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## The Impact of the Northern “Troubles” on Criminal Justice in the Irish Republic

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### INTRODUCTION

Amidst ongoing debate about the links between crime and locale, one important question is the impact that violent upheaval in one jurisdiction may have on neighbouring jurisdictions, particularly at a time when many commentators express the view that globalisation has led to the demise of the nation state as a focal point for social organisation and regulation. My aim in this chapter is to examine this issue in relation to the Northern Ireland conflict and its impact on crime and criminal justice in the Irish Republic. It is beyond my scope here to offer a definitive assessment on such a broad topic – although this surely is a project worth undertaking – and so my comments remain speculative. This reflects the broad nature of the subject matter, but also highlights the absence – until recently, at least – of a sustained tradition of criminological research in the Irish Republic. Moreover, within that existing literature, there has been little sustained effort to assess the conflict’s impact on crime and crime-related issues. In the following pages, I discuss the Northern conflict’s impact on the Republic in terms of several aspects of crime. First, I consider how the Troubles have affected the level and nature of crime in the Republic. Then I examine its impact on the criminal justice system generally, looking in turn at the Republic’s

legislative framework, the Garda Síochána, and the prison system. Before moving on these issues, however, it is worth considering the reason for the lacuna in Irish criminological research.

#### CRIMINOLOGY, AND THE LACK OF IT, IN IRELAND

The enormous absolute and relative costs of the troubles established the UK as the most violent western liberal democracy during the years of conflict. Within British criminology, however, the conflict has in large part been "ignored" (Brewer et al 1997, p 4). Although one important exception to this is the attention it received from a number of critical criminologists and others (discussed below), this general omission is highlighted in the *Oxford Handbook of Criminology* (Maguire et al 1997). There, Downes and Morgan note the human and financial costs of the conflict and observe that "[t]he costs in terms of negative effects on public trust in British institutions have been incalculable" (1997, p 127). Despite this self-evident significance, the conflict merits little more than a few isolated mentions throughout the 32 chapters and 1,250 pages of text.

The same criticism is generally true of criminology in the Irish Republic, partly reflecting the general absence of an Irish criminological research tradition. Rolston and Tomlinson's description of criminology as "Ireland's absentee discipline" (1982, p 25) was particularly apt. Prior to the 1980s, the amount of criminological work done in and on Ireland was miniscule. Since then, several notable, if relatively recent, developments have begun to reverse this situation, most visibly through the establishment of criminology institutes and centres in several universities throughout Ireland. Brewer et al (1997) nevertheless subtitle their book on crime in Ireland, *Here be Dragons*, in reference to the "unknown" quality attached to crime and related issues in Ireland.

Several factors relate to how this situation developed. First, the historically low levels of crime in Ireland may have ensured that issues of crime and justice were a low priority for government, and consequently there has been a striking absence of government-funded criminological research (and indeed, social science research generally). The Department of Justice, for instance, first established a research budget as recently as 1997. Second, the social sciences in Irish academic institutions have until recently been fairly marginal within those institutions. Third, the sociology that has been conducted has generally been preoccupied with issues of social policy (Clancy et al 1995). It is noteworthy that while the development of criminology in Britain had its origins predominantly in the spheres of law and psychology, the rapid expansion of the discipline coincided with the development of interactionist and Marxist/critical perspectives in the 1960s, a development that was largely absent in Ireland. In addition to these various factors, however, it seems undeniable that the Northern Ireland conflict

has had a "chill factor", inhibiting the development of Irish criminology (Rolston and Tomlinson 1982; Tomlinson, Varley and McCullagh, 1988). Critiques of law and state might have appeared too contentious for many scholars who were not anxious to become embroiled in broader political debates. It is also likely that the Catholic Church's heavy involvement in "youth justice" in Ireland shielded those institutions from the oversight and critique to which they otherwise might have been subject.

Whatever the precise reasons for criminology's underdevelopment in Ireland, that particular corner has now been turned (this book representing one dimension of the process). But while there is now a distinctive "Irish" criminological literature, it too has paid scant attention to the conflict's impact. In the major overviews of crime and criminal justice in Ireland – such as O'Mahony's (1993) *Crime and Punishment in Ireland* and McCullagh's *Crime in Ireland* (1996) – Northern Ireland barely rates a mention. In Brewer et al (1997) *Crime in Ireland 1945-95*, considerable mention is given to the impact that the conflict had on the prevalence and management of "ordinary" crime in Northern Ireland, but there is no systematic analysis of such issues in relation to the Republic. In fact, apart from the work of Brewer et al, the most sustained external attempt to measure the conflict's impact on crime and justice issues has been in relation to its impact in Britain.

#### CONTENTIOUS AND CONTAGIOUS: NORTHERN IRELAND AND ITS IMPACT ON CRIMINAL JUSTICE IN BRITAIN

Within the British context, developments in the administration of justice in Northern Ireland were frequently cited by critical criminologists and others as evidence of the growing power of the "authoritarian state" and its impact on criminal justice issues (Bunyan 1977; Hall and Scraton 1981; Sim, Scraton and Gordon 1987). The theme of this approach was that Northern Ireland's contentious present was Britain's predictable future: the policies and practices evident in Northern Ireland (such as heavily-armed police, non-jury courts, etc) would, sooner or later, visit Britain's shores and, indeed, Europe generally (Tomlinson 1993). While Hogan and Walker (1989, p 171) suggest that "imitation" of developments in Northern Ireland "has not always been pernicious", the concern expressed here drew on a metaphor of contagion, reflecting what Hillyard (1987) described as the "normalisation of special powers". So, rather than remain confined to dealing with political violence and thus peripheral to the rest of the criminal justice system, the emergency legislation and other measures enacted in response to the conflict were increasingly being viewed – and used – as part of the "ordinary" legal landscape. Its "temporary" description belied its marked longevity, while its "emergency" character was at odds with its gradual "normalisation" (Hillyard 1993, 1987; Ní Aoláin 2000).

Thus the Prevention of Terrorism (Temporary Provisions) Act (PTA), introduced in 1974 following the Birmingham pub bombings in which the IRA killed nineteen people, gradually became a near-permanent legal fixture. Although the British Home Secretary, when introducing it to parliament, described its provisions as "draconian" and "unprecedented in peacetime", it continues to be renewed, while also being amended and extended on several occasions (in 1984 the scope of the act was extended from Northern Irish matters solely, to cover "international terrorism" generally). In addition to the longevity of this "temporary" emergency legislation, the provisions for arrest and interrogation in the PTA and the Emergency Provisions Act appeared increasingly to be used for purposes other than that for which they were (arguably) intended. A large majority of people questioned under emergency legislation were not charged, the implication being that arrest and interrogation was used as part of a broader framework for gathering intelligence rather than as a means to gather information relating to a specific criminal allegation. From the Act's inception to 1982, only 2 percent of those detained under its provisions were charged (Geraghty 1998, p 96), while of the 7,052 people questioned under the act between 1974 and 1991, 86 percent were released without charge (Hillyard 1993, p 5).

In addition to legislation and special powers generally, policing also emerged as a major concern. "Policing by consent" remains *the* rhetorical trope of policing in Britain, but it was a paramilitarised mode of policing that developed in colonial Ireland, and subsequently in Northern Ireland. As the conflict unfolded in the late 1960s and early 1970s, during which the RUC was severely criticised, the force underwent an extensive process of professionalism in an effort to improve relations with the Catholic community in particular, and to increase the force's effectiveness generally. This process was characterised on the one hand by a discourse of consent and service (Mulcahy and Ellison 2001), and on the other by an enormous increase in the force's technological capacity to deal with paramilitary organisations and large-scale public disturbances (Ellison and Smyth 2000). As the RUC enhanced these latter capabilities, the "militarisation" (Hillyard 1997) underpinning them became increasingly evident.

Some forms of militarisation remained restricted to Northern Ireland. This was most evident in relation to the use of "Plastic Baton Rounds" (PBRs, and their precursors, "Plastic Bullets"). While the firing of PBRs in Northern Ireland was a routine occurrence during the conflict, with its usage characterised by a distinct lack of oversight (Committee on the Administration of Justice 1996), senior police officers balked at using them on British soil (even during riots in 1985 in which a police officer was hacked to death) in case this irreversibly damaged the pacific image of the English "bobby". In relation to other aspects of policing, however, there was greater willingness to put to use the "lessons from Ireland" (Hillyard 1985). This critique alleged that Northern Ireland was serving

as a testing ground for measures to contain the industrial unrest and inner-city riots in Britain during the 1970s and 1980s, as well as political dissent generally (Ackroyd et al 1980; BSRSS 1985; Bunyan 1980; Manwaring-White 1983). While Northern Ireland may not have constituted a formal experimental site for criminal justice initiatives (Hogan and Walker 1989), senior British police officers visited Northern Ireland "to discuss riot control and learn from their 'success'" (Reiner 2000, p 68) and it seems likely that some of the practical experience gained there in areas such as crowd control was put to use in the 1984/5 miners' strike in Britain. Similarly the increasing move in Britain towards "intelligence-led policing" resonates with the covert surveillance techniques that were (and remain) to the fore of policing in Northern Ireland (Geraghty 1998; Hillyard 1997). As a consequence of this broad trend, Hillyard (1985) argued that the "lessons from Ireland" were profoundly depressing ones, with grave implications for civil liberties and the character of the criminal justice system in Britain. How, then, would these issues unfold in the Irish Republic?

#### THE NORTHERN CONFLICT AND CRIME IN THE IRISH REPUBLIC

The Northern conflict has impacted on crime in the Republic in a variety of interrelated ways. There are clear difficulties with calculating the financial cost of the conflict, but several estimates have been made. The New Ireland Forum (1984, pp 15-6) estimated that the direct cost of the conflict between 1969 and 1982 was IR£1,100 million, while further indirect costs – in terms of lost output to the economy – amounted to IR£1,200 million (in 1982 prices) for the same period. Tomlinson (1995, p 10) estimated that the total cost of the conflict between 1969 and 1994 was £23.5 billion sterling, with 10.5 % of these costs (£2,467.5 million pounds sterling) being incurred in the Republic.

Measuring paramilitary involvement in crime is, however, particularly difficult. Much paramilitary crime is "hidden" and goes unreported, including intimidation (of witnesses and others), extortion rackets, smuggling activity, VAT fraud, and so on. Other crime involves members of paramilitary organisations engaging in crime for purely personal benefits. Amongst republican paramilitary organisations, the INLA in particular has been persistently and convincingly linked with various forms of "apolitical" crime (Holland and McDonald 1994). In fact, one of the key features of the conflict's impact is the very complexity of it. The National Crime Forum (1998) outlined what it viewed as some of these intricacies:

The emergence of political subversives has meant that more guns have become available to ordinary criminals and there has been a big increase in the number of armed robberies. Disaffected political figures flirting with the regular underworld



have made their terrorist skills and their superior weapons available on occasion. The interaction between political subversives and regular criminals has been complex and complicated, each group enlisting co-operation from and providing support to the other only when it suited it and never without a reserve of some suspicion. From the policing point of view the gardaí were faced with a complex situation where crimes were brought committed by people motivated by very different objectives. The prioritised preoccupation of the gardaí with political subversives during the late seventies and throughout the eighties created conditions where organised crime could thrive and where a drug culture, with all its attendant problems for the criminal justice system, could take root without focused opposition (p 14).

Some of the complexities involving paramilitaries and ordinary criminals are evident in the case of Martin Cahill, one of the most infamous criminals in recent Irish history. Cahill's criminal career included an attempt to undermine a prosecution he was facing by killing a government forensic scientist. Cahill apparently decided to use a car-bomb having seen its effectiveness in Northern Ireland and also because this might implicate paramilitaries in the forensic scientist's murder. On another occasion, Cahill attempted to sell a famous collection of paintings he had stolen to the UVF. On yet another occasion, after Cahill successfully robbed a jewellery business that the IRA had decided was too risky to rob, the IRA demanded half the proceeds. Cahill refused. He was shot dead by the IRA in 1994, shortly before it declared its ceasefire (Williams 1998). When we consider that some of Cahill's accomplices had paramilitary connections, the complexities of the relationship between political violence and "apolitical" ordinary crime are highlighted still further.

#### MEASURING THE "SPILLOVER" OF CRIME

Even while discussing the conflict's impact, and despite the vagaries of crime rates, it should be noted that most commentators attribute one of the lowest crime rates in Europe to Ireland. Rottman argues that up until the mid-1960s crime levels in Ireland were "almost imperceptible" (1980, p 145). Thereafter crime levels increased dramatically, nearly doubling between 1965 and 1970, and continuing to rise steeply and steadily in subsequent years until it peaked in 1983, when 102,387 indictable offences were recorded. In a little under twenty years, levels of recorded crime had increased sixfold. Since the early 1980s the crime rate has fluctuated, declining in the late 1980s, reaching a new peak in 1995, and declining again in recent years. Victimisation studies offer a more nuanced (though hardly conclusive) picture of crime in Ireland than that provided by official figures, and their findings suggest that for some crimes, victimisation rates in Ireland are closer than previously thought to comparable figures for other countries (Breen and Rottman 1985; O'Connell and Whelan 1994; Central

Statistics Office 1999; see also Mayhew and White 1997). Nevertheless, levels of crime in Ireland consistently appear amongst the lowest in Europe and the industrialised world in general (Brewer et al 1997).

Given the intensity of the conflict, particularly in the early 1970s, some commentators claimed that violence was literally spreading southwards. In the *Report on Crime for 1975* (p ii), the Garda Commissioner wrote: "Violent criminal activity designed to intimidate for political purposes in the border areas has undoubtedly influenced crime trends throughout the whole country. This is particularly noticeable since 1969". This broad claim, however, is undermined by several important qualifications.

First, despite Ireland's dramatic rise in crime levels from the mid-1960s onwards, most European countries experienced a similar rapid rise in crime rates to that in Ireland. The onset of this and the precise trajectory of the crime increase are clearly related to the specific circumstances in any given society, but the broad trend seems clear: during the 1960s, 1970s and 1980s, rapid increases in the crime rate were evident in most industrialised societies. This suggests that in addition to purely local factors, other broader processes were also at work. Such claims were frequently made by garda commissioners in the early 1970s, who linked the rise in Irish rates with processes of urbanisation and industrialisation, higher levels of prosperity, as well as changes in family structures and in the public's general attitudes towards authority and hitherto widely-respected institutions (see *Report on Crime 1970-75*). Certainly, the rapid rise in crime rates coincided with widespread social changes in Ireland that Rottman described as "a transformation not by stages but in one rapid step" (1980, p.116). Rapid urbanisation, internal migration, a rise in general prosperity levels coupled with a widening gap between rich and poor, all had a profound impact on the nature of Irish society, and especially on attitudes to, opportunities for, and responses to crime (Brewer et al 1997). Second, while the crime rate did increase in the Republic during the years of the conflict, the "watershed" year identified by Rottman, 1964, predates the outbreak of widespread violence in Northern Ireland. Third, while there may have been an "overspill" of criminal activity from Northern Ireland, this is most likely limited to specific forms of crime rather than crime in general. This is not to underestimate the direct impact of the conflict on crime in Ireland, particularly violent crime, but rather to invite a more qualified assessment of its impact.

As crime rates increased unchecked until the 1980s, issues surrounding crime and the efficacy of crime control policies assumed unparalleled significance within Irish political discourse (Breen and Rottman 1985). Although rural crime has on occasion generated widespread public concern, particularly violent crime involving elderly victims (McCullagh 1999), it was urban crime that provoked the greatest reaction, particularly the high concentration of crime in Dublin. This concern echoed with the alleged emergence of a new era of violent crime in

Ireland, fuelled in part by events in Northern Ireland. Armed robberies were one indicator of this, rising from twelve in 1969 to 228 in 1979. Much of this increase was directly attributable to paramilitaries seeking funds to purchase weaponry and finance other expenditures. Murder rates (excluding cases of manslaughter) also increased rapidly, although from a strikingly low base rate. On only six separate years between 1945 and 1969 (inclusive) did the number of murders in Ireland reach double figures and the average was 7.8 murders per year between 1960 and 1969. From the 1970s onwards, the murder rate increased considerably, generally reaching twenty or more murders per year until the early 1990s. Sutton (1998) estimates that in the Irish Republic between 1969 and 1998, 107 people were killed in incidents directly related to the conflict, representing approximately 3 per cent of the total number of fatalities in the conflict. Nearly one-third of these deaths occurred in 1974 when loyalists bombed Dublin and Monaghan. On no other year during the conflict did the number of conflict-related fatalities in the Republic reach double figures. Moreover, most of these incidents were concentrated around the border area (Poole 1997). Significantly, the largest increases in the number of murders occurred in 1995 when forty-three murders were recorded, and while the number of murders has declined somewhat since then (running at 38 per year for 1997-99) this remains far above the figures recorded during the height of the conflict. Thus, while the conflict explains some of the increase in the number of murders in Ireland, a large proportion of this was the result of other factors, and appears to be linked with the general rise in crime levels in Ireland.

Violent crime is one indicator of paramilitary activity, but the vast bulk of crime in Ireland is property crime and the rise in the incidence of these crimes accounts for the majority of the changes in the Irish crime rates. While the murder rate trebled (from eight to twenty-three) between 1961 and 1991, the burglary rate increased by a factor of fifteen, from 2,000 burglaries in 1961, to almost 31,000 in 1991 (McCullagh 1996). The reclassification of offences in 1975 makes the analysis of long-term trends difficult, but the general trend remains clear. Between 1976 and 1995 violent crime ("offences against the person", reported as Group I offences) accounted for an average of 2.5 per cent of all indictable offences recorded in Ireland (and it never reached above the 1978 rate of 3.7 per cent of offences). The incidence of violent crime has risen, but it generally has done so at a far lower rate than property crime which continues to account for the overwhelming majority of crime in Ireland (Brewer et al 1997).

While the 1980s witnessed growing concern about violent crime in general, much public attention focused on the rise of drug-related crime. Again, this concern was largely directed towards events in Dublin, which witnessed a rapid rise in drug-related offences during the early 1980s as heroin use greatly increased. This was accompanied by vocal public criticism of gardaí response to the problem, and several local organisations were formed to counter drug crime, resulting in

various clashes not only with individuals allegedly involved in drug dealing, but also with the gardaí (Bennett 1988; Reynolds 1998; Williams 1998). One retired civil servant "admitted that the Department of Justice and gardaí were shaken by the scale of the problem in the early 1980s, especially in Dublin." Senior gardaí even asserted that "drugs have been the biggest single influence on the crime profile during their time of service" and that "drugs had a profound impact, bigger than terrorism, on the crime profile in the Republic of Ireland..." (Brewer et al 1997, pp 46-7). One of the reasons why drug use had such an immediate and profound impact on the crime profile in Ireland is the less-than-adequate response it received from official agencies. Some of this may be related to the pressures of the conflict, insofar as the security threat absorbed resources that would otherwise have been invested in crime prevention measures. But the poor official response seems more likely due to a general inertia and disinterest towards drug use and the impact of heroin use on marginalised communities (discussed below in relation to policing).

Overall some unknown – although probably small – proportion of the overall increase in crime figures in Ireland was directly related to the Northern conflict, but the vast majority of it was not. Even though the direct impact of the conflict was most evident in relation to violent crime, this was largely confined to specific crimes committed by or at the behest of paramilitaries (eg armed robbery, rather than assault generally) which comprise only a small proportion of offences against the person. The conflict may have exercised a greater impact in indirect ways, in terms of facilitating opportunities for crime in a number of ways (including greater availability of weapons, as well as diverting government energies away from the development of cohesive crime prevention measures) but such an influence is difficult to quantify. Indeed, the most visible consequences of the conflict are on the criminal justice system rather than levels of crime, in terms of policing, prisons, and the Republic's legislative framework.

#### THE LEGISLATIVE FRAMEWORK: EMERGENCY MEASURES AND SPECIAL COURTS

The conflict has very visibly affected the operation of the criminal law in the Republic. According to the Department of Justice (1997), the conflict has ensured that "[s]trategies to combat subversive crime involve a distinct approach in terms of legislative provisions, Garda intelligence and evidence gathering, court arrangements and custodial policy" (para 5.24). In terms of legislative provisions, a body of "emergency" legislation provided state officials with expanded powers, while a "special criminal court" was also established to hear cases originally linked to political violence, although in practice it also tried cases unrelated to paramilitary activity. One of the features of emergency measures in the Irish Republic is the general lack of review to which these powers are subject (Hogan

and Walker 1989); nevertheless their influence on the Irish legal landscape has been substantial.

### *Emergency Measures*

In 1939 the Irish government formally declared a "state of emergency" that ran until 1976. A series of events – the kidnapping of a prominent Dutch businessman, a major train robbery, the bombing of the Special Criminal Court as part of an escape attempt, and the assassination of the British Ambassador and a civil servant – prompted the government to enact the Emergency Powers Act 1976 (EPA). This gave police the power to hold suspects without charge for up to seven days. The original state of emergency was ended, and a new state of emergency related to the Northern conflict was immediately declared. This latter state of emergency was formally ended in February 1995, some months after the 1994 paramilitary ceasefires.

The EPA complemented the extant Offences Against the State Act 1939 (OASA), and together these measures gave the government and security forces enormous license to counter any perceived threats to state security. During the early-mid-1970s, the OASA was used as the basis for a substantial number of prosecutions (seventy-eight in 1973), but during the late 1970s the number of OASA prosecutions dwindled dramatically, and throughout the 1980s and 1990s the Act was rarely used to prosecute offences on more than one occasion in any given year (see Garda Commissioner's *Report on Crime*, various years). Despite its decline as a basis for prosecutions, it was routinely used to detain suspects for questioning. Between June 1972 and 1989, more than 27,000 individuals were arrested under Section 30 of the Act (O'Leary and McGarry 1996, p 47). Its provision enabling a suspect to be held for questioning for up to forty-eight hours without arrest ensured its popularity among police officers. Following the Omagh bombing in which twenty-nine people were killed, the Act was further amended in 1998 in ways that curtailed the right to silence and expanded garda powers of detention for purposes of interrogation (O'Donnell 1999, p 188).

### *The Special Criminal Court*

In the event that the "ordinary courts were inadequate to secure justice and public peace and order", the Offences Against the State Act 1939 allowed for a Special Criminal Court (SCC) to be established. The SCC was first established in 1939 in response to fears that IRA activity in Britain could jeopardise Ireland's neutrality during the Second World War. Initially composed entirely of army officers, the SCC sat until 1946 after which it ceased to operate. It sat again briefly in 1961–2, again in response to an IRA campaign, but following the IRA's ceasefire in 1962 the proclamation setting up the court was revoked (Farrell 1997, p 2). As the violence in Northern Ireland escalated in the early 1970s, the government stated

that the ordinary courts were inadequate to deal with these events, and a new government proclamation again established the SCC, with judges rather than army officers trying the cases.

The SCC was established as a jury-less court, with cases typically being heard before three judges. Although the rationale for the SCC was jury-intimidation in the case of paramilitary-related crime – similar to the rationale behind the establishment of the single judge Diplock courts in Northern Ireland – no specific examples of intimidation were actually cited. It tried "scheduled offences" – offences linked with paramilitary activity – but the Director of Public Prosecutions also had the power to direct that any other offence could be tried in the SCC if the ordinary courts were deemed inadequate to try that offence. Following an amendment to OASA in 1972, the sworn testimony of a garda chief superintendent that an accused was a member of an unlawful organisation was sufficient to constitute proof of membership. While this had to be corroborated by other evidence if the defendant denied membership of an unlawful organisation, "the level of corroboration required was not very high" (Farrell 1997, p 3).

The court has been subject to several serious criticisms. First, it has been accused of adopting a less than vigilant approach to allegations of police ill-treatment of suspects during interrogation (for example, in the case of Paul Ward where the court accepted that he had been ill-treated but still convicted him). Second, the court has been criticised for the fact that it also hears cases unrelated to paramilitary activity, including a case in 1997 that involved charges of possession and supply of cannabis. On another occasion, some of those charged with the murder of Josie Dwyer (killed by anti-drugs activists) were tried in the ordinary courts while others charged with the same offence were sent to the SCC. However, while the DPP has the power to refer cases to the SCC, there is no obligation to explain the rationale for doing so in a particular case. The legislative framework arising from the threat to state security generally, has provided enormous powers to the authorities, but one of their striking features is the extent to which they have been used in capacities beyond their original remit. Such a development confirms the tendency for emergency legislation gradually to influence the entire legal landscape (Hillyard 1987).

### THE IMPACT ON POLICING

The framework of policing in Ireland is intrinsically linked with broader issues of state security. As the Commissioner stated: "The *primary* role of An Garda Síochána is to ensure the security of the state" (*Annual Report* for 1997, p 2; emphasis added). This is an important deviation from traditional descriptions of the gardaí role that specifically emphasised "civic" policing and a "community" orientation (Allen 1999; Brady 2000). Although the Department of Justice (1997)



claimed that "the battle against subversive or terrorist type activity has always been accorded the highest priority – and very significant commitment of resources" (para 5.25), it is difficult to disentangle the impact of the conflict from that of other factors. In the years following the outbreak of conflict, the size of the force expanded rapidly. In 1969, it was about 6,500 strong, while by 1981 it had increased to 10,000 members, and by 1984 to 11,200 (McNiffe 1997), although much of this was due to the fact that for years garda numbers had been allowed to fall below its establishment figure (Allen 1999). While numbers declined somewhat thereafter, it is significant that the recent moves to expand garda numbers to 12,000 occurred following the 1994 paramilitary ceasefires, and reflect Fianna Fáil's crime control policies rather than any direct threat to state security. Its commitment to expand the force to a record level was a key plank of its election manifesto.

Exact figures for the deployment of garda resources towards security duties are not available, but of the approximately 1,200 officers stationed in the border region, most are inevitably involved in security duties, even if only to a minor extent or on an occasional basis. The Special Branch based in Dublin focuses on state security, while detectives stationed around the country may also be involved in security matters (such as surveillance), with the exact numbers varying according to the specific requirements at hand.

The rapid escalation in violence during the 1970s required immediate action from the gardaí. Republican paramilitaries were "pretty good at what they were at so it was incumbent on us to improve our skills". Special units such as the Special Task Forces were formed which sought to curb the armed robberies that had increased so dramatically in number during the 1970s. Other developments related to cross-border co-operation in security matters. While one RUC chief constable's opinion was that, in this regard, garda "capacity and contribution was small" (cited in O'Halpin 1999, p 333), the 1985 Anglo-Irish Agreement nevertheless put such co-operation on a firmer institutional footing. The conflict also brought immediate consequences in terms of officers' safety. Of the fourteen officers killed since 1970, twelve were the victims of republican paramilitaries. McNiffe (1997) attributes four of these deaths to the INLA, six to the IRA, and the remaining two to unspecified republicans (a further two officers were killed in a car crash while providing an escort for a cash shipment). The significance of these conflict-related deaths is apparent in the fact that prior to the conflict 1942 was the last occasion on which a garda was murdered on duty. Despite this, the effort directed against paramilitary activity was not without its benefits in terms of organisational development. According to one senior garda officer:

It gave all our people an experience in serious crime incidents that in normal circumstances, in a country of this size, you wouldn't have ... It hampered the force's

ability to deal with crime generally but it gave us an awful lot of experience. If you take ballistics, we're one of the world's foremost authorities on it; and improvised weaponry, our officers are lecturing all over the world about it. The force was changing anyway, but it probably accelerated our development to a very high degree, expediting the whole thing. (Interview No. 1)

One of the key issues arising here is the conflict's impact on the deployment of criminal justice resources in the Republic. Even during the early 1970s the Garda Commissioner complained of the "heavy demands on manpower" that the conflict generated, "[a]t a time when police resources are under severe pressure" (*Report on Crime* for 1973, p i). In the 1974 *Annual Report*, the Commissioner again noted the difficulties in deploying resources towards crime prevention "when so many members of the force have to be employed on duties of a security nature" (*Report on Crime* for 1974, p i). This situation prevailed throughout the conflict, and in 1997 the Department of Justice (para 5.25) stated that "the impact of subversive activity ... has been enormous and has significantly reduced the capacity of the system to deal with other forms of crime".

While this argument might at face value appear persuasive, it raises the question of whether the conflict might be used as a scapegoat for broader deficiencies within the criminal justice system. It is, after all, largely a matter of conjecture whether the absence of a conflict would have seen far greater resources directed towards crime prevention. During the early years of the conflict, while the force was in the process of major expansion, many officers were transferred temporarily to border regions to supplement the numbers there, but these officers were typically drawn from low-crime rural divisions. One senior garda officer was adamant that "the cities were never drained [of police] to supplement the border" (Interview No. 1), and so it seems unlikely that the rise in crime in Dublin and other urban centres can be explained in terms of a shortage of police due to the conflict. Much of the crime rise in Dublin during the late 1970s and early 1980s is probably linked with the rapid development of a serious drugs problem in specific areas at that time. Certainly it was during this period that powerful criminal gangs came to the fore. But, as discussed earlier, crime was rising quickly anyway, and illegal drugs formed just one component of this. What seems most striking about the response of the gardaí and other criminal justice agencies to drugs, is not that it was diluted by the pressing demands of state security, but that it was so minimal in the first place. Thus one garda officer (Interview No. 1) noted that while drugs were available throughout the 1970s, drug use "wasn't seen as a major problem in the country. It was left to the gardaí, seen as a garda problem. "Multi-agency" was not a word you heard in the 1970s. So the '70s was largely a decade of inaction." Such inaction in relation to "soft drugs" (which comprised the vast majority of drugs available in Ireland during the 1970s) is not necessarily a matter of major

concern, but the fact that such inaction continued into the 1980s when heroin began to exert such a massive influence speaks volumes about the lack of police engagement with community concerns and especially the low priority accorded to meeting the needs of marginalised groups. On that basis, the primary factor associated with the lack of an effective governmental response to serious drug abuse in Dublin was not so much the imperative of state security as indifference and inertia.

While the rise in crime during the 1970s and 1980s generated a range of challenges for crime control policy, the conflict brought a different set of pressures to bear on criminal justice agencies. One of the most serious consequences of the Troubles for the gardaí was that it implicated officers in scandals arising from allegations of systematic ill-treatment of suspects, typically paramilitary suspects. According to Farrell, "the government allowed a group to emerge in the gardaí, popularly known as the Heavy Gang, who specialised in the use of brutality to secure confessions" (1993, pp 122-3). Related to this, several high-profile cases collapsed due to "the courts not being satisfied that alleged confessions in garda custody were voluntary" (Walsh 1999, p 262). An Amnesty International mission to Ireland in 1977 also expressed concern about police treatment of suspects in custody. The government established an official inquiry into interrogation procedures (Ó Briain 1978), but further allegations of serious misconduct continued to dog the force. Some of these allegations raised questions of whether the conflict had fundamentally changed the orientation of policing in the Republic (Walsh 1999). In addition to concerns that gardaí were ill-treating paramilitary suspects, other allegations surfaced of collusion between some gardaí and republican paramilitaries. Concern about police powers was also evident in relation to the sheer scale of Operation Mallard in 1987, during which 50,000 houses were searched for paramilitary weapons (O'Halpin 1999; Walsh 1999). It is important to note, however, that much of this criticism involves behaviour unrelated to the conflict, and reflects political patronage and the long-standing physical force tradition in Irish policing, as much as any threat to state security (Brady 2000; Dunne and Kerrigan 1984; Farrell 2000; Inglis 2001; Joyce and Murtagh 1983; O'Mahony 1996). For instance, the Council of Europe's (1999, 1995) reports by the Committee on the Prevention of Torture highlight persistent allegations of ill-treatment of suspects in garda custody. It noted that the "such allegations regarding the use of excessive force by police officers highlights the need for the Irish authorities to remain particularly vigilant in this area" (1999, para 14).

While the conflict in Northern Ireland is one reason why the gardaí might be criticised and the behaviour of its officers called into question, the nature of the conflict is also a compelling reason why such criticism is so infrequently made, in official circles at least. As Walsh (1999) notes, elected politicians, particularly

the Minister for Justice, demonstrate enormous reticence in their willingness to criticise the gardaí and this is probably due in large part to government reliance on the force's security role. Walsh (1999, pp 400-1) quotes one former Minister for Justice speaking during a Dáil debate who berated those who would subject the force to inappropriate criticism in relation to a kidnapping:

There is nothing between us and the dark night of terrorism but that Force. While people in this House and people in the media may have freedom to criticise, the Government of the day should not criticise the Garda Síochána. We all know that there are mistakes in the operation but it is obscene that the Government and the Minister responsible should be the first to lead the charge in the criticism of the Garda Síochána.

Given the seriousness of these scandals, and political reticence to criticise the gardaí in public, it is unclear what the consequences of such events have been. O'Halpin states that the "force's public stock fell" because of allegations surrounding the "heavy gang" (1999, p 328), but one senior officer felt that the guards had come through such allegations relatively unscathed:

The public were very, very supportive, totally supportive right throughout the troubles, even in the border counties where they would have been inconvenienced more than anywhere else ... I don't think that any of that ["heavy gang" allegations] had any long-term impact on our public standing. I don't think any of those powers have been abused. I think that people would have difficulties in pointing to any specific instance ... I don't think we should make any excuses about exercising the powers available to us. It is necessary to still have them – look at various groups now who are not on ceasefire ... (Interview No. 1)

Walsh argues that the gardaí were able to weather the storm because "public support for the gardaí was so widespread and strong, compared with that for subversives, that the government was able to defuse the situation by the appointment of an inquiry into the treatment of persons in garda custody" (Walsh 1999, p 262), which ultimately was largely ignored. The high levels of public confidence in the gardaí (Hardiman and Whelan 1998) may indeed have insulated it from the most potentially destabilising consequences of such scandals, but a focus on "overall" levels of confidence masks important differences in the attitudes and experiences of different sectors of society. Amongst marginalised populations, typically those at the "receiving end" of policing, levels of support are noticeably lower. One 1987 public opinion survey found that fifty-seven of respondents agreed that the statement that "the Garda Síochána sometimes exceed their powers by abusing suspects physically or mentally" (Bohan and Yorke 1987, p 80). It seems inevitable that such public perceptions are related to scandals arising from the conflict.



## THE IMPACT ON THE PRISON SYSTEM

The conflict's impact on the prison system has mainly related to issues arising from paramilitary prisoners held in custody. Prior to the outbreak of the troubles, a handful of IRA prisoners were held in Mountjoy and in the Curragh. As the escalating conflict ensured that more paramilitaries were imprisoned, these were initially housed in Mountjoy. Following a major riot in 1972 and the escape of three prisoners by helicopter in 1973, Portlaoise prison was designated the main centre for paramilitary prisoners. In addition, Limerick housed female paramilitary prisoners, while male paramilitary prisoners were held there from 1981 onwards. A handful of loyalist prisoners were held in Mountjoy. The presence of large numbers of paramilitary prisoners was a major security concern for the prison authorities. As one senior Prison Service official put it: "they were disciplined, dangerous, and you knew they might be thinking about escape, and of course they had support on the outside" (Interview No. 2). Other commentators noted that they presented "an array of daunting problems: difficult to house, awkward to handle, not simple to occupy, not cheap to guard" (Osborough 1985, p 187). As a consequence, Portlaoise was characterised by high levels of security, and it became "more of a fortress" (Interview No. 2). The staff/prisoner ratio in Portlaoise increased from 100:114 in 1973 to 100:63 in 1985 (Whitaker Report 1985). Additional security was provided by the gardaí and the army.

The number of paramilitary inmates fluctuated from year to year, reaching a maximum of approximately 200 during the late 1970s and early 1980s, and subsequently declining to perhaps 120 for a number of years, and to approximately 80 in the early 1990s (O'Mahony 1993). In recent years, most paramilitary prisoners whose organisations were on ceasefire were released as a confidence-building measure, or specifically under the provisions of the 1998 Good Friday Agreement. At present, several dozen members of the Real IRA (opposed to the peace process) are held in Portlaoise, while a handful of other paramilitaries are held at Castlereagh. Exact figures for the total number of paramilitary prisoners detained in the Republic since the conflict began are not available, but one individual involved in prisoner welfare estimated it could be as high as 4,000 individuals (Interview No. 3).

The sheer scale of the conflict had not been anticipated by the prison authorities and personnel shortages required a huge recruitment drive to increase staffing levels. Moreover, the prisoners' demands for some form of political prisoner status, similar to the "special category status" regime for paramilitary prisoners in Northern Ireland, was a constant source of protest and tension. In the early 1970s, this extended to public protests outside the prison in support of the prisoners' claims. As one prison source noted: "They didn't want to be viewed as criminals." They continually sought recognition as politically-motivated

prisoners, "and informally that was the regime that operated" (Interview No. 2). Prisoners had considerable day-to-day autonomy over their activities, and were housed according to paramilitary affiliation. While there was some contact between officers and paramilitary inmates, most of the communication from prisoners to the prison authorities was channelled through the officer commanding, the senior paramilitary officer. In addition to politically motivated prisoners, Portlaoise also housed a number of ordinary prisoners – trustees known as the "Working Party" – responsible for day-to-day maintenance of the prison and who received "extra remission and relatively liberal conditions as compensation" (Whitaker Report 1985, p 261). Paramilitary prisoners did not work, and in fact were involved in negotiating the provision of Open University courses to the prison. One prison officer noted that paramilitary prisoners were "very group-oriented", and that as a body of prisoners they were strikingly disciplined and organised. However, because the different paramilitary groups were held separately, the prison service had to duplicate many of its services to ensure, for instance, that the various organisations used the exercise yard at different times, on a "time-share" basis as it were.

Security, however, remained the major consideration from the prison authorities' point of view: security was "top of the agenda, security of the state, security of the prison, you were always upgrading security" (Interview No. 2). Tighter security arrangements were instituted following escapes, including greater restrictions during visits. Prisoner protests over strip-searching, curtailments on free association, as well as demands for improved conditions generally were the focal point for conflict between prison officers and inmates (Interview No. 3). There were persistent allegations of staff brutality towards inmates, and one prison officer was killed in Dublin in 1983 by paramilitaries, a governor of Portlaoise had bombs placed underneath his car, and several other prison officers received death threats.

The Irish government's decision to allocate Portlaoise prison to paramilitary prisoners inevitably exacerbated the situation of chronic overcrowding that characterised the Irish prison system (O'Donnell 1998; O'Mahony, 2000). But the striking feature of the Irish prison system is that while the numbers of paramilitary prisoners stabilised, the remainder of the system was characterised by ongoing and massive expansion. This was explicitly linked with the advent of a serious drug problem in Ireland. Representatives of the prison service stressed that the impact of the conflict was "not as important as the impact of drugs overall," which had a "far, far greater impact" on the prison system. Once "drugs and the demand for drugs had come in, you had all that petty crime to fund drug use. The impact of subversives never expanded beyond Portlaoise. The numbers of subversive prisoners adjusted up and down ... but it never really had an effect beyond Portlaoise" (Interview No. 2). While there were only four major penal

institutions in operation in Ireland when Portlaoise was designated for paramilitary prisoners, by 1995 this had risen to more than a dozen institutions.

The increase in crime generally also impacted on the Portlaoise regime. The advent of "big-time, serious, dangerous" criminals, particularly in the form of armed and organised gangs, meant that some "ordinaries" were transferred to Portlaoise, primarily because of the security threat posed by such prisoners. Prison sources viewed this as a permanent feature of the system: "There is a future for Portlaoise, whether there are subversives or not." In that sense, the contemporary significance of Portlaoise is that its security features can be utilised in response to the increase in non-subversive crime, particularly serious organised crime.

#### LAW AND ORDER, AND THE LESSONS OF CONFLICT

It is one of the massive ironies of modern Ireland that the expansion of the criminal justice system to unprecedented levels – in terms of the prison building programme, recruitment to the gardaí, and powerful legislation targeting drug offenders and organised crime – occurred in the (apparent) aftermath of the conflict rather than during it. Hillyard even suggests that, historically, "the key law and order strategy" of successive Irish governments "was to do nothing" (2000, p 6). Rather, the most discernible shift in law and order discourse was associated with the enormous economic growth during the 1990s and Fianna Fáil's increasing commitment to punitive crime control measures (O'Donnell 1999; O'Donnell and O'Sullivan 2001).

Insofar as the conflict has had a direct impact on the contours of crime and criminal justice in the Irish Republic, it appears to have been largely confined within specific parameters. The conflict may have contributed to a gradual brutalisation of Irish society in some ways, particularly in terms of authoritarianism within government and criminal justice agencies, but its discernible influence on crime levels in Ireland has been surprisingly low. Quite simply, the Republic has never been convulsed by the conflict. Much of this is due to the character of the conflict, through its specific conceptions of "legitimate targets" and its largely localised violence. For whatever reason, though, the spillover has been minimal. This is in no way to disregard the conflict's impact: it has seen levels of crime rise, people killed, state powers expanded dramatically, and prisons filled. While it has shaped various aspects of the criminal justice system in decisive ways and absorbed a massive level of resources, its impact has been dwarfed by the sheer scale of other changes. The most striking shifts in criminal justice in Ireland since the 1970s are due to the rapid increase in ordinary crime rather than to the Troubles. Indeed, it is possible that increased European integration, rather than any developments in Northern Ireland, will generate the greatest momentum in the "drive towards the bottom" (Kapteyn 1996), if each country – in an effort to

reduce extra-European immigration, deter asylum-seekers, and minimise the scope of being used as a European toe-hold for international crime – seeks to out-do each other by introducing increasingly punitive measures (see also Tomlinson 1993).

If the "normalisation of special powers" in Northern Ireland is a development that has been mirrored somewhat in the Irish Republic, the question remains as to whether the Republic will prove as receptive on other matters. To what extent, for instance, can the Republic learn from innovative developments in Northern Ireland, in terms of restorative justice and police reform generally? Comparison of the RUC and the Garda Síochána reveals a disturbing lack of oversight and accountability surrounding policing in the Republic. The Garda Commissioner has recently stated that he is not opposed to independent investigation of complaints against the police, and the Irish Labour Party has recently called for many of the Patten Report recommendations to be implemented in the Irish Republic, and also for a Police Complaints Ombudsperson to be established (Cusack 2000). Irish politicians have a long tradition of ignoring the innovations recommended in a variety of reports into the penal system and policing (such as the 1978 Ó Briain Report and the 1985 Whitaker Report; see O'Donnell 1999). Having been left relatively untouched by the conflict, will the Irish Republic prove equally immune to the positive lessons of conflict resolution?

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### Interviews

- Interview No. 1 – Senior Garda Officer (2001)
- Interview No. 2 – Two Senior Officials in the Prison Service (2001)