

The 4th Annual North-South Criminology Conference

*Reflections on Irish Criminology North and South:
Learning and Challenges for the Future*

Book of Abstracts

**Dublin Institute of Technology – Aungier Street
23 and 24 June 2008**

Monday 23 June

Welcome:

1:00PM: ROOM 4-027

Conference Opening by Bríd Grant (Director and Dean, Faculty of Applied Arts, Dublin Institute of Technology)

Plenary Session

23 JUNE: 1:15-2:25: ROOM 4-027

PLENARY SPEAKERS:

Dr Bill Lockhart OBE (Chief Executive, Youth Justice Agency of Northern Ireland)

Dr Bill Lockhart was appointed Chief Executive of the Youth Justice Agency in June 2004. Bill is a Chartered Forensic Psychologist who has worked within the criminal justice system in Northern Ireland for over 25 years. More recently he served as Chief Executive for the Extern organisation from April 1994 to June 2004. He was an independent member of the Northern Ireland Criminal Justice review set up as a result of the Good Friday Agreement. Bill is an Associate Fellow of the British Psychological Society, a member of the British Society of Criminology (former chair of Northern Ireland Branch) and has been a Visiting Scholar at the Institute of Criminology, University of Cambridge. He has a wide experience of criminological research, with specialist interest in restorative justice, juvenile offending, mentally disordered offenders and community responses to crime.

Prof Ian O'Donnell (Director, Institute of Criminology, School of Law, University College Dublin)

Ian O'Donnell is professor of criminology at University College Dublin. Previously he was director of the Irish Penal Reform Trust and research officer at the Oxford University Centre for Criminological Research. His most recent book (with Claire Milner) is *Child Pornography: Crime, Computers and Society*.

Session 1: Criminal Justice Policy-Making

23 JUNE: 2.30-3.50: ROOM 4-027

CRIMINAL JUSTICE POLICY-MAKING

James Martin (Assistant Secretary, Department of Justice, Equality and Law Reform)

The aim of this paper is to give some insight into the practical issues relating to criminal justice policy formulation and implementation. Criminal justice policy is of particular interest to the public because it has significant implications for individuals and the community and because the criminal justice system involves the use of force by the State. As a result, this area of Government policy tends to be more controversial, have greater demands for accountability and gets more media attention than most.

The first priority of the Department is to keep the existing criminal justice system operating. This is a major logistical exercise in itself involving the management of about 20,000 people and €2bn per annum. The next priority is accounting for and managing the crises that inevitably occur when someone makes a mistake or the situation suddenly changes. Up to 60% of the energy of the Headquarters of the Department is spent accounting to Parliament and responding to media inquiries. A crisis often generates a need for an instant policy change. It is only in a very small number of circumstances that the Department has an opportunity to take a considered and measured approach to new policy formulation.

There is frequently a lack of reliable information or relevant research (although the situation is improving) and public perception about a problem may not reflect reality. In addition to determining what the ideal policy might be, one must determine whether or not the policy:

- will be acceptable to the public and politicians;
- will get buy in from the various actors in the criminal justice system;
- will be feasible to implement in the sense of practicalities, resources and effort required of the key players.

Implementation of a new policy can be more challenging than the actual formulation of that policy. Nearly all new policies have some resource implications and therefore meet opposition from the Department of Finance. Vested interests in the form of trade unions, professional groups, interests groups tend to be very resistant to change if not won over.

THE MEDIA AND CRIMINAL JUSTICE POLICY-MAKING

Carol Coulter (Legal Affairs Editor, The Irish Times)

INTEREST GROUPS AND CRIMINAL JUSTICE POLICY-MAKING

Mark Kelly (Executive Director, Irish Council for Civil Liberties)

Session 2: Community Policing

23 JUNE: 2.30-3.50: ROOM 4-079

POLICING THROUGH PARTNERSHIP IN NORTHERN IRELAND: A WORKING UPDATE

Mark Brunger (School of Law, Queen's University Belfast)

The reform of policing and justice was both a contentious and important part of the Good Friday/Belfast Agreement. Ten years on from the Agreement therefore, what have been the progressions in policing and justice, particularly with regard to issues of local police accountability? In this respect, the Agreement recommended two reviews, one of policing, in the form of the Independent Commission on Policing (1998) ('The Patten report'), and the other taking on board the broader criminal justice sector, in the form of the Criminal Justice Review (2000). As a result of these reviews, both District Policing Partnerships (DPPs) and Community Safety Partnerships (CSPs) now provide multi-agency based accountability structures for the Police Service of Northern Ireland (PSNI) at the local level. To date the empirical research concerning the operation of these partnerships has been limited to inspection and oversight reports on behalf of official monitoring agencies. In light of this, the goals of this paper are threefold. Firstly, based on the evidence provided from these reports, the paper will provide a critical analysis of the partnership process to date. Secondly, the paper will introduce the background and context to my current research on the partnerships, the relevance of the work and report on some of the preliminary findings of recent pilot work. Thirdly, the paper will reflect on the impact of partnerships both upon the broader issue of community policing and on the progress of police reform in Northern Ireland.

REFUSAL OR RESPECTABILITY: AN ETHNOGRAPHY OF POLICE – COMMUNITY RELATIONS IN INNER CITY DUBLIN

Jonathan Ilan (Centre for Social and Educational Research, Dublin Institute of Technology)

This paper will present ethnographic data on the manner in which the residents of *Northstreet* in inner-city Dublin relate to the Gardaí who police their locality. Whilst traditionally an impasse existed between a force employing oppositional policing practices and a community displaying heightened

antipathy to law and order, boundaries have become blurred in contemporary late modern society. Urban renewal, ostensibly participatory forms of governing security and changes to the social, economic and cultural composition of the community have opened avenues to cooperation. The community's customary taboo against 'ratting' has been recast in an entirely more complex fashion. Whilst cooperation with the Gardaí is a tangible display of *respectability* for residents committed to representing themselves as such, they may fear recrimination from or share close ties to, those who frequently conflict with the law and/or demonstrate a *rough* variant of working class culture. Equally, residents may publicly espouse cooperation whilst privately holding an ambivalent stance towards criminality. Gardaí on the ground, furthermore, deploy their own value judgments in formulating their response to various members of the community. The paper ultimately highlights the potential pitfalls underlying dialogue between Gardaí and working class communities, demonstrating that state attempts to foster greater inclusion serve to redraw lines of social exclusion rendering certain residents more alienated than may have been in the past.

POLICING LOYALIST AND REPUBLICAN COMMUNITIES: UNDERSTANDING KEY ISSUES FOR LOCAL COMMUNITIES AND THE PSNI

Jonny Byrne (Institute for Conflict Research)

Policing and justice in Northern Ireland has long been a contentious issue within Republican, and to a lesser extent, Loyalist communities and has remained so through the decade long peace process. Policing remains one major issue that still needs to be addressed in consolidating a stable and democratic Northern Ireland. Since the St Andrews Agreement (2006) there has been a degree of optimism from the main political parties and both governments. But is this optimism and willingness to enter into partnership and to finally deal with policing shared by working class Republican and Loyalist communities? Since this agreement Sinn Féin at their Ard Fheis in January 2007 passed a special motion to support policing and justice, and the DUP entered into a power sharing government in May 2008. However, questions remain around the proposed devolution of policing and justice powers to the Stormont Assembly.

To date there has been a limited amount of research into policing in Loyalist and Republican communities since the formation of the PSNI. This research project will explore the attitudes and concerns about policing and the PSNI within Republican and Loyalist communities and will explore practical ways to build and develop improved relations between the PSNI and more radicalised working class communities. The research will take place in the context of the discussions around the devolution of justice and policing to Stormont and will contribute to a wider public debate about the future provision of policing and community safety.

Session 3: Prisons and Accountability

23 JUNE: 4.20-5.40: ROOM 2-046

HYGIENIC ADMINISTRATION OR HUMAN RIGHTS?: THE ROLE OF A PRISONS OMBUDSMAN

Brian Coulter (Prisoner Ombudsman for Northern Ireland)

This paper considers the particular contribution of the Ombudsman for Prisons to the protection of prisoners' rights and therefore to a rights-based culture in prisons. It contests the notion that an Ombudsman's role is confined to matters of administrative justice. Case examples are presented in support of this, notably the contribution of the Ombudsman's investigation of prisoners' deaths to State compliance with Article 2 ('The Right to Life') of ECHR. Other examples cited touch upon prisoners' right to freedom of expression and the right to a fair trial.

The discussion in this paper draws heavily upon the experiences of the Prisoner Ombudsman for Northern Ireland since that Office was established in 2005. It reviews the recent emergence of the architecture of accountability in prisons in the U.K. and elsewhere and identifies some key lessons. It concludes that accountability is best secured through the statutory entrenchment of the Offices of

monitors and inspectors giving them direct access to the legislature. It does not argue for determinative powers but insists that monitors be adequately resourced and be visibly and functionally independent of those who manage prisons.

Finally this Paper argues that since the rule of Law does not stop at the prison gate it is imperative that, as Woolf LJ puts it, there should be a proper ‘balance between security, control and justice’. It concludes that a critical part of delivering justice in prisons is the development and maintenance of appropriate accountability. I contend that it is only through officially required and independently measured transparency of operation and of outcomes for prisons that notions that prisoners rights are substantively limited by virtue of their imprisonment can be successfully challenged and a rights-based culture in prisons become the norm.

GOOD ORDER AND DISCIPLINE: THE INTRODUCTION OF THE 2007 IRISH PRISON RULES

Cormac Behan (Institute of Criminology, University College Dublin)

The objective of the Irish Prison Service (IPS) is “to provide safe, secure and humane custody” for those under its care. It “is committed to managing custodial sentences in a way which encourages and supports prisoners in their endeavouring to live law abiding and purposeful lives as valued members of society”.

In October 2007, new Prison Rules were introduced by the Minister for Justice, Equality and Law Reform. These replaced the rather antiquated 1947 Rules for the Government of Prisons. This paper will examine the new rules in the context of the changed circumstances of the 21st century and in light of the revised European Prison Rules and the UN Standard Minimum Rules for the Treatment of Prisoners.

The focus of this paper is not on a legal interpretation of the rules but rather on their transformative potential. It will examine if the over-riding desire in the new rules is to maintain good order and discipline or create an environment where prisoners are given the tools to cope with imprisonment and rebuild their lives. To explore this dynamic, the rules will be located in a wider context of the governance of Irish Prisons.

LIGHT IN CLOSED SPACES: ACCOUNTABILITY AND THE RULE OF LAW IN PRISONS

Liam Herrick (Executive Director, Irish Penal Reform Trust)

The paper examines the challenges to ensuring the universality of human rights protections and the application of the rule of law in a prison context. The paper will look at how robust accountability mechanisms founded on human rights standards can be used to penetrate into the closed spaces that are our prisons and places of detention. Parallels will be drawn with other historic “closed spaces” in Irish society, including psychiatric hospitals, orphanages and industrial schools.

The question of accountability can also be viewed both in terms of the violations of rights that are associated with failure to achieve accountability, and also in terms of the benefits of good governance structures for staff and institutions, as well as for inmates themselves. While accountability mechanisms may take many forms, the specific focus of the paper will be on independent oversight structures. I will argue that independent oversight of prisons is critical component for a healthy prison system.

Finally, I will appraise the current situation in Ireland in relation to independent oversight. The recent experience of prison accountability mechanisms in other jurisdictions will be examined to map possible models for Ireland. The requirements presented by Ireland’s anticipated ratification of the Optional Protocol to the UN Convention Against Torture provides further context for the development of effective accountability mechanisms in this jurisdiction.

Session 4: Emerging Issues in Criminal Justice

23 JUNE: 4.20-5.40: ROOM 3-067/8

RIGHTS, RHETORIC AND REALITY: THE PRESUMPTION OF INNOCENCE IN IRISH CRIMINAL LAW

Claire Hamilton (School of Social Science and Law, Dublin Institute of Technology)

There is currently a sense among the body politic, the media and the population at large that we are a country which is generous to its accused persons. A concomitant assumption is often made is that the rights of the accused have been purchased at the expense of the rights of victims or to put it another way: that we are playing a “zero-sum” game. The aim of the paper is to challenge such statements and move the debate in a different direction. I am interested in the tangible effects of the presumption of innocence for an accused person in Ireland given the inroads which have been made to this constitutionally protected principle in recent years. An attempt will therefore be made to take stock of some of the law - primarily legislation - impacting upon the presumption of innocence, arguably one of the most important principles of our criminal law.

The first part of the paper therefore aims to establish briefly the precise meaning of the presumption in Irish law and its ambit, together with the reasons why it is important. It will then proceed to consider the case law and legislation which has narrowed its scope and practical import for the accused before drawing some tentative conclusions about the current buoyancy of the presumption in Irish law and the implications for its further erosion.

THE MAGINOT LINE OF IRISH CRIMINOLOGY: OUTFLANKED BY THE REGULATORY IMPULSE?

Barry Vaughan (Institute of Public Administration, Dublin)

The late development of Irish criminology has resulted in a meagre store of knowledge about the processes and outcomes of the Irish criminal justice system. An un-noted advantage might be that Irish criminology does not have to succumb to what Braithwaite calls the myopia of a police-court-corrections perspective that is the staple of most criminological research. If Irish criminology does adopt this view, it will build what I term a ‘Maginot Line’ that fixes its gaze upon a 19th century vision of criminality as a minority pursuit and a criminology geared to the study of the corrective powers of police, judiciary, prison and probation services, deployed to secure domestic order. Depicting criminality and state intervention thus overlooks the implications of the regulatory state, which offers a more expansive definition of offending, uses different instruments of control than the conventional justice system, and offers a very different explanation of contemporary changes. The regulatory state, exemplified by agencies such as the Director for Corporate Enforcement, and the Health and Safety Authority, is due to the increasing obligations of international integration. Regulatory agencies often possess their own prosecutorial powers augmented by their capacity to reverse the burden of proof in many instances which has been the subject of adverse judicial comment. By ignoring such developments, Irish criminology fails to attend to how: (1) criminality is being managed, often by obliging the accused to prove his/her innocence, outside of the conventional criminal justice system; (2) accountability concerns over such interventions are even more appropriate thanks to this reversal of proof; (3) regulatory tactics – risk management divorced from punitiveness - are being emulated within this system to deal with problems as different as organized crime and traffic infringements; and (4) the international context of much regulation undercuts the idea that criminal law is mainly about forging solidarity between state and citizen. Accounting for these regulatory impulses reveals a new range of concerns that should be at the heart of Irish criminology.

DOUBLE JEOPARDY AND *NE BIS IN IDEM*: FUNDAMENTAL PRINCIPLES IN THE CRIMINAL JUSTICE PROCESS

Ger Coffey (Centre for Criminal Justice, School of Law, University of Limerick)

Double jeopardy is a common law principle against multiple trials and punishments for the same criminal offence following an acquittal or conviction. This fundamental principle of criminal justice has been reformed in the United Kingdom and New South Wales, and proposed reforms are being considered in Australia and New Zealand. In jurisdictions where the principle has been reformed, the prosecution authorities are empowered to petition the appellate court to quash an acquittal and order a retrial in the light of fresh and compelling evidence of the accused's guilt. Retrials impact on the fundamental rights of the accused including the presumption of innocence being eroded if the jury in the case of a retrial merely endorse a conviction based on new evidence of the accused's guilt.

With regard to the globalisation of criminal law and criminal justice, *ne bis in idem* is an international law principle against retrials and the imposition of multiple punishments for the same criminal offence within the jurisdiction of the same state, as provided for by the ECHR, ICCPR and CISA. The European Commission has published a Green Paper on "Conflicts of Jurisdiction and the Principle of *Ne Bis in Idem* in Criminal Proceedings" (2005), and proposed EU legislation would make provision for the allocation of prosecutorial jurisdiction where a conflict arises as to the 'best place' to prosecute a criminal offence, the effect of which extends beyond the national border of the state where the offence was substantially committed. The criminal law and procedure of individual states inevitably vary, particularly in the definition of criminal offences, which may further complicate this dilemma.

This paper evaluates these fundamental principles of criminal justice and procedure and the effect of recent and proposed reforms in common law jurisdictions and within the EU.

Session 5: Policing Reform **23 JUNE: 4.20-5.40: ROOM 4-068/9**

ULSTER'S POLICING GOES GLOBAL: THE POLICE REFORM PROCESS IN NORTHERN IRELAND AND THE CREATION OF A GLOBAL BRAND

Graham Ellison (School of Law, Queen's University Belfast) &
Conor O'Reilly (Centre for Criminology, University of Oxford)

This paper engages with contemporary discussions in relation to the commodification of policing and security. It suggests that the existing literature regarding these trends has been geared primarily towards commercial security providers and has failed to address the processes by which public policing models are commodified and marketed both within, and through, the transnational policing community. Drawing upon evidence from the police change process in Northern Ireland, we argue that a Northern Irish Policing Model (NIPM) has emerged in the aftermath of the Independent Commission on Policing (ICP) reforms. This is increasingly branded and promoted on the global stage. Furthermore, we suggest that the NIPM is not monolithic, but segmented, and targeted towards a number of different 'consumers' both domestically and transnationally. Reflecting these diverse markets, the NIPM draws upon two seemingly incongruous constituent elements: the 'best practice' lessons of policing transition, as embodied in the ICP reforms; and, the legacy of counter-terrorism expertise drawn from the preceding decades of conflict. The discussion concludes by querying as to which of these components of the NIPM is in the ascendancy.

ENABLING THE INSTITUTIONALISATION OF VIOLENCE: THE PUBLIC, THE LEGISLATURE AND AN GARDA SÍOCHÁNA

Vicky Conway (School of Law, University of Limerick)

This paper will argue two key points: first that violence has become institutionalised in An Garda Síochána and second, that this process has been enabled by agents external to the force, namely the public and the legislature. In making the case for the institutionalisation of violence the paper will review the history of An Garda Síochána and highlight the continuing use of force throughout. While in the early decades of the Force's life, and in the years of the Northern Irish Conflict it appeared to be confined to suspects related to subversive activity, it will be contended that it has now become endemic. This position has been repeatedly supported by the findings of the ECPT visits, by the increasing court awards for assault by members of An Garda Síochána, and to some extent, the findings of various tribunals of inquiry.

By way of analysis this paper will show how the institutionalisation process which has occurred has been facilitated by the attitudes of both the public and the legislature towards the Force. Applying post-colonial theory it will be argued that nationalist sentiment in post-independence Ireland engendered such pride in An Garda Síochána, as a core symbol of Irish freedom, that it allowed for police misconduct, particularly where it related to subversive activity, to be disassociated from public perceptions of the Force. Violence, prolific as it was, did not form part of the police identity, and therefore did not have to be addressed. Finally it will be argued that recent reform has done nothing to combat this.

THE GARDA OMBUDSMAN COMMISSION: REFLECTIONS ON YEAR ONE

Carmel Foley (Garda Síochána Ombudsman Commissioner)

At the outset, it is essential for a police ombudsman to decide the *raison d'être* of the body. Trust must underpin policing. Consequently, the role of the ombudsman will be an improving influence rather than a purely coercive one. Rather than focusing solely on the punishment of wrong-doing the ombudsman must seek to make internal police discipline function better. Independent oversight may not always mean independent investigation. Sometimes, the ombudsman may be more effective supervising and improving internal police discipline investigations.

There are similarities between the Garda Síochána Ombudsman Commission and its counterpart in Northern Ireland, the Office of the Police Ombudsman for Northern Ireland. There are also similarities with the Independent Police Complaints Commission in England and Wales. Nonetheless, these similarities only go a certain distance. GSOC is modestly-resourced by comparison with its counterpart bodies in Northern which deals with a police service and a population smaller than in this jurisdiction. The Garda Síochána Ombudsman Commission serves the very specific requirements of the public and the traditionally unarmed police service in this jurisdiction.

Tuesday 24 June

Session 6: Contemporary Issues in Youth Crime

24 JUNE: 9.30-10.50: ROOM 3-067/8

MINORITIES IN JUVENILE JUSTICE – AN IRISH CONCERN?

Nicola Carr (Children's Research Centre, Trinity College Dublin)

Research from other jurisdictions, reveals a body of literature that has explored the relationship between ethnicity and disproportionate contact with the criminal justice system. In the UK, some of this literature has focused specifically on young people from ethnic minorities and their contact with the criminal justice system and have explored whether there is 'differential' treatment of people of Black and Ethnic Minorities within the Criminal Justice System vis-à-vis their White UK counterparts. Similarly, in the United States with the advent of the "two million prisoner society" Hudson (2002), there has been a focus on the disproportionate numbers of ethnic minorities incarcerated in United States' prisons.

In the Irish context, virtually no attention has been paid to this issue, despite evidence of increased numbers of foreign nationals within the prison system and some evidence to support the view that Irish Travellers are over-represented within the adult custodial population (Kilcommins et al 2004). Within the youth justice sector, there have been no studies that specifically focus on minorities within the youth justice system, although some reports make reference to possible over-representation of Traveller young people (McPhillips, 2005).

This presentation focuses on the relevance of international research literature on minorities in the juvenile justice system to the Irish context. Noting Kilcommins' observation that: "...using literature that has been produced in other countries...does not address the particularities of the Irish situation", this paper will seek to explore the relevance of a 'minority justice' discourse to Ireland's indigenous minority group, Irish Travellers with reference to the author's empirical research on Traveller Young People within the Irish Youth Justice System.

OPT OUT – LOCKED UP

Bronagh Gibson (Children Acts Advisory Service)

This research examines the educational disadvantage (ED) experienced by young offenders in Ireland in order to better understand why it is they offend. It uses both a qualitative and quantitative approach and was conducted on 30 male offenders placed on remand to Children Detention Schools. It analyses their assessment reports and is particularly interested in their educational attainment, educational needs and learning ability. It also explores their personal histories, highlighting the prevalence of factors associated with ED and offending behaviour.

This research finds that ED is a characteristic of all young offenders sampled. The ED they have experienced is as a result of underachievement, low educational attainment and poor participation in education. It also finds that ED is complex in nature and is best examined when placed in the context of socio-economic disadvantage. Illustrated throughout the study is that indicators of ED could be viewed to be both as a result of, or a variable of socio-economic disadvantage, highlighting issues such as family structure, family influences, past traumas and abuses. The findings of this research also suggest that ED is not a causal factor of offending, but is a variable of offending and delinquent behaviour.

PROTECTING THE BEST INTERESTS OF THE CHILD: DO YOUNG OFFENDERS QUALIFY?

Raymond Arthur (School of Social Sciences & Law, University of Teesside)

The proposed amendment to the Constitution regarding children's rights aims to acknowledge the natural and imprescriptible rights of all children. Paragraph 5 of the proposed amendment enshrines the

right of the courts to secure the best interests of the child in any court proceedings relating to adoption, guardianship, custody or access. Court proceedings involving young offenders are specifically excluded from this list implying that the Children's Court does not need to secure the best interests of the child. The effect of the proposed referendum wording is a bifurcated approach towards troubled young people in Ireland. Young people in need of support and care in the form of adoption, guardianship, custody or access are to be accorded constitutional protection of their best interests. Troubled young people who engage in offending behaviour are specifically excluded from this constitutional protection.

In this paper I aim to show that this bifurcated approach represents a serious diminution in the rights historically afforded to young people who offend, disregards Ireland's commitments under international law and also ignores the well established link between child maltreatment and juvenile offending. I will argue that both troubled and troublesome young people share the same characteristics and needs, therefore both groups deserve the same constitutional protection of their best interests. I will compare the Irish approach with the Scottish youth justice system which looks beyond young people's offending behaviour and provides a multi-disciplinary assessment of the young person's needs. I will conclude that in Ireland the best interest principle must be applied fully, without any distinction and integrated in all law relevant to children including the Constitution.

AN EXAMINATION OF ADULT-ONSET OFFENDING IN THE CAMBRIDGE STUDY OF DELINQUENT DEVELOPMENT

Tara Renae McGee (School of Justice, Queensland University of Technology) & David Farrington (Institute of Criminology, University of Cambridge)

In the extant literature, adult-onset offending has usually been identified using official sources of offending. It is expected that many of the individuals identified this way would have histories of prior offending and antisocial behaviour. To investigate this issue, the men from the Cambridge Study in Delinquent Development (CSDD) were examined. The CSDD is a prospective longitudinal study of men from inner-city London, followed from age 8 to 48. Adult-onset offenders were identified using official records and then compared to other offenders and non-offenders on a range of prior measures of antisocial behaviour and self-reported offending. Results were mixed showing that the lives of some men identified as adult-onset offenders were relatively trouble free prior to detection. In comparison, the adjudication by the criminal justice system for others was simply the first time their ongoing pattern of offending had been detected. One important finding is that there are some individuals who appear to have a trouble free childhood and adolescence with offending beginning in adulthood. This has implications for theories which argue that true adult-onset offending does not exist and provides weight for the argument to examine turning points. This and other findings will be discussed in this paper.

Session 7: Power and Resistance – Historical and Contemporary Perspectives

24 JUNE: 9.30-10.50: ROOM 4-068/9

'SPEAKING TRUTH TO POWER': CRITICAL ANALYSIS AS RESISTANCE

Phil Scraton (Institute of Criminology and Criminal Justice, Queen's University Belfast)

This paper is based on, and makes reference to, three decades of in-depth critical research into some of the period's most controversial events in Britain and Ireland. These include: institutionalised racism and Irish Travellers in England; the 1980s inner-city uprisings; deaths in police and prison custody; prison protests; the Hillsborough disaster and the cover-up that followed; the Dunblane shootings and the State's response to bereaved parents in the immediate aftermath; the imprisonment of women and girls in Northern Ireland; the regulation and criminalisation of children and young people; the impact and consequences of the killing of James Bulger; children's rights in the aftermath of conflict; the 'War on Terror' and its implications for human rights and civil liberties.

This research, documented in *Power, Conflict and Criminalisation* (Routledge 2007), integrates case-based documentary and content analyses with extensive interviews carried out with those directly involved. It argues that the material reality of 'marginalisation', the politics of 'criminalisation' and the ideology of 'demonisation' are central forces in the application of state power and authority, the regulation of dissent and the imposition of compliance. It affirms that structural relations of power, authority and legitimacy, particularly the inequalities of class, 'race', sectarianism, gender, sexuality and age, establish the determining contexts of everyday life, social interaction and individual opportunity. Further, it proposes that critical social research has a moral duty and political responsibility to investigate abuses of power, seek out the 'view from below', and work towards social justice through rigorous and uncompromising analysis.

MASCULINITIES AND VICTIMHOOD: PARAMILITARISM, PAIN AND POWER

Lisa White (Queen's University, Belfast)

During the conflict in and around Northern Ireland, state violence contributed to many public testimonies of personal trauma, including those of internees and prisoners - some of whom were the perpetrators of violence themselves. Based upon documentary analysis combined with qualitative research with republican ex-detainees, the paper explores the problems of victimology, through the experiences of ex-detainees who 'went public' with allegations of state brutality in the context of conflict in and around Northern Ireland. The paper asks what dominant discourses of paramilitarism, pain and power can contribute to our understanding of male victimhood, 'terrorism' and state violence both past and present.

Against a background of state and non-state violence during the period 1971-1985, many ex-internees and ex-prisoners would make allegations of brutality against the state and its agents, particularly following interrogations in Castlereagh Holding Centre, Gough Barracks and Palace Barracks, and later during the prison protests in the H-Blocks of HMP Maze / Long Kesh. The study is based upon documentary analysis, combined with the findings of research interviews with republican male ex-detainees who were detained during the period 1971-1985, and 'went public' with allegations of state brutality.

The study examines the ways in which 'victimhood' is constructed at a socio-political level, critically questions cultural assumptions about male victimisation. It deconstructs socio-cultural depictions of male power, and seeks to understand the cause and effect of masculinity discourses on those who go public about experiences of brutality. The paper explores the mechanisms through which the label of 'victim' is applied and denied, with particular relevance to the conflict in and around Northern Ireland. Unlike the majority of studies, the paper controversially frames ex-prisoners as examples of victimised men, and explores the power of cultural discourses surrounding victimisation and its impact on those ex-detainees who went public about private experiences of state brutality.

The paper represents part of a wider multi-disciplinary study into the lived experience of 'truth sharing', exploring the motivations, meanings and consequences of 'truth sharing' about state brutality as experienced by ex-detainees. As the situation in Northern Ireland appears to move towards that of a post-conflict - yet deeply divided - society, the research aims to critically analyse the reality of making private memories part of public knowledge, and seeks to discover what lessons can be learnt from past experiences of 'truth sharing' about violence.

THE INTERNATIONALISATION OF CRIME DURING THE AGE OF EMPIRE

Paul Knepper (Department of Sociological Studies, University of Sheffield)

When did crime become an international issue? Judging by recent discussion in criminology, one would say quite recently. Crime became a national issue (when it became politicised) in America in the 1960s, and in the UK in the 1970s; it became an international issue with the advent of 'globalisation' some time after that. From a historical perspective, crime became an international issue a hundred years ago or so, during what EJ Hobsbawm refers to as the 'Age of Empire', from 1881-1914. In fact, the contemporary issues of terrorism, human trafficking, immigration first emerged in this period, originally framed as anarchism, white slavery, and alien criminality. The first international conferences on anarchism and white slavery took place in these years and the UK enacted the first

modern immigration structure in 1905 in response to fear of 'alien criminality'. (This was also the period in which criminology emerged with international conferences concerning criminal anthropology.) By looking back at the emergence of these issues, it is possible to gain a new perspective on current understandings of crime as an international issue. It is impossible to grasp the globalisation of crime without an understanding of the legacy of the British Empire.

RE-IMAGINING DDR: EX-COMBATANTS, LEADERSHIP AND MORAL AGENCY IN CONFLICT TRANSFORMATION

Kieran McEvoy (Director, Institute of Criminology and Criminal Justice, Queen's University Belfast)

Drawing upon criminological studies in the field of prisoner rehabilitation, this essay explores the relevance of the Demobilisation, Disarmament and Reintegration (DDR) framework to the process of conflict transformation in Northern Ireland. In a similar fashion to the critique of 'passivity' offered by, for example, the 'strengths based' or 'good lives' approach to prisoner resettlement and reintegration more generally, the author contend that the Northern Ireland peace process offers conspicuous examples of former prisoners and combatants as agents and indeed leaders in the process of conflict transformation. The paper draws out three broad styles of leadership which have emerged amongst ex-combatants over the course of the Northern Ireland transition from conflict - political, military and communal. It suggests that cumulatively such leadership speaks to the potential of ex-prisoners and ex-combatants as moral agents in conflict transformation around which peacemaking can be constructed rather than obstacles which must be 'managed' out of existence.

Session 8: Experiences of Youth Detention

24 JUNE: 11.20-12.40: ROOM 2-046

DIFFERENT FOR GIRLS? THE INCARCERATION OF GIRLS IN NORTHERN IRELAND'S YOUTH JUSTICE AND PRISON SYSTEMS

Linda Moore & Una Convery (School of Policy Studies, University of Ulster)

There is a considerable body of literature demonstrating the many ways that girls and women experience 'pains of confinement' (Sykes 1958) which are gender-specific (eg Carlen 1988). This paper based on primary research discusses the particular experiences of girls in custody in Northern Ireland. It presents findings from research carried out over a decade with girls in the Juvenile Justice Centre for Northern Ireland, Maghaberry Prison and Hydebank Wood Young Offenders Centre (including reference to research conducted by the authors with Dr Ursula Kilkelly and Professor Phil Scraton). Girls and women make up a small minority of the custodial population in Northern Ireland as elsewhere and the paper argues that consequently their rights and needs have been marginalised. Girls entering custody often present with troubled life histories and high levels of prior abuse and their experience of incarceration can exacerbate vulnerabilities through a range of treatment including detention within a male-oriented environment through to strip searching, isolation and restraint. Despite the development of international human rights standards, most prominently the UN Convention on the Rights of the Child, the state in Northern Ireland continues to imprison girls within an adult women's prison and to criminalise girls and boys from the age of 10. Moreover, despite the growing body of evidence regarding the needs of girls in custody and recommendations from the Northern Ireland Human Rights Commission, the youth justice and criminal justice agencies in the North have failed to develop a strategy for the detention of girls and appropriate alternatives to custody. Finally, the paper explores the potential of a Bill of Rights for Northern Ireland to address the rights of children in custody.

‘THE LONG AND WINDING ROAD’: YOUNG PEOPLE’S EXPERIENCES OF ATTENDING COURT WHILE ON REMAND IN PRISON CUSTODY

Sinéad Freeman (School of Social Sciences and Law, Dublin Institute of Technology)

The high number of young people appearing before the courts has brought about a recent surge in interest in relation to the nature of the court experience for young people in Ireland (Kilkelly, 2005; 2008; Carroll et al., 2007). Despite this increased focus, little remains known about those who attend court while on remand in prison custody. This paper aims to address this dearth by providing a pioneering insight into the experience of attending court on remand, through the eyes of young prisoners. It is based on an observation study carried out in the Children Court, Dublin and 62 semi-structured interviews conducted with males and females aged 16 to 21 years on remand in three Dublin prisons. The findings suggest that attending court is a central feature of custodial remand and is a particularly punitive and unsettling experience. The indication is that the adverse nature of the custodial remand court experience exerts a negative impact not only on young people’s identity and mental health during the remand period but also on future attitudes towards attending court. The findings have important implications for criminological theory, policy and service provision including the measures required to ensure an individual’s right to be presumed innocent until proven guilty is maintained while attending court on custodial remand.

DEFIANT TO THE LAST: REACTIONS TO SANCTIONING EXPERIENCES AMONG YOUNG MEN IN PRISON IN NORTHERN IRELAND.

Roisin Devlin & Shadd Maruna (Institute of Criminology and Criminal Justice, Queen’s University Belfast)

This paper aims to explore the experience of criminal justice system sanctions from the subjective perspectives of young men in prison in Northern Ireland. In particular, the paper considers the internal, subjective dynamics of criminal sanction effects using the autobiographical self-narratives of 32 young men serving a custodial sentence in Northern Ireland. The theoretical perspective chosen to explore these self-narratives comes from the notion of defiance. Defiance describes the circumstances in which the experience of receiving a criminal sanction may generate further crime. A theory of defiance has been developed by Lawrence Sherman (Sherman 1993). Sherman argues that the effect of criminal sanctions is influenced by levels of social bonding, emotions and also by perceptions of fairness about criminal justice system institutions (Sherman 1993). These influences are made up of personal and historic sanction experiences so that criminal sanctions interact with formal and informal punishments that have occurred in the past (Sherman 1993; Hagan and McCarthy 1997). In order to understand the internal, subjective dynamics of criminal sanction effects, the young men’s accounts of formal sanctions are considered in light of their self-narratives about informal punishments (including experiences of paramilitary threats and violence) and other relevant personal experiences such as those within family life, education and employment. The paper draws on these personal accounts to develop the notion of defiance as a useful narrative based framework through which to understand more about the subjective effects of receiving a criminal sanction.

Session 9: Evolving Practices in Sentencing in Ireland

24 JUNE: 11.20-12.40: ROOM 3-067/8

PETTY OFFENDERS AND CUMULATIVE SENTENCING: EXPLORING THE MYTH OF PUNITIVENESS IN IRELAND

Niamh Maguire (Lecturer in Law, Department of Applied Arts, Waterford Institute of Technology)

In criminological literature, the concept of ‘punitiveness’ is frequently employed to explain a multitude of recent developments in penalty ranging from the revival of boot camps, to three-strikes laws, up to and including mass imprisonment. In Ireland, the concept of ‘punitiveness’ has also been invoked to explain, amongst other things, certain trends in the use of imprisonment.

One such trend is the relatively high proportion of petty offenders imprisoned in Ireland. It is claimed that Irish judges use prison excessively, especially for minor offences, and that this is caused by judicial punitiveness and by reluctance to use alternatives to prison. These claims are typically based on analyses of aggregate trends in imprisonment and alternatives to imprisonment rather than on an examination of sentencing law and practices.

Drawing on research findings from an exploratory study of sentencing in Ireland, this paper suggests an alternative explanation for the relatively high frequency with which prison is used for petty offenders. It argues that Irish judges are not particularly punitive-minded, or necessarily reluctant to use alternatives to prison. Instead, this paper argues that the use of cumulative sentencing provides an internally consistent and logical explanation for the high frequency with which offenders convicted of minor offences are imprisoned. The paper concludes by discussing the theoretical, practical and policy implications of cumulative sentencing in Ireland.

CALIFORNICATION OF IRELAND'S SENTENCING LAWS?

Ciara Fitzgerald (Faculty of Law, Griffith College Dublin)

This paper will discuss one element of the recent Criminal Justice Acts (2006 and 2007): mandatory minimum sentencing for habitual offenders. This sentencing innovation was introduced in the US in 1993 and in the UK in 1997. This article will look at the background to the introduction of both laws and seek to analyse any similarities between the Irish legislation and that of our neighbours.

In the US the initial introduction of such State legislation in Washington and, subsequently, California was precipitated by an increased fear of crime and reluctance by the politicians to be viewed by the public as being soft on crime. The campaign to introduce the legislation was an emotive one, championed in both States by the family of the victims of violent crimes perpetrated by recidivists.

The run up to the passing of the Crime (Sentences) Act 1997 in the UK bears a striking resemblance to the circumstances surrounding the passing of the Criminal Justice Act 2007. The UK Bill had been introduced before a General Election in the UK and, like the Irish 2007 Act, had either to be passed quickly or dropped. The UK 1997 Act is not as extreme as either the Washington or California laws.

The similarities of such laws will be analysed under three categories:

1. The category of triggering offences;
2. The "legitimacy" of the triggering offence;
3. The existence of judicial discretion.

The final part of the paper will focus on the possible effects of such sentencing rules and question whether the laws are supposed to have actual practical effects or play a mere symbolic role.

PROBATION IN IRELAND: A BRIEF HISTORY OF THE EARLY YEARS

Gerry McNally (Assistant Director, The Probation Service)

This paper traces the early years of probation in Ireland from its origins prior to the foundation of the state to the 1960s. It examines the principles and practices underpinning the work of the Probation Officers as reflected in newspaper reports, documents and commentaries of the period. It reviews the social, cultural and political factors at work in Ireland and their influence on the role and function of Probation Officers over the decades and in the later development of the Probation Service.

The paper acknowledges the contribution of individual officers in their practice and in the development of the Probation Service. Comparison is made with developments in probation in Northern Ireland and in England and Wales.

Session 10: Community Safety and Fear of Crime

24 JUNE: 11.20-12.40: ROOM 4-068/9

FEAR OF CRIME IN IRELAND: UNDERSTANDING ITS ORIGIN AND CONSEQUENCES

Michelle Butler & Paul Cunningham (National Crime Council)

'Fear of Crime' is a complex subject, both in terms of defining what exactly constitutes fear of crime and how it should be measured. It covers many issues such as fear of: physical violence; being mugged or robbed; invasion of one's home; fear occurring from prior victimisation and fear arising from the perceived level of anti-social behaviour in society. Using data from the Garda Public Attitudes Survey, this research examines the extent to which the Irish public fear crime, the factors associated with fear of crime and the impact of fear of crime on quality of life. Variations in the impact of fear of crime on quality of life are also explored to investigate how fear of crime may have a greater effect on quality of life for some individuals than others. Comparisons between these findings and those arising in other jurisdictions are drawn. Attention is also paid to the relationship between fear of crime and risk of victimisation to determine what strategies and/or initiatives may be best placed to reduce fear of crime and its consequences.

CCTV – THE MODERN PANOPTICON: THE RISE OF SURVEILLANCE AS A SOCIAL CONTROL MECHANISM

Dorothy Appelbe (Centre for Criminal Justice & Human Rights, University College Cork)

The emergence of the 'risk' and 'stranger' society have set the scene for the arrival of surveillance as the 'in vogue' method of managing the crime predicament. This paper will explore the theoretical basis for surveillance as a social control mechanism as a backdrop to the rise of CCTV as a crime control strategy.

The diffusion of responsibility for crime control between the State and its citizenry has brought about an increased level of consciousness of crime among the public. This has led to individuals taking greater heed of crime and its potential impact on them and theirs on it. With the realisation that crime is an inevitable reality; a risk society emerged with the assessment and management of risk at its core. Mass surveillance rose to become a prominent intervention that feeds into and feeds off this risk society. As well as facilitating the assessment of risks through the accumulation of information on potential trouble-makers, surveillance also contributes to the management of risks. The capacity of surveillance as a social control mechanism is arguably most vividly seen in Bentham's Panopticon, which exemplified how constant observation reinforced by the threat of coercion would secure conformity. Though never realised, its underlying principles have seeped into the outside world with CCTV being its modern embodiment.

The incredible proliferation of CCTV has also been fuelled by the emergence of the stranger society. The decentralisation of responsibility for crime control has increased awareness of the threats posed by 'others'. To protect themselves, individuals and communities have opted to baton down the hatches to exclude malefactors. Gated residential communities, private security and CCTV are a number of the symptoms of this 'fortress mentality'. Arguably, such measures contribute to their own necessity by encouraging the heightening of suspicion and distrust of 'others'.

THE ROLE OF REPEAT VICTIMISATION IN YOUTH CRIME

Kalis Pope (School of Social Sciences and Law, Dublin Institute of Technology)

Repeat victimisation is the likelihood of becoming a victim, once you have already been victimised. There is evidence to support the claim that victimisation is one of the strongest predictors of further victimisation. Research into repeat victimisation has also shown the possibility of massive crime reduction capabilities through the simple reduction in repeat victimisations. Ellingworth, Farrell, and Pease (1995) discovered that the reason these capabilities are possible is that to a large extent, there is a concentration of crime on particular individuals and particular places. This concentration of crime will

be discussed in the inner-city Dublin context. This paper is based on experiences encountered during the Young People's Experiences of Crime Research Project, which investigated the experiences of 15-17 year olds in inner-city Dublin. The study used a mixed-method approach, incorporating a youth victimisation survey and focus groups. Based on data collected from secondary schools and Youthreach centers in inner-city Dublin, results indicated high-levels of victimisation, similarities between victims and offenders, repeat victimisation, and an evolving shift in gender-specific victimisation incidents. The purpose of this paper is to explore these findings, in particular, repeat victimisation. Research into repeat victimisation is an essential element of youth crime research, as it has both practical and theoretical implications for the development of evidence-based policy in response to youth criminality.

BETWEEN SOCIAL SURVEILLANCE AND SOCIAL TRANSFORMATION: THE ROLE OF PRACTITIONERS AND CURRICULUM IN YOUTH CRIME AND DISORDER PREVENTION IN IRELAND

Matthew Bowden (School of Social Work and Social Policy & Department of Sociology, Trinity College Dublin)

Youth crime prevention has emerged in Ireland over the past 15 years as a response to youth disorder in urban peripheral areas in the early 1990s. Since then the number of initiatives in various parts of the country now approaches the 100 mark. While the popular and political appeal of these projects is noteworthy, the longer term effect and impact is far from established. One of the early problems identified with such initiatives is their straight-jacketing within a police-community relations framework. At the level of day-to-day programming, the initiatives are as diverse as they are numerous with little by way of centralised systems of quality assurance or policy development.

This is the second of a series of papers exploring the field of youth crime and disorder prevention. The current paper will consider the role of practitioners in interpreting and acting upon their mandates most particularly in relation to identifying relevant curriculum. Two ideal types will be delineated: those that are oriented towards social surveillance and those that are potentially socially transformative. In general, the former tend to follow character-forming approaches using widespread leisure oriented programmes, are more concerned with moral curriculum and tend to be monologic in communicative terms. The latter take the form of working within working class youth culture, builds individual social and cultural capital with small groups of young people and take a more discursive and dialogic approach to curriculum. The paper concludes by discussing these approaches in the context of the wider politics of crime and community.

Session 11: Sexual Offending – Legal and Social Responses

24 JUNE: 1.40-3.00: ROOM 2-046

VETTING SEX OFFENDERS ACROSS BOUNDARIES: LEARNING AND CHALLENGES FOR THE FUTURE

Anne-Marie McAlinden (Institute of Criminology & Criminal Justice, Queen's University Belfast)

The issue of sex offender management and vetting and barring in particular is an important one for cross border co-operation and debates. This issue has resonance not only on a North South basis but also within Europe as a whole where many of the problems are mirrored. In essence, there are two principal difficulties – significant cross-border movement of individuals within the EU and the disparity within and between countries in terms of standardised criminal record information and vetting and barring systems. This paper examines these issues via an analysis of reciprocal arrangements for managing sex offenders and preventing the unsuitable from working with children or the vulnerable in the North and South of Ireland in particular. The array of wider European approaches to pre-employment vetting will also be examined. The current differences in approach mean that vital information about perceived risk may be lost. In addition, individuals will likely exploit differences between countries to avoid detection or obtain employment with children and abuse again in other

jurisdictions where vetting and barring procedures are not as robust. This paper will argue that there are lessons to be drawn from this examination particularly in terms of developing more effective policies and information management systems. Challenges for future cross border co-operation North and South and within the EU as a whole are also presented. These are framed chiefly in terms of increased co-operation within and between countries in relation to the exchange of relevant information and the development of common policies; a European wide index of offenders; and standardised criminal records information and data storage systems.

IN SEARCH OF CLARITY: SUGGESTIONS FOR THE REFORM OF THE LAW SURROUNDING CONSENT IN RAPE LAW

Susan Leahy (Centre for Criminal Justice and Human Rights, University College Cork)

The absence of consent is a constituent element of the offence of rape. However, despite its obvious importance, the concept of consent in this area of the law remains ambiguous. 'Consent' is not statutorily defined and there is a paucity of guidance from the case-law as to when consent should be deemed to be absent. Given the obvious importance of consent in rape prosecutions, this paper will argue that the law in this area is in need of clarification and discuss the various methods by which this may be achieved. This will involve a consideration of:

- (1) the potential approach which could be taken to defining consent;
- (2) the current and potential scope of factors which have traditionally been said to vitiate legally valid consent to sex, namely, force, fear and fraud and whether any other vitiating factors should be added to this list; and
- (3) the problems caused by the honest belief defence and reforms which may alleviate some of the controversy surrounding this defence

Suggestions for reform will be informed by academic commentary and by the experience of other common law jurisdictions which have incorporated a definition of consent into their sexual offences legislation.

RECALIBRATING THE SCALES OF JUSTICE: THE IMPACT OF THE NOTION OF 'BALANCE' IN DELAYED PROSECUTIONS FOR CHILD SEXUAL ABUSE

Sinéad Ring (Centre for Criminal Justice and Human Rights, University College Cork)

This paper considers the balancing paradigm - the idea that substantive justice involves a balancing exercise by judges in weighing up the rights of the accused person against the rights of the victim and the public interest. The paradigm, which has influenced legislative change in England and Wales, is now increasingly evident in Irish debates about criminal justice. This paper evaluates the notion of balance in the context of the Irish courts' approach to the problem of delayed complaints of child sexual abuse.

The issue of delay in cases of child sexual abuse is a relatively new phenomenon and has implications and risks of injustice that are only just beginning to be appreciated. Since the mid-1990's Ireland has experienced a surge in the number of prosecutions of child sexual abuse, most of which involve abuse that is alleged to have occurred many years ago. In some cases, the delay is as much as 30 years. Delay in the institution of criminal proceedings can result in the lack of evidence such as reports and records, and deterioration in the quality and availability of witness testimony - memories fade, witnesses die or move away. This lack of documentary and witness evidence can seriously prejudice the defence. The courts have developed a significant body of case law setting out how the difficulties presented by delayed complaints should be dealt with by the criminal process. The notion of balance features prominently in this jurisprudence. By employing a rights-based approach, the paper will critically examine the impact of the balancing paradigm on due process guarantees in the context of the prosecution of this particularly grave and emotive crime. It will also seek to reveal the threat of the language of balancing to the legitimacy of the wider criminal justice system.

DISCLOSURE IN CHILD PROTECTION PROSECUTIONS: RECONCILING THE IRRECONCILABLE?

Chris Taylor (Bradford University Law School)

The increase in historical child protection prosecutions in the UK raises serious issues surrounding the investigation and prosecution of these difficult and sensitive cases. They also require a degree of co-operation between police and social care professionals which, has not always been forthcoming. In particular, the question of pre-trial discovery continues to cause suspicion and conflict.

Such cases frequently entail demands for extensive disclosure of care records of alleged victims, both from prosecution and defence, which often places police and social workers in conflict over the release of such personal information. For investigators, the principal objective is a successful prosecution whereas, for the defence, such records often yield potentially valuable material. For social workers, however, the confidentiality of children remains the paramount concern and this is undermined by any form of blanket disclosure.

Attempts to reconcile these competing perspectives within the criminal justice system have consistently failed, resulting in an often random system of informal agreements between police forces and local social services departments. Most recently, the introduction of a national protocol has singularly failed to overcome the resistance of many social care professionals, leaving police and prosecutors frustrated at the obstacles placed in their way.

This paper considers a forthcoming empirical study into the nature of this ethical and practical conflict between two sets of professionals and how the fundamental question of confidentiality within the care system is reconciled with investigative exigencies and due process safeguards within the criminal justice system.

Session 12: Current Issues in Due Process

24 JUNE: 1.40-3.00: ROOM 3-067/8

THE PRE-TRIAL RIGHT TO SILENCE: A COMMON SENSE APPROACH

Yvonne Marie Daly (School of Law and Government, Dublin City University)

The idea of allowing inferences to be drawn from the pre-trial silence of an accused person was accepted in the Northern Ireland case of *Kevin Sean Murray v D.P.P.* (1994) 1 W.L.R. 1 as being a matter of “common sense”. Since then, many legislative enactments and judicial pronouncements, both in the Republic of Ireland and in England and Wales, have impacted on the pre-trial exercise of the right to silence and the circumstances in which inferences may be drawn from such silence at later trial.

This paper will outline and examine the law in relation to inferences from pre-trial silence in both jurisdictions, referring also to the closely-related right of pre-trial access to legal advice. The most influential legislation in relation to the pre-trial right to silence, such as the *Criminal Justice and Public Order Act, 1994* in England and Wales and the *Criminal Justice Act, 2007* in Ireland will be analysed, along with important case-law from both jurisdictions, and from the European Court of Human Rights.

Central difficulties related to the drawing of inferences at trial will be highlighted throughout the paper, and particular emphasis will be placed on challenges created for the Irish criminal justice process by virtue of the new wide-ranging inference-drawing provision included in the *Criminal Justice Act, 2007*. The paper will conclude by contending that the law on pre-trial silence has, at this juncture, strayed far from its common sense beginnings and a number of potential future improvements will be considered.

THE PROPOSED DNA DATABASE: LEGAL LIMITS

Liz Heffernan (School of Law, Trinity College Dublin)

One of the more striking aspects of DNA profiling is the speed with which it has gained acceptance among forensic scientists, investigators, judges and juries, as the ultimate means of criminal identification. A key factor in the expanding use of DNA in the investigation of crime and the prosecution of alleged offenders is the use of DNA databases which electronically store individuals' DNA profiles for comparison with profiles generated from biological samples found at crime scenes. In 2005, Law Reform Commission proposed the establishment of a DNA database in Ireland and a bill is expected to be put before the Oireachtas in the coming months. This paper will explore some of the significant, challenging issues raised by the establishment and operation of the proposed Irish database. The legitimacy of DNA databases rests on the assumption that any interference with civil liberties is proportionate to the essential State objective of preventing and detecting crime. This paper will examine the legal limits that have been placed on the use of DNA database technology to safeguard proportionality. It will question the adequacy of those limits in theory and practice taking as an example an issue currently under consideration by the European Court of Human Rights, namely, the retention by the State of the DNA samples and profiles of persons suspected, but ultimately not convicted, of criminal conduct.

Session 13: Alleviating the Effects of Imprisonment

24 JUNE: 1.40-3.00: ROOM 4-068/9

VISIONS OF FREEDOM - AN EXPERIMENT IN THE PENAL TREATMENT OF WOMEN IN IRELAND

Barbara Mason (London School of Economics)

Set within the academic framework of feminist theory of female incarceration, the subject of this paper is the outcome from a study of the first new prison for women in Ireland in almost 200 years which opened in December 1999. Called the Dóchas (Dóchas is the Irish word for hope) the new prison involved an innovative architectural design and an enlightened regime aimed at addressing the individual needs of female offenders. Through a series of interviews and observations during the first 30 months of occupation, the evolution of the experiment was tracked, from an initial period of turmoil and uncertainty through a gradual period of adjustment to a state of equilibrium.

A number of similar penal experiments in other jurisdictions in recent years (notably in England, Scotland and Canada) resulted in many of the benevolent intentions of the initiators being gradually undermined by factors both within and outside the control of the institution. By contrast, this study revealed that despite initial setbacks and a number of ongoing challenges, the aspirations underlying the new philosophy remained intact and provided an encouraging example of how sustained commitment to an ideal can offer some level of encouragement to an otherwise rather bleak picture of female incarceration at the beginning of the 21st century.

Sadly, recent developments that have occurred since the conclusion of this study (the proposed demolition of the Dóchas Centre and relocation to a new site) are in danger of eroding many of the positive achievements for women in prison that have been part of this significant innovation.

THE SECONDARY EFFECTS OF IMPRISONMENT ON FAMILIES AND COMMUNITIES

Jessica Breen (School of Social Work and Social Policy, Trinity College Dublin)

This presentation presents an overview of the relevant literature related to the secondary effects of incarceration on prisoners' families and communities. Moore's (1996) framework for investigating direct, indirect and tertiary effects is presented and used to structure current thinking and research. Key theoretical concepts, social capital and social control, are defined and discussed, as are the various theoretical approaches to the study of the secondary effects of imprisonment on families and

communities. This is followed by a review of the results of empirical research including what little is known in the Irish context.

PRISONERS' FAMILIES AND PENAL POLICY: INTERNATIONAL PERSPECTIVES
Helen Codd (Lancashire Law School, University of Central Lancashire)

In recent years academics, policy-makers and activists in a number of countries, including Ireland, have become increasingly concerned with the collateral consequences of imprisonment. These collateral consequences vary from jurisdiction to jurisdiction and can include disenfranchisement; welfare disqualification; social stigma; financial problems and difficulties finding employment, amongst many others. In addition, significant recent research in the US, the UK and Ireland has begun to explore the impact of imprisonment on communities, especially in urban areas. There has been no real attempt, however, to explore international and global perspectives. This paper will move outside the traditional jurisdictional boundaries which have dominated the research and will consider international questions such as the needs of families of foreign national prisoners; prisoners' children; provision for mothers and babies and problems of family contact. In addition, it will be argued that although much of the recent literature on prisoners' families has focused on single jurisdictions, the impacts of imprisonment on families and communities go beyond narrow jurisdictional boundaries. This paper will contend that there needs to be a greater awareness of the negative impacts of imprisonment and will argue that the effects of imprisonment on families raise inherent questions of justice and rights which go beyond questions of individual states' responses to prisoner's families and include questions of race, gender and punishment.

Closing Session

24 JUNE: 3:00-4:30: ROOM 4-027

**THE DEVOLUTION OF CRIMINAL JUSTICE AND POLICING POWERS IN
NORTHERN IRELAND: OPPORTUNITIES FOR COOPERATION BETWEEN
NORTHERN IRELAND AND THE REPUBLIC OF IRELAND**

Address by Mr Paul Goggins MP, Minister of State at the Northern Ireland Office

Closing Address by Mr Seán Aylward, Secretary General, Department of Justice,
Equality and Law Reform