarity: their youthfulness and their marginality to the labour force. Roughly one quarter were aged 16 or less, one third aged between 17 and 20, and only 42% were 21 years of age or older. At each age group, including those aged 16 or younger, the majority were unemployed. A pattern of early school leaving and either marginal employment – as unskilled or semi-skilled labourers – or unemployment is present. Only 37% of those aged less than 17 were still in school, while 54% in that age group were listed as unemployed. Eight of every ten persons in the 17-20 age group were unemployed, the remainder mainly in unskilled or semi-skilled manual work. That distribution was closely paralleled among those aged 21 or over: only one person in five was listed as having an occupation; 76% were recorded as unemployed.

The age distribution of persons arrested in Dublin compared to the rest of the country was discussed in Chapter 4. The relevant data are to be found in Appendix Tables 1.1 and 1.2.

Among those residing in the eight-station inner city, the picture that emerges is bleaker still. They are younger than those coming from non-inner city neighbourhoods – 31% are less than 17 years old, 34% are aged 17-20, and only 35% are 21 or older – and the syndrome of early school leaving and unemployment is more pronounced. Less than one third of those 16 or younger were recorded as being in school, and the stated occupation for 87% of the 17-20 year olds was “unemployed”; for those older than 20, the breakdown between unemployment, manual work and white collar work was 85%, 9%, and 3%, respectively. Even allowing for the vagaries of uncertain and perhaps perfunctory categorisation procedures – after all, the distinctions involved are peripheral to the main concerns of police work – the statistics on educational participation and unemployment are dispiriting. When the non-inner city Dublin is subdivided, a similar portrait of entrants to the criminal justice system is found.

Appendix Table 1.3 offers such comparisons, combining three traditional working class Local Authority housing areas – Crumlin, Sundrive Road, and Ballyfermot Stations – and the newer working class areas of Finglas, Ballymun, Coolock and Cabra, as well as Tallaght. Each of the six Garda stations or grouping of Garda stations presents a slightly blurred image of the overall Dublin pattern. The table thus confirms the prevalence of the basic pattern in all parts of the Dublin region which receive high or even moderate levels of physical and social deprivation in social area analyses (cf. Breathnach, 1976; Bannon *et al.*, 1981). The table also indicates the range of variation around the basic pattern. In particular, the relatively well-established working class

Appendix Table 1.1

Numbers and ages of persons “apprehended” for indictable offences, 1976-1981

Age group	1976		1977		1978		1979		1980		1981	
	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin	Dublin/Non-Dublin
0-9 years	113/ 141	124/ 195	339/ 270	350/ 318	285/ 358	115/ 283						
10-14 years	2614/ 2407	1972/2791	2931/ 3045	2892/ 3216	2610/ 3238	2156/ 3198						
15-16 years	3462/ 2934	3016/3176	3724/ 2837	3523/ 3241	3004/ 3422	3202/ 3272						
17-20 years	3292/ 3408	3558/3681	3487/ 4220	4037/ 4215	4429/ 4986	6123/ 6191						
21-29 years	3754/ 4420	4088/3991	3387/ 3983	3339/ 4462	4575/ 4645	5427/ 5144						
30-64 years	2074/ 2850	2137/2782	2164/ 3125	2274/ 3064	2675/ 3837	2849/ 4603						
65-99 years	19/ 52	25/ 34	17/ 60	17/ 48	19/ 76	17/ 65						
Sub-total	15328/16212	14920/16650	16049/17540	16432/18564	17597/20562	19889/22756						
Total	31,540	31,570	33,589	34,996	38,159	42,645						

Appendix Table 1.2

Ages of those arrested for indictable offences: 1976-81

Age	1976		1977		1978		1979		1980		1981	
	Dublin	Non-Dublin	Dublin	Non-Dublin	Dublin	Non-Dublin	Dublin	Non-Dublin	Dublin	Non-Dublin	Dublin	Non-Dublin
0-14	17.8	15.7	14.0	17.9	20.4	18.9	19.7	19.0	16.5	17.5	11.4	15.3
15-16	22.6	18.1	20.2	19.1	23.2	16.2	21.4	17.5	17.1	16.6	16.1	14.4
17-20	21.5	21.0	23.8	22.1	21.7	24.1	24.6	22.7	25.2	24.2	30.8	27.2
21-29	24.5	27.3	27.4	24.0	21.1	22.7	20.3	24.0	26.0	22.6	27.3	22.6
30+	13.7	17.9	14.5	16.9	13.6	18.2	13.9	16.8	15.3	19.0	14.4	20.5
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

housing estates, which date in some cases from the 1930s (shown as the combined areas of the Crumlin, Sundrive Road, and Ballyfermot Garda Stations) show a distinctive pattern in which the proportion of those arrested who are under age 17 and the incidence of unemployment at all age groups are lower than elsewhere (Tallaght is the exception). Now the evaluation appropriate to such differences is difficult to establish. It is by no means clear that the situation becomes more beneficial as the ranks of those being arrested expands to be more representative and less restrictive in its selection. Such differences do, however, add weight to the call that has been made by the Association of Garda Sergeants and Inspectors for a "research and implementation" stage as a prelude to the introduction of any new approaches to policing, such as community policing (1982, pp. 14-15).

In this respect, if the age distribution of persons arrested even approximates that of persons in an area who are involved in crime, then important differences emerge among areas as large as those defined by Garda station boundaries. The differences that were found in the proportion of school leavers in the younger age groups of various areas may be equally significant. Such differences, however, would need to be confirmed by more precise information than that on which the statistics being used here are based. Differences between Garda stations in the "persons apprehended" statistics will confound real differences between localities in the nature of participation in criminal activities with differences in police procedures, the extent of recidivism, and the age structure of the local population. But given the importance that can be attributed to the age composition of those engaged in law breaking activity, it is worthwhile to consider the implications of what evidence exists. An age distribution swollen disproportionately toward the 17-20 age group is in most respects more worrisome than one in which the under 17 predominate. And parts of Dublin do evidence quite distinctive profiles in this respect. The area bounded by the Tallaght Garda Station, for example, has a high percentage of young people (under 17) among those arrested and a low percentage of persons in their late teens (17-20). This is true but to a lesser degree for the Coolock Garda Station area. In contrast, Finglas, Cabra and Ballymun show patterns in which there is an extraordinary concentration of 17-20 year olds among those apprehended (53%, 44%, and 38%, respectively), and comparatively low percentages in the youngest age group. If such information were linked to the types of offences and the number of persons with multiple arrests during a year in an area, and, of course, if the areas involved more closely approximated social areas or neighbourhoods, such differences could be interpreted. The presence of factors that facilitated or inhibited a progression from juvenile delinquency into a mere persis-

Appendix Table 1.3

Ages and occupational status of males apprehended for indictable offences in 1981: selected areas of Dublin region

Occupational status	Crumlin, Sundrive and Ballyfermot			Tallaght			Finglas			Cabra			Ballymun			Coolock		
	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+
	%			%			%			%			%			%		
Student	41.9	1.0	0.3	18.5	0.0	0.0	19.6	0.7	0.9	10.0	2.5	0.6	26.4	1.9	0.0	31.6	2.8	0.0
White collar	0.2	1.1	2.4	0.0	1.5	6.4	0.0	0.5	4.7	1.3	1.0	0.6	0.0	0.7	2.2	0.3	7.0	5.4
Skilled manual	0.2	2.2	1.0	0.0	0.0	1.9	0.5	6.6	1.2	0.0	0.0	0.6	0.0	2.1	0.3	0.0	1.4	4.4
Semi-skilled manual	2.7	7.4	4.5	1.0	0.0	5.6	3.6	3.2	4.4	1.3	3.0	4.6	0.8	1.7	2.9	0.9	3.8	8.8
Unskilled manual	7.0	7.9	10.2	22.5	19.1	7.2	2.4	3.2	6.8	1.3	9.1	4.0	0.8	5.0	9.1	1.8	12.2	6.2
Unemployed	44.4	79.7	79.1	38.5	77.9	66.9	71.1	84.7	80.2	86.3	82.8	85.1	68.2	76.7	82.8	63.8	71.8	72.6
Other	3.6	0.7	2.5	19.5	1.5	12.0	2.6	1.2	1.8	0.0	1.5	4.6	3.8	12.0	2.7	1.8	1.0	2.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	446	814	942	200	68	251	194	595	339	30	198	453	261	535	629	334	287	387
% in age group	20.3	37.0	42.8	38.5	13.1	48.4	17.2	52.7	30.1	17.7	43.7	38.6	18.3	37.5	44.1	33.1	28.5	38.4

tent and intractable form of adult criminality would be of obvious interest in making such an interpretation.

Information on the living circumstances of persons apprehended during 1981 in Dublin is even more sketchy than that on social background. Appendix Table 1.4 indicates the percentage of each group that live either with their parents or their spouse, alone, sharing accommodation or in lodgings, are "of no fixed abode", in a hostel, or are "itinerants". The classifications are those of the Garda who filled in the C.2 form, and caution is required in using such information as its accuracy will necessarily vary depending on the answers given to the Garda, his or her knowledge of the person involved, and the meaning individual Gardai have given to the various categories. Again, Appendix Table 1.4 is limited to males and to the year 1981. Percentages are shown separately for the eight-station inner city area and for the remainder of the Dublin area.

The distribution of living circumstances is not particularly revealing, for our purposes. The living circumstances of persons held responsible for indictable offences do not appear to differ significantly from those of the remainder of the population. This is especially true for those aged under 21, the vast majority of whom were recorded as living with their families. It is only among those aged 21 and over that any striking divergence is encountered from the living circumstances of any other subpopulation that might be examined. In the 21 and over age group, there is a marked proportion not living in a typical family situation: with their parents or spouse. Among inner city residents, 14% were recorded as living alone, 21% as living with others or in lodgings, and 2% as living in hostels. A small proportion, 1.5%, were recorded as not having a fixed abode. So unlike juveniles or teenagers, there is evidence that the living circumstances for adults (over 20 years) who were held responsible for an indictable offence in 1981 differ from the general adult population, and did so in a manner that suggests fewer conventional attachments.

Regrettably, the extent of that distinctiveness cannot be precisely measured. No census or similar statistics exist that correspond to the categories by which the Gardai classify "home circumstances". The most recent relevant information to make a comparison is from the 1971 Census, in which 3.6% of the national population (in private housing units) lived in one person households (Vol. VII, p. xiii). Slightly more than half of those persons were male and the Dublin region contained slightly fewer single person households as a proportion of total permanent housing units than did the country generally (13.9% in the



Appendix Table 1.4

The living circumstances of males apprehended for indictable offences in 1981: Dublin Metropolitan Area residents

Living circumstances	Total Dublin area			Inner city Dublin			Non-inner city Dublin		
	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+	Aged 0-16	Aged 17-20	Aged 21+
With family	93.9	84.0	68.5	91.0	82.9	60.8	95.8	84.6	71.3
Alone	0.2	2.1	8.7	0.3	3.7	14.4	0.1	1.4	6.6
Lodgings/Sharing	2.1	11.7	19.9	2.8	9.9	21.2	1.6	12.6	19.5
No fixed abode	0.2	0.8	1.2	0.2	0.9	1.5	0.2	0.8	1.2
Hostel	0.4	0.8	0.7	0.5	2.4	1.9	0.3	0.1	0.3
"Itinerant"	3.2	0.4	1.0	5.1	0.3	0.3	2.0	0.5	1.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	4,081	5,460	6,968	1,620	1,792	1,842	2,461	3,668	5,125

Dublin region and 14.2% nationally (Census of Population, Volume VII, p. xii and p. 7). An approximation to the Garda category "living with others/lodgings" is even more difficult to obtain. In 1971, 162,201 persons lived in permanent households that did not include a family (Census of Population, Vol. VII, p. xiii), representing 5.7% of persons in permanent households; most "lodgings" would fall into that category. "Persons" in this sense would include children as well as adults. Some categories of persons not living in non-permanent private housing and in non-private (i.e., institutions) households might also be included, however. If we take the widest possible definitions of such circumstances ("hospitals, county home, etc." and "other type of institution") we find only 3.2% of the Co Dublin population so included, of whom only a small proportion would be relevant (Census of Population, Vol. VI, p. 1).

A final indication as to the social characteristics of persons entering the criminal justice system can be gleaned from the Garda records: marital status. The convention of dividing Dubliners into inner city and non-inner city is adhered to, and though in this instance both males and females are included, only the over 20 age category is represented. For the inner city, 39.4% of men and 57.1% of the women aged over 20 held accountable by the Gardai for an indictable offence were or had been married; in the remainder of the Dublin Metropolitan Area this was true for 41.7% of men and 69.4% of women. More recent comparative information to the general population is available in this case through the 1979 Census. Of residents in the Dublin Co Borough in that year, 64.8% of males and 65.2% of females over 20 years of age were either married or widow(ers). Since the marriage rates for persons apprehended was based on a group aged one year older, and, therefore, more likely to be married, the comparison therefore understates the distinctiveness of the group of persons held accountable for indictable offences. That distinctiveness becomes still more pronounced if the total Co Dublin area is used for the comparison: in 1979, 70.6% of males and 70.9% of females were or had been married (Census of Population of Ireland, 1979, Volume II, p. 51 and p. 67).

The clear difference in the marital status of women arrested in the inner city and elsewhere suggests a strong difference in the age distributions of those women arrested who live inside from those who live outside of the inner city. Females represented 16.1% of all those persons held accountable for an indictable offence in the Dublin area during 1981. That percentage is the product of quite divergent patterns in the inner city and the remainder of the Dublin region. Slightly more than one in five (21.4%) of inner city residents apprehended for an indictable

offence were female; in contrast, females represented just over one in eight (13.4%) of persons apprehended who resided in non-inner city areas.

Overall, females entering the criminal justice system were younger than their male counterparts: 30.7% of females and 24.7% of males arrested in Dublin were aged 16 or less. For females, there was also less of a concentration in the 17-20 age group, with one of four females (24.5%) and one of three males (33.1%) in that category.

Again, however, that Dublin overall pattern obscures differences within the region. Specifically, females residing in the inner city are predominantly young when brought to the attention of the criminal justice system and those in the remainder of the Dublin region are predominantly adults. This mirrors the difference in the age distributions of inner city and non-inner city males, but also reflects variation in the situations under which males and females tend to be apprehended for offences. Given the lack of descriptive statistics on persons arrested in Ireland, these merit citation. For the inner city, 39.4% of females apprehended were aged 16 or less (contrasting with 30.8% of males resident there), 28.1% were aged 17-20 (34% of males) while those aged 21 or over accounted for 32.5% of all females (and 35% of all males) apprehended. Thus, for inner city residents, females were more likely to be juveniles when involved in crime (or more precisely, accused of a crime). This contrasts with the pattern for male residents of the inner city, who are concentrated more in the 17-20 age group.

The age distribution of females who resided outside the eight-station inner city area is less weighted toward the younger age groups: those age 16 or younger represented 23.4% of the total apprehended among females (compared to 22% for males in that age group), the 17-20 age group for females constituted 20.5% of all females apprehended (32.6% for males apprehended), while the majority of females were 21 and over, representing 56% of all females (and 45% of all males). Thus, the only consistency in gender differences is that the 17-20 age group forms a far more substantial share of the male than of the female population of persons apprehended. In the inner city, females are typically younger than males and in the rest of the Dublin region females are typically older than males when they come to the attention of the criminal justice system.

Appendix Table 1.5 provides an overview of the ages and occupational statuses of the 3,173 females who, in 1981, were held to be responsible for an indictable offence, using a condensed version of the format from

Table 8. The inclusion by the Gardai of a category "housewife" makes more difficult the evaluation of the reliability of the occupational classification and complicates any interpretation. Also the "Other" category is more frequently used for females than for males. The differences between inner city Dublin and the remainder of the Metropolitan Area were less pronounced for females than for males, as were differences overall or within each area in terms of occupational statuses by age. The description in Appendix Table 1.5 does, however, confirm the marginality of persons brought into the criminal justice system: 69% of women from inner city areas under age 21 were unemployed, as were 65% of their non-inner city counterparts. Students are rare even among that age group, rarer in the inner city than elsewhere.

Appendix Table 1.5

The ages and occupational statuses of females apprehended for indictable offences in 1981: Dublin Metropolitan Area

	Total Dublin area		Inner city Dublin		Non-inner city Dublin	
	Aged 0-20	Aged 21+	Aged 0-20	Aged 21+	Aged 0-20	Aged 21+
	%		%		%	
Student	18.1	5.3	14.7	0.4	22.5	7.7
White collar	0.6	2.2	0.4	1.3	0.8	2.7
Skilled	0.6	1.4	0.8	0.2	0.3	2.0
Semi-skilled	2.3	1.0	2.1	0.9	2.5	1.1
Unskilled	1.9	1.4	0.7	0.2	3.3	2.0
Unemployed	67.1	32.2	69.0	52.1	64.6	22.5
Housewife	4.6	54.7	4.1	43.1	5.1	60.3
Other	5.0	1.6	8.2	1.7	0.9	1.6
Total	100.0	100.0	100.0	100.0	100.0	100.0
N	1,729	1,424	969	466	760	958

In sum, there is both a clear difference by area, distinguishing the inner city from the remainder of the Dublin region, and within each type of area, differences between men and women in terms of their age distribution. Females living within the inner city tended to be younger, on average, than their male counterparts from the same area when being placed within the criminal justice system. Outside of the inner city, the distinctiveness of females in the system is that those over 20 form so substantial a proportion of the total.

Taken together, such strong differences between the inner city and the rest of Dublin and between males and females raise questions regarding the factors underlying involvement in crime and on the adequacy of the criminal justice system's response. In the former instance it points

to socio-economic factors that impede or promote the involvement in law breaking activity by particular age groups, and that do so in a manner that operates differently for males than for females. These factors appear to be community specific, rather than manifesting a general pattern even in Dublin. In terms of an evaluation of the adequacy of the criminal justice system, the analysis of characteristics of persons apprehended can highlight mismatches between the programmes and facilities that are currently being made available and needs, as defined by the persons to be accommodated. Such considerations should extend beyond spaces in institutions to the range of alternatives to incarceration and also to formal adjudication of any kind.

This review of what is knowable at present about the total pool of persons actually processed by the agencies of the criminal justice system is mainly an indication of the dimensions of the problems before us. A syndrome of early school-leaving that culminates in unemployment emerges as characteristic of young men coming to the attention of the Gardai and the courts. By the late teens all have left school, most are unemployed. Of those aged over 17, the generalisation can be made that eight of every ten male individuals about whom a decision must be reached within the criminal justice system are unemployed at the point of initial decision-making. It is necessary to stress that the 19,702 entries of persons used here (some individuals may have numerous reappearances in the statistics) form the most broadly defined group for whom information can be compiled in Ireland.

But the most troublesome implications of the socio-economic situations of those before the criminal justice system is not their marginal labour force status, which is hardly astonishing. Rather, it is the preponderance of that population that are in the years just before adulthood. This was most pronounced for those resident in the inner city, more than a third of whom were in the four year interval of 17-20. It is to that age group that the criminal justice system is least prepared to make a response.

They essentially fall into a gap, too old for the special provisions devised for juveniles and yet obviously requiring facilities and programmes separate from those for adults.

Given the inclusiveness of the population examined in this section, it is also of note that so substantial a proportion of those entering the criminal justice system are adults. Approximately four of every ten persons – both for males and for females – entering the system were aged 21 or over. Though such a presence of adults in the population of persons incarcerated or even persons convicted might be expected, it is

quite high for the initial stage of the system. When compared to the numbers listed in the *1981 Annual Report on Crime* as "persons convicted or against whom the charge was held proved and order made without conviction", those convicted are more likely to be over 21; 49% of men convicted were over 21 (42% of those apprehended), 33% were 17-20 (33% of those apprehended) and 18% were under aged 17 (25% for those apprehended). The age distributions are not directly comparable. Separate figures for persons convicted in the Dublin Metropolitan Area are not available, so national statistics must be used. Still, adults appear to form a substantial proportion of those involved in crime. The advantage of statistics based on persons apprehended, however cumbersome the label, over those on persons convicted or imprisoned also emerged clearly. The former are the more appropriate for analyses of the nature of the human problem underlying public debate on crime and how to respond to it.

## APPENDIX II

### The Galway District Court Study

Prepared by Professor K. Boyle, Law Faculty, UCG

This study completed in 1983 of the Galway District Court is the initial phase of an empirical research project on the organisation and administration of criminal justice conducted at the Faculty of Law, University College Galway.

The District Court is the lowest court in the hierarchy but in many respects is our most important court. Its caseload far exceeds that of any other court, and is destined to grow as the increased jurisdiction, given under the 1981 Courts Act, takes effect. The criminal jurisdiction of the court includes all non-indictable or summary offences, and the preliminary examination of indictable offences which may proceed for trial before the Circuit Court. However, the District Court in fact disposes itself of 90% of indictable crimes in the State and sends forward only 10% of such cases for jury trial. This latter jurisdiction is unique in comparison with the equivalent courts in Northern Ireland and Great Britain. It follows, therefore, that quite apart from its role as a court for children and young persons, and its civil jurisdiction, the vast bulk of persons who offend against the criminal law of the State have contact only with the criminal justice system through the Garda and the District Court. The current study appears to be the first attempt to research the District Court since it was established in 1924.

#### Research Design

In addition to a detailed legal description of jurisdiction the study comprised an empirical analysis of the functioning of the criminal process at District Court level. A 5% representative sample (899) cases was selected out of a total of 17,464 offences disposed of in the Galway District Court over a three year period (1978-1981). A ratio of 1 indictable offence to 2 non-indictable was maintained in the sample reflecting the greater predominance of less serious offences that are dealt with by the District Court. Information was sought on basic variables concerning offender, offences and procedures in the court and coded for computer analysis. In this account all figures are rounded.

## Results

### *Crime in the West of Ireland*

While the study was based on figures of persons prosecuted rather than crimes known to the Garda, some picture of crime in the Galway region can be derived from the data. Galway is a medium-sized city, with a population which has grown rapidly over the last decade from 27,000 to 37,500 between 1971-1981. Despite its rapid growth, Galway remains a city where serious crime is relatively infrequent, and where the rate of increase in crime over the last decade has been less than the national average. Detection rates in the sample years, however, as gross figures, were about or below the national figures for the same years.

Most crime in Galway whether indictable or non-indictable is of a relatively unserious nature: in the period of study there was a striking absence of serious crimes of violence, homicide or robberies. The bulk of offences were summary offences, and the largest percentage of the indictable category comprised thefts under £100 in value. Most offences (as indeed elsewhere in the State) are minor traffic offences and violations. It may be concluded therefore, that Galway despite considerable population influx, and new industrial base, has for the moment retained the scale of antisocial behaviour typical of a rural society, and perhaps of the country as a whole twenty years ago. While crime has increased in volume it has not changed in character: there is a noticeable absence of serious violence, sexual assaults, so called street crime and drug offences in the period studied.

### Characteristics of Offenders

The most striking difference relates to the representation of the under 17 population in prosecutions: 7% in Galway as compared with 28% nationally (for the years 1979-81). The Galway figures for the 17-21 years group was 33% compared with 29% nationally, and 61% were over 21, compared with the national average for the period, of 48%.

For a city with such a large percentage of third level and second level students, it was striking that offenders at schools and colleges accounted for only 3% of prosecutions. The largest single group to come before the court were male unemployed persons (28%) and a majority of all defendants were married (54%), and lived locally. Females prosecuted were 9% of the sample, considerably lower than the national figure which was 14% for the sample years. The most common offences prosecuted against females were minor traffic offences. In summary, while Galway is very much smaller than other cities in Ireland, it has as yet no serious crime problem, and in particular has a remarkable low rate of juveniles coming before the courts. The relative unserious nature

of the bulk of offences committed is reflected in the fact that over 80% of offenders were first offenders, and 8% only had previous convictions of a serious nature.

### The Prosecution Process

#### *Detection of Offences*

The study attempted to determine how different offences come to light. The bulk of prosecutions relate to breaches of traffic and licensing laws; detected directly by the Garda, and accounted for 59% of prosecutions. In about one in four cases, detection resulted from information or complaint by the victim to an independent witness. This was particularly the case in assaults. Statements of admission after caution were made by about one third of those prosecuted for indictable offences and constituted the basic evidence against the accused in those cases.

#### *Length of Proceedings*

Given the size of the caseload, the Galway District Court is most expeditious in disposing of cases. 31% were dealt with on first appearance, 80% within four months, and 20% only were outstanding after 12 months. Equally satisfactory is the fact that 86% of those prosecuted appeared before the court, in response to a summons, and only 14% were in custody before first appearance. Persons prosecuted turn up for trial: 9 out of 10 defendants obeyed the obligations of bail or summons to attend at court.

#### *Trial*

While jury trial is a constitutional right in Ireland, it is remarkably underutilised. In the Galway sample, 90% of persons charged with indictable offences and entitled to jury trial elected to be tried by the District Court. A similar picture applies nationally. The explanation is well known: the maximum term of imprisonment which may be imposed by a District Court is currently twelve months, whereas after trial before a Circuit Court, if convicted the sentence for the same offence may be considerably more. This inducement to plead guilty, is a form of statutory "plea bargaining", and while it ensures expeditious and less costly trial, can give rise to abuse, where relatively serious offences which should merit more severe punishment are dealt with in the District Court. The study concluded that there was a need for restrictions on the District Courts' jurisdiction to dispose of indictable offences, particularly for assaults, including rape, and serious thefts and robberies.

The rate of pleading guilty was 47% which for comparable studies in other

countries is low. The national figures are not known. It appeared that defendants were as likely to plead not guilty and contest a prosecution for a minor offence as for a more serious one. Trial outcomes are similar to studies elsewhere: 3 out of 4 offenders are convicted and the gross acquittal rate was 15% of all prosecutions.

Out of the total sample, 41 offenders only were sentenced to immediate imprisonment, very few for the maximum term. Suspended sentences and fines (generally no greater than £20.00) were the most frequent sanctions imposed. The mildness of the penalties reflects the uncomplicated and relatively minor nature of the criminal infractions dealt with by the Court.

#### *Legal Representation*

The majority of those prosecuted, whether at trial or on appeal were legally represented: 50% by a solicitor paid for by themselves, and 17% under the free legal aid scheme. Since in no case in the sample for which free legal aid was applied, was the application refused, it can be assumed that the availability of legal services in Galway to accused persons is satisfactory.

#### *Children and Young Persons*

At present there is no children's court as such in Galway, the cases are taken at the scheduled sittings of the District Court where they are held in camera. The result is that children and adults mix in the court precincts, and children often sit in court while the adult list is dealt with. While reform of juvenile justice is long overdue in the State, a minimum reform urgently required is the complete separation of adult and juvenile cases, which will require more accommodation and additional District Justices to deal with children and young persons.

### APPENDIX III

#### Prison Populations of Member States of the Council of Europe: Committals during 1982 and Daily Population as of 1 September 1983\*

	(a)	(b)	(c)	(d)	(e)
	Rates of committals per 100,000 in 1982	Rates of imprisonment per 100,000 population 1982	Percentage accused	Percentage under 21	Average "effective sentence or remand" (months)
Austria	—	110.0	24.7	—	—
Belgium	211.8	65.0	28.4	12.7	3.0
Cyprus	54.1	35.8	3.2	19.1	6.6
Denmark	377.7	60.0	26.9	14.7	2.0
France	136.9	69.3	50.4	16.9	5.8
Federal Republic of Germany	200.0	100.3	26.1	14.7	6.2
Greece	—	47.0	30.5	5.8	—
Ireland	187.9	42.1	9.0	26.9	2.4
Iceland	65.5	24.3	10.5	8.8	6.5
Italy	227.9	73.0	73.9	—	3.4
Luxembourg	268.2	67.0	31.8	6.1	3.2
Malta	79.5	30.0	37.1	5.2	4.4
Netherlands	215.4	28.0	40.0	—	1.6
Norway	292.2	47.0	28.1	10.6	2.1
Portugal	79.3	58.9	37.2	16.3	8.0
Spain	149.3	38.6	34.1	13.0	4.8
Sweden	—	43.0	18.9	4.9	—
Switzerland	147.4	62.0**	32.8**	5.1	4.2
United Kingdom (England & Wales only)	315.5	87.5	19.1	29.2	3.3

\*Not all rates are for the period stated, see *Prison Information Bulletin*, December, 1983, pp. 28-29.

\*\*Estimated.

### APPENDIX IV

#### Trends in Criminal Justice Expenditure, 1960-84

This appendix considers the data available on criminal justice expenditure. There has been and is, no centralised system of determining the contents of that budget. This is mirrored in the various government accounts, in which expenditure on criminal justice is often merged with that for other functions and is scattered under a wide variety of headings.

Appendix Table 4.1 traces for the 1960 to 1984 period the changes in current operating expenditure of the Garda Síochána, the courts (both civil and criminal) and the prison system. To place those three trends in the context of the general increases in public expenditure, between 1960 and 1970 all public current expenditure grew by a factor of 3.4-fold (not allowing for inflation) and between 1971 and 1981, by 9.6-fold (again in actual costs). The full 1960-61 to 1981 rise was 32-fold, as shown under the "Total expenditure of public authorities" heading in *National Income and Expenditure*.

By 1981, current (non-capital) expenditure on the Gardai stood at £166 million, on the courts at £6.6 million, and on the prisons, at £26.2 million. The contrast between the real increases recorded by each component of the system is itself quite revealing. To maintain expenditure at its real value in 1960 prices, the appropriate deflator is that implicit in the series describing current operating costs of the public service. This can be obtained by adopting the deflator implicit in the *National Incomes and Expenditure* series (see Table A.3 and A.4 in the 1981 edition, for example). By doing so, one allows for the fact that wages and salaries form the largest component of such expenditure. Such costs have increased over the 1970s at a pace that exceeds inflation generally, as recorded, say, in the Consumer Price Index. Such a deflator has the advantage of offering a more realistic estimate of the extent to which the amount of criminal justice services being provided has increased, as opposed to how much the employees who provide the services earn.

If we take the full 1960-61 to 1981 period, we find that growth in real terms as experienced by the Garda Síochána was 2.6-fold (dividing

the constant 1981 figure by the 1960 level of actual expenditure), for the courts, 1.4-fold, and for the prisons, 9.3-fold. The result was that if we take the full costs of criminal justice as estimated in Appendix Table 4.1 the Gardai spent 89.4% of the total in 1960-61 and 83.5% in 1981. In contrast, the courts' share declined from 6.6% to 3.3% over that period, while that of the prisons jumped from 4.0% to 13.2%. Most of the growth in real criminal justice expenditure was concentrated in the post-1971 period. It left the prison service with greatly enhanced resources, the Garda Síochána substantially better off as was shown in the rise in Garda numbers, and the courts little changed. To place these changes in context, however, it is useful to compare the rise in criminal justice expenditure to total public expenditure. The 1960-61 to 1981 increase in actual expenditure was 32-fold, a rate that only the prison system outpaced. The post-1981 increases were roughly equally distributed, with the Gardai and courts receiving a slightly greater increase than did the prisons system.

The figures for each section of the criminal justice system are understatements of the amount actually expended in a year; for the courts, there is both understatement through omissions and a partially compensating overestimation, as only part of the courts' activities relate to the criminal law. There is no dependable basis for disentangling court expenditure by function. However, in many instances it is possible to augment the figures in Appendix Table 4.1 to achieve a more complete accounting of the costs of criminal justice. This is done in Appendix Table 4.2.

One significant omission from Appendix Table 4.1 falls under the "courts of law" heading, as the financial procedures of government treat judicial salaries as a non voted item – one not included in the annual votes by the Oireachtas for public services. The first entry is therefore the £1,846,154 in remuneration and pensions paid to the members of the Supreme Court, the High Court, the Special Criminal Court, the Circuit Court, and Justices of the District Court. The judiciary is engaged in both civil and criminal work, with the exception of the individual solely a member of the Special Criminal Court, and so only part of the salaries can properly be attributed to criminal justice.

General expenditure on criminal justice falls under the vote for "Public Works and Buildings" under two headings. The first is for maintenance, supplies, furniture and fittings, rents, and other current charges, such as fuel and water. In 1983 a total of £8,096,000 was entered under Justice. "New works, alterations, and additions" added a further £3,300,000 in that year to the cost of criminal justice.

Appendix Table 4.1

## Non-capital expenditure on the main criminal justice agencies 1960-84

Year	Garda Síochána		Courts of justice		Prisons	
	Actual expenditure	At constant 1960-61 prices	Actual expenditure	At constant 1960-61 prices	Actual expenditure	At constant 1960-61 prices
1960-61	5,413,977	5,413,977	400,830	400,830	240,308	240,308
1961-62	6,046,651	5,749,953	395,670	376,255	276,298	262,741
1962-63	6,739,980	5,995,890	446,210	396,949	320,616	285,220
1963-64	7,869,990	6,604,723	450,145	377,775	350,042	293,765
1964-65	8,930,980	6,248,499	465,560	325,726	362,521	253,635
1965-66	9,295,790	6,159,416	546,454	362,082	440,550	291,910
1966-67	10,420,240	6,630,339	623,450	396,698	456,760	290,634
1967-68	11,176,900	6,531,387	662,950	415,747	497,500	311,990
1968-69	12,787,300	6,490,650	722,500	419,570	512,000	297,329
1969-70	16,285,800	7,326,046	780,600	414,772	581,200	308,820
1970-71	18,736,200	7,684,124	894,600	402,429	800,800	360,234
1971-72	24,284,400	8,752,712	1,090,000	447,033	1,054,100	432,309
1972-73	32,284,000	10,076,155	1,303,850	469,941	1,722,000	620,652
1973-74	23,920,350	6,704,698	1,525,850	476,233	2,453,010	793,699
1974*	54,155,000	11,389,304	2,359,600	334,950	1,991,000	558,063
1975	59,513,000	10,907,408	2,952,600	541,146	4,496,250	945,604
1976	63,881,000	10,604,416	3,085,000	512,118	6,131,300	1,123,731
1977	73,722,100	10,892,584	3,239,000	478,569	6,553,500	1,087,898
1978	94,453,300	12,173,386	4,110,500	529,772	8,674,600	1,281,689
1979	119,585,700	12,776,250	5,291,000	565,278	11,727,000	1,511,406
1980	165,736,700	14,147,392	6,571,000	560,905	21,145,500	2,259,135
1981	186,716,800	n.a.	7,823,000	n.a.	26,233,000	2,239,266
1982	206,705,000	n.a.	8,176,000	n.a.	29,137,000	n.a.
1983					31,759,000	n.a.
1984 (Estimates)	224,003,000	n.a.	9,324,000	n.a.	34,878,000	n.a.

\*Expenditure over the nine month period 1 April 1974-31 December 1974. Until 1975, the financial year for Government accounting was the 12 months ending 31 March; from 1 January 1975 the financial year coincides with the calendar year.  
 Expenditure is taken from "gross totals" in *Revised Estimates for Public Services*, taking 1983 expenditure from the 1984 Estimates, etc.; 1960 prices are calculated from the deflator implicit in the "Public administration and defence" series, Tables A.3 and A.4 in *National Income and Expenditure* (1980 and 1981 deflators will require revision when the 1983 volume becomes available).

Several major headings involving, at least in part, criminal justice, appear in various other votes. The Director of Public Prosecution was voted £1,088,000 in a separate vote, while the Department of Education was the location of the £3,036,010 expended on current Residential homes and Special schools' activities in 1983. Some of the maintenance and supply costs under the latter category can not be detached from the general category of "Education".

Some expenses pertaining to the Office of the Minister for Justice are unambiguously criminal justice in their purpose: in 1983, this included £3,500,000 as compensation for "personal injuries criminally inflicted" and £1,550,000 for legal aid in criminal trials. The Probation and Welfare Service was allocated £2,059,380 for wages and salaries.

The total shown in Appendix Table 4.2 is merely a broad estimate of additional criminal justice expenses in 1983. It is certainly an underestimate. For example, the salaries of nearly all teachers within the prison system are borne by Vocational Educational Committees (Council for Social Welfare, 1983, p. 30).

Appendix Table 4.2

A partial costing of criminal justice expenditure for 1983

Current Expenditure Category	£
From Appendix Table 4.1	250,907,000
Salaries of Judiciary (Central Fund)*	1,846,154
Public Works and Buildings:	
(a) "Maintenance, repairs, other current charges"	8,096,000
(b) "New works, alterations and additions"	3,300,000
Office of the Director of Public Prosecutions	1,088,000
Residential Homes and Special Schools	3,036,010
Office of the Minister for Justice:	
(a) Criminal injuries compensation	3,500,000
(b) Legal aid in criminal trials	1,550,000
(c) Probation and Welfare Service	2,059,380
Expenditure from "other services" (excluding Public Works and Buildings):	
(a) Garda Siochana	1,806,867
(b) Courts	2,833,832
(c) Prisons	1,777,677
Malicious Damage and Injuries Compensation	6,000,000

\*Indicates 1983 estimates contained in the 1983 volume.

"Malicious damage and injuries" covers the recoupment from the Department of Environment received by local authorities for (a) "damage attributable to disturbances in Northern Ireland" and (b) other malicious injuries in excess of 20p in the £ rate (see the annual report of Department of Environment, the most recent of which covers 1982).

Sources: *Revised Estimates for the Public Services*, 1983 and 1984 volumes. Expenditures are "gross totals" from "provisional outturn" as shown in 1984 volume.

The estimates also do not reflect the magnitude of expenditure on providing new facilities for the Gardai, courts, and prison service. The Public Capital Programme for 1981 (as recorded in the outturn figures for that year shown in the 1982 Budget, to which the Public Capital Programme is appended) provided for £1,608,000 to be spent on Residential Homes and Special Schools, £10,881,000 for prison facilities, £55,000 for probation and welfare services, and nearly one million pounds for courthouses. The 1982 Public Capital Programme accelerated such expenditure, with a continuing commitment to prison construction and reconstruction and a substantial increase in capital spending on the probation and welfare services:

The £11.54 million being provided for the prison building programme covers ongoing costs mainly on (i) construction of the new security prison and prison service accommodation at Portlaoise, (ii) completion of site development works, perimetering and service buildings at Wheatfield, Co. Dublin, (iii) completion of work at Cork prison, Arbour Hill prison and Loughan House, (iv) modernisation of the Mountjoy/St. Patrick's Institution complex.

A sum of £0.3 million is being provided to acquire and renovate premises for use as probation centres (Budget, 1982, p. 128).

In the context of today's restrictions on State expenditure it is unlikely that this level of construction activity will be maintained and the capital programme envisioned in the early 1980s completed within the present decade.



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