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Crime and Punishment in the Republic of Ireland: A Country Profile

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The colonial origins of the Irish criminal justice system can be seen in its buildings, laws, procedures and practices. When change occurs it is often driven by events rather than emerging from a deliberative process that draws on evidence and expertise. The murders, in the space of a fortnight in 1996, of a journalist and a police officer, led to heightened anxiety about crime and its consequences. This was accompanied by a toughening of the political mood that was translated into a commitment to more police and more prisons. At around the same time, and continuing for a decade, the Republic of Ireland experienced rapid social change, including significant inward migration and greatly increased prosperity. These trends impacted on police, prosecutors and courts and put new pressures on the prison population. How these challenges are addressed – especially in the context of declining economic resources – will determine the shape of the criminal justice system in the years ahead.

HISTORY AND CONTEXT

The island of Ireland was divided after a war of independence fought against Britain between 1919 and 1921. Six counties became Northern Ireland and remained part of the United Kingdom, while the other 26 charted an autonomous route, first as the Irish Free State and later as the Republic of Ireland. Politically-motivated violence, inspired either by the ideal of a united Ireland or a desire to preserve the link with Britain, has continued at varying levels of intensity. This violence was furious at times – there were 470 deaths in 1972 – but was highly concentrated and rarely strayed south of the border.

Since a ceasefire was declared in 1994, and the Good Friday Agreement was ratified in 1998, military fortifications along the country's internal border have been removed and the number of British soldiers stationed in Northern Ireland has been scaled down. Paramilitary prisoners who accepted the legitimacy of the peace process were released and the Police Service of Northern Ireland was created to replace the Royal Ulster Constabulary (on imprisonment see McEvoy, 2001; on policing see Mulcahy, 2006). While militant splinter groups remain active the ceasefire has held firm.

The Republic of Ireland has an area of 70,300 km² and a population of 4.4 million. Most of the population lives in, or around, the major cities of Dublin, Cork, Galway, Limerick and Waterford. In terms of political arrangements, there is a bicameral parliamentary system with 166 members directly elected by the people to Dáil Éireann at least once every five years and an upper house (Seanad Éireann) comprising 60 senators who are elected by local political representatives, nominated by the Taoiseach [prime minister], or voted in by graduates of Dublin University and the National University of Ireland. The head of state is the president who is elected by the people for a seven-year term. The major and long-established political parties are Fianna Fáil, Fine Gael and Labour. In addition there are several smaller parties (Sinn Féin, Green Party, Socialist Party). Constituencies have three, four or five seats, depending on the population in an area, and the single transferable vote system of proportional representation is used in all elections.

The national languages are English and Irish (Gaeilge). While a significant proportion of the population has a reasonable level of fluency in the latter it is rarely heard outside of those small geographic areas, known as An Ghaeltacht, which are particularly found along the Western seaboard. Citizens are entitled to conduct legal proceedings in Irish and to use the language in any dealings with state agencies. When the country achieved independence it maintained the common law legal tradition (whereby a body of law builds up over the years on a case by case basis, with earlier decisions forming precedents to guide the handling of later ones) and the criminal justice apparatus that it inherited from Britain. The legal process is adversarial (a contest between the state and the accused) and professional (there are no lay judges).

The Royal Irish Constabulary that had policed Ireland prior to independence was disbanded in 1922, followed three years later by the Dublin Metropolitan Police. The organisation that emerged in their stead was named An Garda Síochána (‘guardians of the peace’) and, remarkably given the revolutionary context in which it was formed, it was unarmed virtually from its inception. The rationale for this decision was expressed by the first Garda commissioner, Michael Staines, as a desire for his men to “succeed not by force of arms, or numbers, but on their moral authority as servants of the people” (on the history of policing see Brady, 1974; McNiffe, 1997).

The criminal justice system exists within the context of a written Constitution, *Bunreacht na hÉireann*, which was enacted by the people in 1937. This deals with the establishment and operation of the courts (Arts. 34-37), the trial of offences (Arts. 38 and 39) and the fundamental rights of the person (Art. 40). Other criminal justice related provisions include those giving the president the power to commute or remit punishment imposed by any court (Art. 13.6) and a prohibition on retrospective criminalisation (Art. 15.1). Perhaps the most significant elements of the constitutional framework are the following:

- Art. 34.1: Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.
- Art. 35.2 All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.
- Art. 38.1 No person shall be tried on any criminal charge save in due course of law.
- Art. 40.4.1 No citizen shall be deprived of his personal liberty save in accordance with law.

Guided by these constitutional imperatives the Minister for Justice has responsibility for setting the legislative and policy context according to which the criminal justice system functions. Traditionally this role has involved taking a close interest in operational matters. For example, the Parole Board makes recommendations about the administration of prison sentences, including the possibility of early release, but the final decision in every case resides with the minister (e.g. Parole Board, 2010). This is controversial in the case of life sentence prisoners whose eventual release date is thereby politicised unavoidably. The minister is also the regular recipient of petitions from other politicians on behalf of constituents who wish to have a penalty remitted (usually a fine reduced) or to see an increased police presence on the streets of their area. These factors, together with the tendency to rush to law-making to demonstrate firmness of purpose, allow the minister to stamp his or her personality on the portfolio with clearer definition than cabinet colleagues (O'Donnell and O'Sullivan, 2003).

A time of flux

The size, shape and priorities of a country's criminal justice system are affected by wider societal forces. Approaches to policing, prosecuting and punishing are vulnerable to national (and global) winds of change. For about a decade beginning in the mid-1990s the Republic of Ireland experienced a period of rapid economic growth. Migration patterns were reversed, national wealth soared, the country made itself attractive to foreign direct investment, and what became known as the Celtic Tiger economy emerged as a phenomenon of global interest (Nolan et al, 2000). By the beginning of the twenty-first century Ireland had morphed from a failing economy with a high level of emigration into a desirable destination for people seeking a better life. One statistic illustrates the scale of this change. This is the rise in the monthly number of asylum applications from around half a dozen in 1993 to almost 1,000 by 2002. This is a good indicator that the country had become internationally recognised as both stable and prosperous; a potential haven for those fleeing adversity.

These economic and demographic changes were accompanied by significant social shifts. Over a very short period the Republic of Ireland became ethnically diverse. Respect for the Roman Catholic Church, previously so powerful and unyielding, was battered by a series of child sexual abuse scandals (Commission to Inquire into Child Abuse, 2009). Family structures became more varied and fluid with greater

participation by women in paid employment and more children born outside marriage. Levels of educational attainment rose and university tuition fees were abolished. National wealth grew dramatically and Irish buyers began to make their financial muscle felt in property markets all over Europe. Within a decade the Republic of Ireland had become more outward than inward looking, more individualistic, less deferential, and festooned with the material trappings of success (Fahey et al., 2007).

It will take time before the ramifications of these changes for the criminal justice system become apparent. But there are early indications that it is being reshaped by the changing environment. In 2001 the requirement to stand more than five feet nine inches tall (men) and five feet five inches tall (women) was removed as an eligibility criterion for joining An Garda Síochána. In 2006 the need to have passed state examinations in the Irish language was removed as well. Instead, recruits must hold a qualification in two languages, at least one of which is Irish or English. These changes paved the way for non-Irish nationals to apply to join the ranks.

Not unsurprisingly given the changed nature of the resident population, reports of immigrant involvement in criminal activity began to appear in the late 1990s. Translators were required to attend courthouses to ensure that justice was done, and seen to be done, whether in Swahili, Romanian or Yoruba. This was quite a change from previously where the infrequent use of Irish was the only breach of English language dominance. The prisons also began to feel the presence of a more diverse clientele, with one in four committals in 2009 being non-Irish nationals (Irish Prison Service, 2010, p. 18).

CRIME

Broadly speaking, criminal cases are divided into two types, summary and indictable. The former are of a minor nature and are tried in the non-jury District Court. They are usually prosecuted by members of An Garda Síochána, but cases can be taken by other investigatory bodies such as the Health and Safety Authority or the Environmental Protection Agency. The maximum prison sentence that can be imposed for any one offence is 12 months, and the maximum sentence available to the court for multiple offenders is two years. Driving offences, drunkenness, public disorder, theft and criminal damage constitute much of the District Court's business.

Indictable offences are more serious and can be heard by a judge and jury in the Circuit Court or the Central Criminal Court; the latter forum dealing exclusively with homicide and serious sexual violence. Any sentence can be imposed up to the maximum allowed by law, which for more serious offences such as robbery and rape is life imprisonment. Murder carries a mandatory life sentence.

The Offences Against the State Act 1939 created a (juryless) Special Criminal Court. This was to be deployed when the government was satisfied that the threat of juror intimidation was such that the ordinary courts were “inadequate to secure the effective administration of justice and the preservation of public peace and order” (s. 36). In 1962, the Special Criminal Court was formally disestablished but it was brought back to life in 1972, in response to a spillover effect from mounting violence in Northern Ireland, and it has been in existence ever since (Davis, 2007).

Statistics

The interpretation of crime statistics everywhere is fraught with difficulty. The problems are compounded in the Republic of Ireland because of the over-reliance on Garda Síochána data, the compilation of which is poorly understood. Despite lengthy deliberations, an expert group, set up by the Minister for Justice could obtain no firm grasp of how the statistics were assembled and should be made sense of. A minority of the Group (including this author) reported in 2004 that despite its best efforts it could come to no conclusions about the “quality, reliability and accuracy” of the official crime figures (Expert Group on Crime Statistics, 2004, para. 2).

There are few alternative sources of information. Although national and local victimisation surveys have been conducted (Watson, 2000) there remains an excessive dependence on the official picture and when it is unclear explanation becomes difficult. The lack of explanatory text in the Garda annual reports makes it difficult to understand whether changes in offence frequency are due to legislative initiatives, policy developments, new recording practices or real changes in criminal behaviour. The lack of good quality data has been a serious impediment to criminological research. Matters became even more complicated in 2000 when the approach to categorising and presenting crime data in the Garda annual report changed fundamentally for reasons that were not revealed.

In 2006 the compilation and publication of crime statistics was taken over by the Central Statistics Office (CSO) and in 2008 the figures were published for the first time according to a new scheme, based on the Australian model, and known as the Irish Crime Classification System (ICCS). The ICCS is innovative in that it embraces a system of classification that is based on a hierarchy of harms (Central Statistics Office, 2010). It shifts the focus away from a notional concept of an aggregate crime level. Instead the classification consists of sixteen groups with a total figure provided for each group. This makes it difficult for those who report on crime in the media to rush to a single summary figure as evidence that the problem is getting ‘worse.’

The ICCS has the additional strength that it has been designed with a view to expanding over time to incorporate criminal conduct that is investigated by bodies other than An Garda Síochána and, as a result, is seldom seen as part of the real crime problem. For instance, groupings exist to accommodate tax offences (committed by both corporate and individual persons), environmental offences and breaches of data protection. These categories will be populated over time as the information becomes available to the CSO. The merit of the new taxonomy is that it has a clear rationale. The drawbacks are that it is difficult to examine a time series of crime data given the interruptions in 2000 and 2008, and that the system will continue to evolve for some time before it is fully comprehensive and stable.

Table 1 shows the main crime categories for 2009. It is important to note that, for the purposes of the ICCS, homicide is broadly defined, including 55 murders, 4 cases of manslaughter and 28 incidents of dangerous driving leading to death. Reflecting the fact that the ICCS remains something of a work in progress, the contents of Groups 14 (other road and traffic offences) and 16 (offences not elsewhere classified) were not published with the rest of the data for 2009.

*** Table 1 about here

Drug crime is a cause of concern, particularly in deprived parts of Dublin where opiate misuse is concentrated (Connolly, 2006). Heroin is most commonly administered intravenously rather than being smoked, with predictable consequences

for the spread of diseases such as HIV and hepatitis. Methadone is widely prescribed as a heroin substitute and dispensed from community pharmacies as well as specialist clinics. The availability of methadone is associated with a decline in the kind of offending directly related to drug use. One measure of this is that robberies and aggravated burglaries involving syringes declined in frequency from 1,104 in 1996 to 115 in 2006. On the other hand, the financial attractiveness of the drug trade to criminal entrepreneurs has contributed to the upward trend in lethal violence as disputes about debts and distribution networks are increasingly resolved with guns (Campbell, 2010; O'Donnell, 2005). The most commonly used drugs, based on seizures by police and customs, are cannabis (resin and herbal), Ecstasy, cocaine and heroin.

Law and order politics

Anxiety about crime reached a peak in June 1996 with the shooting dead of a crime journalist (Veronica Guerin) who wrote for the country's most-read newspaper, *The Sunday Independent*, and a Garda detective (Jerry McCabe) who was escorting a delivery of cash to a bank. The killing of the former was thought to have been arranged by a gangland figure about whom she was planning to write an exposé. The latter was shot by an IRA unit that was carrying out an unauthorised operation during a temporary break in the ceasefire that had been declared a couple of years earlier. These deaths raised the spectre of gangland drug dealers acting with impunity and renegade paramilitaries posing a lethal threat to the state.

This was a defining moment in the debate about law and order in the Republic of Ireland, and a catalyst for a hardening in political attitudes (Kilcommins et al., 2004). The Archbishop of Dublin told mourners at Guerin's funeral that it was "time to reflect on the drift in the direction of our society and to ask how it may be halted" (*Sunday Times*, 30 June 1996). Crime control became a national priority and it was almost as if a state of national emergency had been declared. This was a textbook case of moral panic. Public anger and anxiety were inflamed and a raft of legal and policy changes was set in motion to clamp down on organised crime. Serious questions were raised about the state's ability to police itself, about the extent to which there was a control deficit. The calculated killing of a journalist who wrote regularly about Dublin's underworld suggested that crime gangs felt they were

beyond the reach of the law. This was a worrying scenario for many people and generated the conditions where a harsh response to perceived lawlessness became acceptable.

Dáil Éireann was recalled from its summer recess for a special debate in July 1996 and the government introduced a raft of criminal justice legislation. Most significant was the setting up of a Criminal Assets Bureau (CAB) to deny offenders the chance to benefit from the proceeds of their crimes. This meant that assets could be confiscated without the necessity for a criminal conviction. The onus is then placed on the citizen to establish the innocent provenance of their wealth (McCutcheon and Walsh, 1999). Often the individual in question is required to pay the Revenue Commissioners whatever tax the CAB estimates is owed on the basis of ill-gotten gains. There has been muted concern about the implications of this model of policing for civil liberties, especially the presumption of innocence and the burden of proof (Hamilton, 2007).

The high level of passion that characterised the debate about crime at this time was carried through to the general election of 1997 when politicians engaged in a bidding war, promising more police, more prisons and less tolerance. But this infatuation with punitiveness does not seem to have endured and in the years that followed, the significance of law and order affairs fluctuated greatly in the public's hierarchy of concerns, with more mundane matters such as health care and house prices generally causing more protracted anxiety (Kilcommins et al., 2004). While questions of crime and punishment continue to occupy politicians this is rarely in a sustained way, although there has been an unwavering commitment to expanding the prison system and making resources available to An Garda Síochána.

Policing

An Garda Síochána is a national body led by a commissioner who is appointed by the government. For policing purposes the country is divided into six regions. These in turn are divided into divisions, districts and sub-districts. Each sub-district usually has only one station, the strength of which can vary from three to 100 Gardaí. On 31 December 2009 the personnel strength of An Garda Síochána was 14,835. The *Policing Plan 2010* set out six priorities for the force:

1. To protect the State and the people against terrorism in all its forms.
2. To combat serious crime, in particular organized crime.
3. To achieve the maximum levels of safety for local communities.
4. To complete and implement a Garda Charter which will improve the Garda response to calls for service and which will contain commitments on the level of community policing service which the public can expect from Gardaí.
5. To police the roads, in particular to reduce the number of deaths and serious injuries arising from collisions.
6. To prevent and detect human trafficking and to protect victims.

Police misbehaviour and unaccountability have been causes of concern (Conway, 2010). In combination with the lack of an adequate mechanism to handle complaints from members of the public (until the creation, in 2005, of the Garda Síochána Ombudsman Commission and the Garda Inspectorate) this gave rise to a context where a culture of impunity could emerge. Justice Frederick Morris, who chaired a tribunal of inquiry into Garda misconduct, reported in August 2006 that: “The Tribunal has been staggered by the amount of indiscipline and insubordination it has found in the Garda force. There is a small, but disproportionately influential, core of mischief-making members who will not obey orders, who will not follow procedures, who will not tell the truth and who have no respect for their officers” (Tribunal of Inquiry, 2006, para. 6.09). Despite the profound nature of these problems, opinion surveys show repeatedly that the police continue to be held in high regard by members of the public and applications to join the force always exceed, by a large margin, the number of available places.

CRIMINAL PROCESS

The Office of the Director of Public Prosecutions (DPP) decides whether to charge people with criminal offences, and what the offences should be; enforces the criminal law in the courts on behalf of the people; and supervises prosecutions. Most of the cases dealt with by the DPP emanate from An Garda Síochána, but some are referred by the investigative branches of bodies such as the Revenue Commissioners, Competition Authority, Health and Safety Authority and Environmental Protection Agency.

An Garda Síochána and the specialist investigating agencies conduct most District Court prosecutions. For more serious matters directions are sought from the DPP about whether and how to proceed. While every case must be considered on its own merits, there are general principles which guide the initiation and conduct of prosecutions. These are set out in *The Statement of General Guidelines for Prosecutors* published in 2001. The decision whether to prosecute is based on twin considerations. First, the strength of the evidence: a prosecution should not be instituted unless there is a *prima facie* case against the accused – admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused – and a reasonable prospect of securing a conviction. Secondly, the public interest: it will generally be in the public interest to prosecute a crime where there is sufficient evidence to justify doing so, unless there is some countervailing public interest reason not to prosecute. (The seriousness of the alleged offence is the first factor to be considered in assessing where the public interest lies.)

Where the evidence discloses several possible offences, determining the choice of charge is generally within the exclusive domain of the prosecutor. According to the *Guidelines* the charge should adequately reflect the seriousness of the criminal conduct for which there is evidence and provide the court with an appropriate basis for sentence. The prosecutor should only prefer charges which are justified by the facts and must not ‘over-charge’. Ideally, the prosecutor should aim to select a single charge which adequately reflects the nature and extent of the criminal conduct. The views of An Garda Síochána are considered in deciding on the appropriate charge.

Apart from deciding on the appropriate charge it is necessary – other than in relation to summary offences – to consider where the prosecution should take place. Some offences can be tried either summarily or on indictment and the law provides for different sentences depending on the method of prosecution. Three types of case can arise and these are described in the *Guidelines* as follows:

1. Where the legislature has created offences which may be tried either summarily or on indictment without giving the accused an option in the choice of venue, then the decision on venue is for the prosecutor. Should

the prosecutor's decision be to proceed summarily that decision is subject to the District Court judge being satisfied that the offence is a minor one.

2. When the accused has an option of being tried in the District Court or on indictment and elects for summary trial this is subject both to the judge's agreement that the offence is a minor one and the prosecutor's consent.
3. A final category calling for the prosecutor's consideration relates to indictable offences which may be disposed of in the District Court on a plea of guilty.

In deciding whether to elect for, or consent to, summary disposal, whether on a plea of guilty or otherwise, the main factor to be taken into account is whether the sentencing options open to the District Court would be adequate to deal with the alleged conduct. In other words, whether a greater penalty is likely to be required than the District Court can impose (twelve months imprisonment for any one offence and/or a fine of €3,000; equivalent to USD\$3,870 at September 2010 exchange rates).

In 2008 the DPP gave directions on files relating to 11,500 suspects. In around one third of these the direction given was not to prosecute, in another one third the direction was to prosecute on indictment, and the remainder were deemed suitable for summary disposal. The reasons why prosecutions were discontinued are set out in Table 2. For prosecutions on indictment the conviction rate is typically over 90 per cent, with the overwhelming majority of suspects entering guilty pleas. There is a strong incentive to do so as such a plea attracts a discount at the sentencing stage.

*** Table 2 about here

Traditionally, the DPP has not explained the decisions taken in individual cases out of concern not to condemn a person without a trial. However, in 2008 the DPP initiated a dialogue about the propriety and practicality of giving reasons, signalling a willingness to consider reversing years of practice, and initiating a pilot project for a small number of serious offences (Office of the Director of Public Prosecutions, 2008). In part this move to render decisions more transparent reflects a growing

awareness of the importance of addressing the interests of victims of crime, who can be pivotal to the case for the prosecution but whose needs are often unrecognised or unmet. Organised support services for crime victims are underdeveloped in the Republic of Ireland and compensation for criminal injuries, if not forthcoming from the offender, is available only on a limited scale (and in selected cases) from the state. There is an option for victims of sexual or violent crime to present an impact statement to the sentencing judge; in homicide cases family members and loved ones have no such right but the judge may decide to hear from them (Carney, 2007). The delivery of victim impact statements has become an emotionally-charged event, particularly when they are read by a grieving parent. On occasion, the content of such statements has given rise to concern, especially when matters are raised that were not aired in open court. This can create a risk of serious injustice for the guilty party.

Any offence may be transferred to the Special Criminal Court if the DPP certifies that the ordinary courts are inadequate to deal with it. The DPP's discretion in this respect is virtually unlimited and there is no requirement to give reasons. The Special Criminal Court deals with very few cases every year (there were ten trials involving 31 accused persons in 2009), but each one raises serious questions about the integrity of the criminal justice system and the proper nature of the relationship between the state and the accused. Its continued existence allows politicians to display their civil libertarian credentials by emphasising a commitment to the jury system for 'ordinary crime' while leaving unaltered an environment where its scope is reduced (Vaughan and Kilcommins, 2008).

Suspects can be held for questioning by An Garda Síochána for maximum periods ranging from 24 hours to seven days, depending on the nature of the charge. While detained they are allowed reasonable access to a lawyer but lawyers are not entitled to be present when their client is being interrogated. When charged and produced in court the accused can be remanded in custody if the offence is serious and their detention is "reasonably considered necessary to prevent the commission of a serious offence by that person" (Bail Act 1997, s. 2). Bail can also be denied if there is a risk that the accused will interfere with witnesses or not turn up for trial. If the offence is a serious one and the accused cannot afford to pay legal fees, then the court will grant a legal aid certificate, which meets the full cost of advice and representation. As a

result, some of the most accomplished lawyers in the state make their services available to the defence.

The judiciary

Judges are not elected. They are appointed by the president on the nomination of the government and thereafter almost impossible to remove from office. The government is assisted in this task by a Judicial Appointments Advisory Board, which is chaired by the chief justice. The Board places advertisements in the national newspapers, takes soundings regarding the suitability of individual applicants and examines application forms. It is also empowered to arrange interviews, but noted in its annual report for 2009 that it had not yet availed of this power. For each vacancy, the Board makes up to seven recommendations (in no order of preference) to the Minister for Justice. The Board makes its recommendations on the basis of criteria laid down in statute, of which the most important are that the individual concerned has displayed in their practice as a lawyer a degree of competence and probity appropriate to the appointment concerned; is suitable on the grounds of character and temperament; and is tax compliant. The subjective nature of some of these qualifications, such as the 'character' and 'temperament' of the putative judge has come in for criticism. So too has the fact that the Board is not empowered to rank applicants on merit. Indeed, the government is not obliged to limit itself to the names on the submitted list and may choose a candidate whose name does not appear upon it. Although Irish judges are political appointees with a party pedigree that is usually obvious, there is a strong professional norm of autonomy and impartiality once they take office.

Children

The District Court can try a child or young person for any offence except homicide provided that, in the case of an indictable offence, the child's parent or the young person has been informed of his or her right to trial by jury and has consented to be dealt with summarily. In Dublin there is a dedicated Children Court. Elsewhere, charges against children are heard in a different building or room from that in which the ordinary sittings are held or on different days or at different times from those at which the ordinary sittings are held. In 2006 the age of criminal responsibility was raised from seven to twelve years. There is an exception in that children aged ten or eleven can be charged with murder, manslaughter, rape or aggravated sexual assault.

In December 2005 the Irish Youth Justice Service (IYJS) was established to coordinate activities that had formerly straddled three government departments (Justice, Health and Children, Education and Science). The main responsibilities of the IYJS are to develop a unified youth justice policy and devise a strategy for its implementation; to manage and develop children detention facilities and a variety of community sanctions, restorative justice conferencing and diversion schemes; to coordinate service delivery at national and local level; and to produce and disseminate information about youth justice. The *National Youth Justice Strategy 2008-2010* set out five high-level goals, namely to:

1. Provide leadership and build public confidence in the youth justice system.
2. Work to reduce offending by diverting young people from offending behaviour.
3. Promote the greater use of community sanctions and initiatives to deal with young people who offend.
4. Provide a safe and secure environment for detained children which will assist their early re-integration into the community.
5. Strengthen and develop information and data sources in the youth justice system to support more effective policies and services.

The approach to dealing with juvenile offenders is flexible. Unlike for adults, the desire to see detention used only as a “measure of last resort” is given statutory expression in s. 96 of the Children Act 2001. The same legislation allows for the expungement of most criminal convictions acquired when a person was aged less than 18 years as long as there are no further offences for three years; for adults there is no facility for wiping the slate clean (Kilcommins and O’Donnell, 2003). Also for children there is a long-established scheme of cautioning and diversion that is operated by An Garda Síochána, and since 2006 the Probation Service has put in place a range of interventions and supports designed specifically for young people. While there is some distance yet to travel the response to youth offending is beginning to acquire distinctive characteristics.

PUNISHMENT

The last execution in the Republic of Ireland took place in 1954. Capital punishment was abolished in 1990, and in 2001 the people voted to amend the Constitution to allow for the deletion of references to capital punishment and the prohibition of legislation allowing capital punishment in the future.

There is very little empirical data available about sentencing (for an overview see O'Malley, 2006). For example, it is not possible to determine the average prison terms imposed for different categories of crime, let alone how penalties relate to offence and offender characteristics. While understanding of the criminal justice system is poor in general, and research in the area is in its infancy, it is probably around sentencing where the information deficit is most pronounced. What is clear is that there is a great deal of variation. The likelihood of imprisonment following a conviction for public disorder or assault in the District Court ranged from 2 per cent in one area to 26 per cent in another (Courts Service, 2008). As for the more serious business dealt with by the Circuit Court, suspended sentences were twice as common outside Dublin (39.4 per cent vs. 19.1 per cent) and prison sentences over five years were half as common (6.6 per cent vs. 15.3 per cent). This may result from the balance of offences coming before the courts, a difference in the characteristics of offenders, or a sterner judicial culture in the capital city. Unfortunately, it is not possible to explore the relative weight of these factors.

The apparent lack of consistency in sentencing is a cause of regular concern, as is the almost unfettered discretion allowed to judges who, generally speaking, are free to impose whatever combination of sanctions or measures they believe best meets the demands of the individual case, subject only to the statutory maximum or the inherent limitation of the court's powers. They are unconstrained by guidelines (Law Reform Commission, 1996). Politicians have attempted to bring the judiciary into line, thus far with little effect. For example, the Criminal Justice Act 1999 introduced presumptive minimum ten-year prison sentences for the possession of drugs worth €13,000 (USD\$16,760) or more. The clear intent of this legislation was to reduce judicial discretion. However, the court can decline to impose the ten-year minimum if it finds "exceptional and specific circumstances" (s. 5) which would make such a sentence unjust. This provision has been interpreted broadly and few eligible

offenders have received the minimum sentence (McEvoy, 2005). Three court reports published side by side in *The Irish Times* on 18 June 2008 – almost a decade after the passage of the Act – illustrate this. In one, a man caught with the largest amount of heroin ever seized in Cork (valued at €145,600; USD\$187,670) was given a six-year sentence but this was suspended on condition that he be of good behaviour; as a result he walked free from court. In another, a man described as “a cog in the machine of drug dealing” was given a seven-year sentence for possessing heroin valued at over €23,500 (USD\$30,290). In the third case the minimum sentence was applied and a man was jailed for 10 years for possessing drugs valued over €58,000 (USD\$74,760).

Judges have also asserted their independence by showing a marked reluctance to accept a recommendation that they give brief written reasons when imposing a prison sentence (Law Reform Commission, 2003). Any suggestion that judicial decision-making be rendered more uniform, explicable or transparent is interpreted as a threat to the separation of powers.

Penalties are used interchangeably rather than thought of hierarchically. For example, when imposing a fine the number of days of imprisonment that must be served in default is stated. Similarly, community service is a direct alternative to prison and the judge must state the number of hours of community service to be carried out and how much prison time will be served if the order is not followed. Suspended prison sentences are popular, even for serious offences. As judicial discretion is broad there is a great deal of variation in the selection of penalties thought to be appropriate for similarly-situated offenders.

But checks and balances are in place. Defence appeals against conviction and sentence have been possible for many years and the Criminal Justice Act 1993 allows the DPP to apply to the Court of Criminal Appeal to have a sentence reviewed on the grounds of undue leniency. The courts have held that for a sentence to be considered unduly lenient it is not enough for the appeal court to think that the sentence was too light. The appeal court must also consider that the trial judge made a mistake on a legal point when imposing sentence. Such applications were made infrequently at first (two or three times a year between 1994 and 1997) but have become more common since, with 58 lodged in 2008. Most are successful.

Probation

The Probation Service in the Republic of Ireland continues to operate within the framework set out by the Probation of Offenders Act 1907, legislation that predates the foundation of the state and specifies that the duty of a probation officer should be to “advise, assist and befriend” (s. 4). This serves as a reminder of the country’s colonial heritage and the inertia that has characterised criminal justice policy-making. Under the Probation of Offenders Act there is scope for the District Court to find an accused guilty but discharge them. This means that no penalty is imposed and the individual does not acquire a criminal record. The most significant change in the twentieth century was the introduction of the Community Service Order under the Criminal Justice (Community Service) Act 1983. Probation supervision consists primarily of individual casework; its efficacy has attracted little scrutiny (Healy and O’Donnell, 2005).

In the absence of a modern legislative framework judges have tended to innovate, as evidenced by the popularity of what are known as orders for supervision during deferment of penalty. In such cases the judge postpones sentence until the offender has had an opportunity to demonstrate a willingness to respond to a specified intervention. This may involve the payment of compensation to the victim, participation on a drug or alcohol course, or engagement in mediation. The understanding is that if the offender complies, and the reports are favourable, a prison sentence will not be imposed. Supervision during deferment of penalty is chosen more often by the courts than probation or community service. According to the annual report of the Probation Service, such orders were made on 2,021 occasions during 2009. This contrasts with a total of 2,865 Probation Orders and 1,667 Community Service Orders made the same year. (Imprisonment is more frequently resorted to than probation and community service combined; in 2009 there were 10,865 committals to prison under sentence. This pattern suggests that prison was used as the default sanction in many cases, rather than being held in reserve for the most serious offences or those offenders who were deemed unsuitable for any form of community punishment.)

Another judicial innovation is the ‘court poor box’. This is sometimes used in conjunction with the Probation Act which, as noted above, allows the court to establish guilt but not proceed to a conviction, thus sparing the defendant the potential adverse consequences of a criminal record. Although without any statutory basis, the poor box has been applied in a range of circumstances including public order offences, minor theft and criminal damage, careless and dangerous driving, and possession of cannabis for personal use. The amounts involved vary widely according to the nature of the offence, the means of the offender and the proclivities of the individual judge. They are generally modest but in January 2003 a man convicted of possession of child pornography paid €40,000 (USD\$51,560) to a named charity in addition to receiving 240 hours community service (in lieu of a nine-month prison term).

Prison

In 2009 the average prison population was 3,881. This equates to a rate of around 87 prisoners per 100,000 population (on trends in imprisonment, and their interpretation, see O’Donnell, 2004; O’Donnell, 2008). Overall, sentences tend to be short, with 70 per cent of those received into prison in 2009 serving less than six months and only 3 per cent serving five years or more (including life). All fixed-length prison sentences automatically attract 25 per cent remission, which can be forfeit in the event of prisoner indiscipline.

There is only one high-security prison in the country. Located in the town of Portlaoise, its perimeter is patrolled by soldiers from the Irish Defence Forces. Although the paramilitary ceasefires have remained solid for more than a decade, the need remains for a high-security prison. This is for two reasons. First, the Hydra-headed nature of the republican movement meant that small anti-ceasefire groups such as the Real IRA and the Continuity IRA sprang into existence when the larger organisations decided that they could serve no further useful purpose. Second, the scale and profitability of the drugs trade created a new class of criminals whose wealth, cunning and ruthlessness meant that in all but the most secure of environments they would pose a credible escape threat.

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is a non-judicial body established by the Council of Europe. Its aim is to protect those in custody and prevent ill treatment rather than to condemn States for abuses. A delegation from the CPT visited the Republic of Ireland for the fifth time in January 2010. It has a right of unlimited access to places of detention such as prisons, police stations and psychiatric hospitals. It consults widely and during its most recent visit met with government ministers, senior civil servants and representatives of the non-governmental sector. The breadth of its consultation and the depth of its expertise confer CPT reports with a difficult-to-rebut legitimacy.

These reports are strictly confidential but they are usually published at the request of the state in question and appear simultaneously with a detailed response. The report of the 2010 visit is not yet available but the previous report, based on a visit in 2006, sounded a number of alarm bells (Council of Europe, 2007). It depicted a prison system distorted by a climate of violence and fear. Beatings of prisoners were detailed, and the CPT expressed grave reservations about the effectiveness of Garda investigations into allegations of abuse by prison staff. In addition, there was a worrying level of inter-prisoner violence, with frequent stabbings and assaults, and increasing numbers of prisoners seeking protective custody – in reality 23 hour a day lock up – out of fear for their safety. Limerick and Mountjoy prisons and St Patrick's Institution for young offenders were deemed to be unsafe for both staff and inmates. The level of violence was attributed to the availability of drugs and the absence of meaningful activities. The lack of structure and purpose in the prisoner's day is exacerbated by inadequate sentence planning and poor conditions (O'Donnell, 2002). Bored young men with little else to occupy them, and few targets to meet, find diversion in obtaining, trading, and consuming drugs. These activities are pervasive and make the prison experience profoundly corrupting.

There were complaints to the CPT about the unpredictable behaviour of prison officers and even suggestions that some of them played a role in inciting violence. Prisoners in Mountjoy claimed that in the evenings and at weekends, certain staff members, apparently under the influence of alcohol, would deliberately start rumours about attacks that one prisoner was supposedly planning on another. Such behaviour, even if rare, is destabilising. The CPT found that conditions in prisons were variable,

with some inmates enduring prolonged periods in small, dilapidated cells without integral sanitation. Many prisoners continue to ‘slop out’ despite repeated promises that this disgusting practice would be eradicated. Hygiene problems are most acute in prisons like Cork and Limerick that also bear the brunt of routine overcrowding. Clearly, there is some way to go before the Irish Prison Service achieves its mission of providing “safe, secure and humane custody” (Irish Prison Service, 2010, p.1). An inspector of prisons was appointed in 2002 and the work of this office should help to hold the prison service to account by monitoring its activities closely and continuously.

CONCLUSION

The Irish criminal justice system is a curious mix. Its colonial antecedents remain obvious in buildings, laws and practices. Innovation has sometimes resulted from an attempt to resolve the tension between the limits of the current arrangements and the demands of a modern society with a wide range of criminal activity to prevent, control and punish. New approaches to crime classification, police diversity and accountability, the victim’s role, prison monitoring and youth justice are at an early stage. The composition of the prison population is changing rapidly as foreign nationals begin to make their presence felt. In combination these developments mean that the next ten years may see the emergence of a more distinctively Irish approach to crime and punishment.

Several things remain constant in particular perhaps an unstructured approach to sentencing, judicial resistance to what is perceived as legislative intrusion in their sphere of competence, and a lack of good quality information and research. The next ten years will be critical in these regards as clarity emerges regarding the proper role of the legislature in setting sentencing policy and increasing significance is attached to the importance of consistency in decision making across all parts of the criminal justice system. International developments may play a role also as Ireland is buffeted by winds of change from larger jurisdictions with which it shares a common legal tradition and language, notably the USA and the UK, where criminal justice issues are more closely examined and the pace of change is more rapid.

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Table 1
Irish Crime Classification System

		<i>Number recorded in 2009</i>
01	Homicide	87
02	Sexual offences	1,485
03	Attempts/threats to murder, assault, harassment and related offences	18,308
04	Dangerous or negligent acts	15,538
05	Kidnapping and related offences	146
06	Robbery, extortion and hijacking	2,487
07	Burglary and related offences	26,877
08	Theft and related offences	77,040
09	Fraud, deception and related offences	4,943
10	Controlled drug offences	21,991
11	Weapons and explosives offences	4,061
12	Damage to property and to the environment	42,336
13	Public order and other social code offences	57,359
14	Road traffic offences (not elsewhere classified)	_____
15	Offences against justice procedures etc.	11,827
16	Offences not elsewhere classified	_____

Source: Central Statistics Office (2010), *Recorded Crime: Quarter 2 2010*, Tables 2.1b, 2.2b, 2.3b.

Table 2
Why Prosecutions were Discontinued

	<i>Per cent</i>
Insufficient evidence	77
Public interest	7
Referred to juvenile diversion programme	2
Time limit expired	1
Undue delay	1
Sympathetic grounds	0
Other	10

Source: Office of the Director of Public Prosecutions (2009), *Annual Report 2008*, p. 33.