CRIME AND PUNISHMENT IN TWENTIETH CENTURY IRELAND
Other Works by the Author:

A History Of The Irish Police
(From Earliest Times...)
Publishers: Anvil, 1974

Emile Durkheim On Crime And Punishment
(An Exegesis)
Dissertation.com, 2002

The Riddle Of The Caswell Mutiny
Universal Publishers, 2003
Crime And Punishment In Twentieth Century Ireland

VOLUME 2

A Description of The Criminal Justice System (CJS) 1950–80

Séamus Breathnach
DEDICATION

To all the students and past pupils of criminology who studied at the College of Commerce, Rathmines, Dublin 6, between 1982 and 2002
The criminal justice System (CJS) has several component parts. For convenience we rely mainly upon four of these institutional components. First of all, the Oireachtas defines certain kinds of behaviour and ‘criminalises’ them. Secondly, the Gardai investigate and detect behaviour so defined. Thereafter the Courts determine guilt, and in custodial cases the Prisons and Detention Centres confine the guilty.

Hitherto, these main institutions of the CJS – the Gardai, the Courts, and the Prisons and Detention Centres – have been seen as separate and autonomous entities, a fact which is exhibited in the manner in which the Gardai and the Prison authorities produce their respective reports. Up to quite recently, the only information produced by the Courts was to be found in the Statistical Abstracts. The ‘Abstracts’ – as the name implies – is a compilation of very useful if un-analysed and parsimonious information regarding the CJS’s component parts, mostly taken from the Prison and Police reports. Moreover, matters respecting juveniles and young persons have been significantly complicated not least because in some respects functional responsibility has been spread over several governmental departments, viz. the department of Justice, Equality and Law Reform as well as the department of Education.

It is not surprising, then, that our knowledge of the system as a whole, and the interconnections between the CJS’s component institutions have remained singularly unexamined for such a long period of our history. The felt-need to provide such an overview is, perhaps, the main inspiration for this enquiry.

The need for such an enquiry became apparent in the seventies and was sharpened in the early 1980s when the author began lecturing to students of Postgraduate Criminology. The factual basis of Irish knowledge concerning the CJS in Ireland was rarely furrowed with a knowledgeable or a critical eye. And if any one doubts the unprofessional or simplistic nature of the collecting process, a brief scrutiny of Table 216 overleaf will assure him of how deficient these statistics have been. Moreover, as we shall see Table 216 is by no means an exception, but is rather symptomatic of what has been allowed to pass for governmental as well as academic accounting for crime in the Republic.

One doesn’t know which is worse – the inaccuracies that were annually recorded or the fact that no one ever found specific fault with them. Obviously, both phenomena can still send a shudder down the spine of the social enquirer, who may subsequently begin to appreciate something of the inscribed obstacles, which the Church/State ensemble, otherwise called the Irish Republic, places in the path of the unwary sociological pilgrim. Police, Probation and Court statistics, are no different. One soon realises that this is no place for the pusillanimous. On the contrary, without an olympian curiosity coupled with Joycean courage all hope of insight is impossible.

If the intrepid social enquirer dares to discover data about the real subject of all social enquiry – Irish society itself, and its clockwork mechanisms of social control! – then, indeed, he shall have to learn that in matters regarding the social sciences, ‘grosse seelen dulden still.’ Otherwise he will soon wither with frustration or be smothered in the ubiquitous tentacles of Catholic obscurantism.

The overall intention in these lectures is to overcome by demonstration the difficulties inherent in working out a reliable overview of the Irish CJS. In this it has been inspired by the American model
## TABLE 216  Prison Statistics 1968 To 1975

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<td>Number of committals:</td>
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<tr>
<td>Male</td>
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<td>2.948</td>
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<td>273</td>
<td>379</td>
<td>378</td>
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<td>2.728</td>
<td>2.539</td>
<td>3.221</td>
<td>3.966</td>
<td>4.613</td>
<td>4.129</td>
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<td>Per 10,000 of population</td>
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<td>9</td>
<td>11</td>
<td>13</td>
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<td>14</td>
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<td><strong>Daily average number in custody:</strong></td>
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<tr>
<td>Convicts</td>
<td>35.84</td>
<td>50.43</td>
<td>61.17</td>
<td>63.41</td>
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<td>Ordinary</td>
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<td>372.44</td>
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<td>616.11</td>
<td>601.41</td>
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<td>717.24</td>
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<tr>
<td>Committed on remand and afterwards discharged</td>
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<td>641</td>
<td>961</td>
<td>1.247</td>
<td>1.504</td>
<td>1.263</td>
<td>1.201</td>
<td>1.073</td>
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<td>Summary conviction</td>
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<td>2.286</td>
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<td>2.035</td>
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<td>137</td>
<td>152</td>
<td>105</td>
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<td>Convictions of superior courts</td>
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<td>183</td>
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<td>279</td>
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<td>Committed and acquitted, remaining on remand or for trial, or otherwise disposed of</td>
<td>199</td>
<td>182</td>
<td>207</td>
<td>145</td>
<td>90</td>
<td>70</td>
<td>134</td>
<td>137</td>
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<tr>
<td><strong>Total</strong></td>
<td>2,728</td>
<td>2,539</td>
<td>3,221</td>
<td>3,966</td>
<td>4,613</td>
<td>4,092</td>
<td>3,679</td>
<td>3,598</td>
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<td>Convictions:</td>
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<td>Offences of criminal prisoners committed on conviction:</td>
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<tr>
<td>Males</td>
<td>256</td>
<td>239</td>
<td>307</td>
<td>402</td>
<td>516</td>
<td>470</td>
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<tr>
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<td>10</td>
<td>11</td>
<td>20</td>
<td>18</td>
<td>16</td>
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<td>Offences against property with violence</td>
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<tr>
<td>Males</td>
<td>380</td>
<td>441</td>
<td>537</td>
<td>622</td>
<td>613</td>
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<td>18</td>
<td>28</td>
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<tr>
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<td>504</td>
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<td>33</td>
<td>50</td>
<td>79</td>
<td>57</td>
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<td>61</td>
<td>73</td>
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<td>Drunkenness</td>
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<tr>
<td>Males</td>
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<td>71</td>
<td>54</td>
<td>115</td>
<td>27</td>
<td>144</td>
<td>72</td>
<td>123</td>
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<tr>
<td>Females</td>
<td>75</td>
<td>42</td>
<td>28</td>
<td>44</td>
<td>53</td>
<td>32</td>
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<td>Other Offences</td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Males</td>
<td>400</td>
<td>331</td>
<td>332</td>
<td>496</td>
<td>810</td>
<td>684</td>
<td>640</td>
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<td>87</td>
<td>89</td>
<td>67</td>
<td>44</td>
<td>44</td>
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<tr>
<td><strong>Total</strong></td>
<td>1.519</td>
<td>1.421</td>
<td>1.741</td>
<td>2.226</td>
<td>2.669</td>
<td>2.275</td>
<td>2.152</td>
<td>2.134</td>
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<td></td>
<td>239</td>
<td>258</td>
<td>160</td>
<td>248</td>
<td>245</td>
<td>197</td>
<td>169</td>
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Total criminal prisoners convicted
Other persons convicted: 1.758 1.579 1.901 2.474 2.914 2.472 2.321 2.330
Debtors, contempt of court and want of sureties 130 137 152 105 105 195 104 100
Total committals on conviction 1,888 1,716 ◆ 2,053 2,579 3,019 ◆ 2,662 ◆ 2,425 ◆ 2,430
Sentences:
Penal Servitude 16 20 29 39 59 49 77 75
6 months to 2 years 473 544 713 1,023 1,100 1,022 1,032 1,015
4 weeks to 6 months 983 850 1,069 1,170 1,444 1,212 1,000 983
Up to 4 weeks 413 253 220 942 114 280 235 284
Period unspecified 3 9 4 5 2 1 - 3
Total 1,888 1,716 ◆ 2,053 2,579 3,019 ◆ 2,564 ◆ 2,344 ◆ 2,361


It is the author’s contention that a factual overview of the system in the form of the American model, or similar system, is a sine qua non for policy makers as well as for all those who are seriously interested in understanding the criminal justice system. Despite the neglect and misunderstanding surrounding such a model in Europe and elsewhere, its potential for radical social reform is singularly ignored. And while texts on the subject invariably revert to the topicality of this or that controversial subject, they confine themselves to studying the Police, the Courts, or the Probation Service, etc., and thereby sacrifice the need for an overall assessment. In this way, the paramountcy of seeing the CJS as an organic whole remains the permanent captive of inferior piecemeal commentaries.

The format of the present inquiry was largely determined by the requirements of students. It was compiled as a collection of lectures given as a course on the CJS to post-graduate students enrolled in the Diploma of Criminology course in the College of Commerce, Rathmines. It was inaugurated by the far-sightedness of ordinary men in the CDVEC (the City of Dublin Vocational Education Committee) of the ‘80s. Since 1992, however, the DIT (the Dublin Institute of Technology), more famed unfortunately for sleaze than for science, gave way to the worst aspects of religious and political chicanery and, surrendering itself to an atavistic concern for technical indoctrination, summarily terminated the college’s only critical course in the social sciences – and the only taught course in criminology in the Republic! After twenty years of unimpeachable service the author was even informed that he had ‘no business on the premises’, whereupon he snatched his notes and now presents his subversive lectures without the pressures of such a malignant academic regime.

The methodology applied throughout the inquiry reposes on the fundamental assumption that there is a ‘system’ of criminal justice. By ‘system’ is meant an aggregate of relationships into which actors enter to produce an overall result. It is further assumed that this overall result provides us with a perspective, both quantitative and qualitative, which informs each of the system’s component parts. Without such a perspective, it is felt that an informed assessment of any of the component institutions comprising the CJS is impossible to formulate in a rational manner. And by the same argument, any contemplated changes or reforms aimed at altering the system or part of it, in the absence of such an overview, must remain the product of guesswork.
Three important qualifications, however, need to be stressed.

Firstly, this inquiry is not primarily or mainly concerned with the ‘causes’ of crime. On the contrary, its main aim is to describe the manner in which crimes in the Republic were processed by the penal institutions in terms of the institutions themselves.

Secondly, while the question of a theoretical explanation is not totally abandoned, an accommodation with labelling theory is presumed. Consensus and conflict viewpoints are also mentioned. The predominant concern is, nevertheless, to disclose facts relevant to the annual processing of indictable crimes. In this respect the available official statistics are heavily relied upon. They are presented in a manner which – one hopes – is both readable and testable by any interested reader.

And thirdly, it should not be forgotten that the present volume, one of three, is solely concerned with a description of the 1950–80 period. During these three decades social life changed utterly in the Republic, such that what occurred had little or no simple relation with the half century that preceded it. Similarly, what followed the 1950–80 period, particularly during the years of the Celtic Tiger, the growth of the ‘Crime Industry’ in Ireland, and the revelations of Church and State corruption, bore little or no relation to what preceded it.

These ‘revolutionary’ times were reflected in the piecemeal changes that informed the component parts of the CJS, in the legislation enacted in the Oireachtas, in the myopic responses to drugs, household violence, organised crime and the incidence of traffic fatalities.

The 1950–80 period provoked a response in the organisational ambitions of the new Courts Service, in the wholesale re-organisation of the Garda Siochana, and in the total reorganisation of the new Prison Service. Unfortunately, as Volume 3 will show, the use of the CJS as an overall entity, and its accountancy potential, were lost sight of and left the Republic rudderless. But that’s another story and can only be realised by unpacking and laying bare the mistakes of the past.

Throughout the century the changes have been so complete between the respective periods 1900–50, 1950–80, and 1980–2004, that it was felt that they had to be separated, given a volume each, and treated in their own time-specific terms. Otherwise it was felt that the radicalism and rapidity and depth of the social change, which Ireland has endured in the twentieth century, would not be fully appreciated. The result, consequently, would have been perverse; for rather than contributing to the creation of an Irish criminology, it would have blurred the century’s moments of change.

Volume 2 (1950–80) comprises eight Lectures (Lecture eight by way of Epilogue), each dealing with a separate yet dependant topic of the CJS during the 1950–80 period. The author takes full and sole responsibility for any errors or mistakes found throughout the series. The following abbreviations might usefully be borne in mind:

CDVEC = The City of Dublin Vocational Education Committee
CJS = The Criminal Justice System
CCM = The Crime Control Model
DPM = The Due Process Model
AG = The Attorney General
DDP = The Director of Public Prosecutions
DJ = District Justice
DMA = The Dublin Metropolitan Area
DMP = The Dublin Metropolitan Police
GS = An Garda Siochana = The Police
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“A PATTERN OR OUR OWN DESIGNING”

Theory and Fact

All science attempts to harmonise fact and theory. As a discipline criminology is no less pretentious. The requirements of such harmony, in the social sciences at any rate, are broadly based. Brute facts and figures, it is contended, hold little or no meaning for us, particularly if they are displayed in an arbitrary fashion, much less if they are rigged. On the other hand, theory is perfectly vain and abstract if it does not correspond with the facts. So, where does one begin?

As we are all aware, the business of theory is to refract upon the facts, to shed light upon them, to give them life and significance and thereby make them amenable to reason. Such facts therefore, are not randomly collected. On the contrary, they must be deliberately and scrupulously – if indifferently – collected. Otherwise the relationship between ‘fact’ and theory will become distorted and unaccountable.

Fortunately, this enquiry into the Criminal Justice System (CJS) is not primarily concerned with theoretical criminology. Its purpose is rather to discover the CJS and to describe in practical terms the manner in which the system has worked – or was worked – in Ireland for those years between 1950 and 1980. Of course the system did not work without some ideology – and that, too, must be taken into account as part of the description.

Throughout the period two rather broad theoretical configurations predominated. These were called respectively ‘conflict’ and ‘consensus’ theory. At the same time a lesser theory called ‘labelling theory’ also found its way into the textbooks. And while ‘labelling’ may be construed as taking a bit from conflict theory and another bit from consensus theory, it nevertheless lends itself admirably to the study of the CJS. For one thing the CJS, as we hope to demonstrate, is no more than an accountability tool. As such it does not require a theory, but rather an orientation or perspective. Secondly,
it has been argued that ‘labelling theory’ is not a theory at all, but is no more than an orientation. In either event, we wish to orientate our current enquiry around the corpus of Irish litigation. Initially at any rate, we wish to find out how much litigation there was during the period under consideration. We then wish to know, how much litigation was criminal, how much civil. Of the criminal, we wish to know how much was indictable and how much non-indictable. With the labellists we also wish to remain sceptical as to the real meaning of such data.

Accordingly, then, this lecture is divided into four parts. These parts are as follows:

Part 1 deals with the following three preliminary concerns:

i. The relation of civil to criminal law;
ii. Conflict and consensus theory; and
iii. Crime and the state

The three remaining Parts then attempt to answer three very practical questions, namely:

Part 2: How much annual litigation was contemplated by Irish courts over the 1950–80 period?
Part 3: How much litigation was civil and how much was criminal?
Part 4: Of criminal cases, how many were indictable and how many were non-indictable?

The Relation of Civil to Criminal Law

Related to the problem of data-selection are the further difficulties of how we distinguish in theory between civil and criminal law, how in general we perceive the nature and role of the modern State, and how, in particular, we account for the historical development of the Republic.

The amount of civil cases there are relative to the total amount of litigation or to the incidence of criminal cases is significant. To thinkers like Durkheim, Henry Maine or Montesquieu, it features as a determinant of civilisation. In Durkheim’s schema, for example, primitive societies are characterised by a preponderance of criminal or repressive sanctions, while modern societies are characterised by restitutive ones. On this reasoning societies advance from a religious type, where crimes are invariably committed against collective items, to a society where crimes are committed against individuals. But the relationship between the civil and criminal law is important for other reasons also.

If we view civil law as an index of the nation’s economic infrastructure, and criminal law as an index of State-control, the ratio over any given period may indicate the State’s propensity to develop a more or less totalitarian regime. The more civil law there is relative to criminal law, the more citizens pursue prosperity and resolve their conflicts in a restitutive manner. On the other hand, the more criminal law there is relative to civil law, the more it appears necessary for the State to interfere and impose punitive sanctions. On this reasoning all law is State-centred. It has an economic dimension and the civil/criminal ratio represents an index of social control.

The usual manner in which civil law is distinguished from criminal law is to call the former ‘private’ and the latter ‘public’. In this way criminal law is seen as a branch of public law and is concerned with the relationship of members of the community to the State. In this sense it is is contrasted, say,
with the law of contract, which is a branch of private law, and is concerned with the relationship of members of the community *inter se*. This contrast is quite plausible.

But it is a lawyer’s distinction and some criminologists reject it, because in some respects all law is both private and public. It is private in the sense that it is always about individuals present and acting, and it is public in the sense that law itself is a social-function and all individuals are functionaries of society. The middle and common term between criminal and civil law is the State, and in the absence of a working definition of the State these distinctions must remain uncertain. Accordingly, the selection of factual data and, more importantly, the inferential significance we ascribe to such data, is somewhat prefigured by our theoretical perspective as to how the State is organised.

**Conflict and Consensus Theory**

Notions of conflict and consensus are used to refer to broad diverging traditions and orientations in European thought. They are often used confusingly and interchangeably. At other times they are used to identify support for particular theorists in philosophy, ethics, social anthropology, and, indeed, for the entire social and natural sciences. For the most part, however, in the 1950–80 period, before the fall of the Berlin Wall, they came to vacillate around right and left attitudes to the State and its agencies.

The classical school of criminology may have grown out of the Enlightenment, but ideas about consensus and conflict date back for thousands of years. They appear in religious doctrines, myths, and historical and philosophical accounts. They precede any formal work in the social sciences.

The felt need to theorise law and the economic conditions of crime appeared in the Old and New Testaments, in Summeria, Babylon, and in Greece and Rome. Moreover, the City-State’s involvement in things criminal can arguably be traced to Plato, a conflict-theorist, and to Aristotle, a consensus-theorist.

In the seventeenth and eighteenth centuries the debate continued. In more modern form it emerges under the pen of Hobbes, Henry Fielding, Adam Smith, Beccaria and Godwin. And in the nineteenth century, two years after Darwin’s *The Origin of Species* Maine’s great work on *Ancient Law* appeared. The twentieth century, more renowned for repetition than originality, exhibited a tendency in writers to eschew rather than engage the ancient issue between individual liberty and social control.¹⁰

Keynesians and Monetarists,¹¹ for example, are known to differ fundamentally on the issue of State-intervention in the economy. Durkheim – and at one time, Marx – were the common property of the respective consensus and conflicts camps. Both orientations included a wide range of origins, including the origin of political parties, as proceeding from the social organisation of the State. And before the fall of the ‘Berlin Wall’, Hegel and Marx made the Modern State the centre of ethical and epistemological issues as well as economic and political ones. Indeed the notions ‘East’ and ‘West’ (by no means to be construed as coterminous within the notion ‘Left’ and ‘Right’, especially as viewed through the military alignments of the twenty-first century and post 9/11 reorientations) increasingly represent a division of the world based as much upon scarce resources as on humanist ideology.¹² Was Afghanistan and Iraq about religion, oil or the resources to build nuclear power?
Were they about revenge, retribution or deterrence arising out of nine/eleven? Or were they insti-gated to liberate the people of Afghanistan and Iraq from their own history?

There are several varieties of conflict as well as consensus theories, which it is not our intention to pursue. Suffice it to note that the Modern State is quite central to such theories.\(^{13}\)

By virtue of the sheer preponderance of the State’s laws and regulations, the growth of bureaucracy since the Second World War, the post war popularity of Keynesian fiscal policy, and the encroachment of EEC administration, one cannot but be aware of the role of the central organs of government. Indeed, so primary is this awareness of the ubiquity of State power that to ignore it would be unthinkable.

Nevertheless labelling theory fits neatly between these two older theories. Its original statements express a scepticism about the role of the State and the criminal, usually at the level of first encoun-ters with the police, the courts, the prisons, etc. Within the process of criminal justice, the defined and the definers, the signified and the signifiers line up to call each other names. If we concede that all behaviour is potentially deviant, the question for the labellists is how does this behaviour get labelled criminal and that behaviour does not?

For labellists the quality of ‘deviance’ does not reside in the behaviour itself, but is at once the outcome of responses to that behaviour. In some sense it is negotiated between the actors. If people keep calling Johnny a ‘rotten thief’, then in due course, if he can get no other identity, he may internalise the label, act like a ‘rotten thief’ and prove us all prophets.

In a much deeper sense deviant behaviour is defined by how and where it happened, as well as on the interactional responses of the State’s agents and agencies thereafter.

The problem from an Irish point of view is not merely whether these orientations had any real significance whatsoever, but how contemporary tensions and concerns were translated into a meaningful perspective.

Crime and the State

One problem with the Irish experience from a conflict/consensus/labelling viewpoint is the purity of theorists of a certain European variety. In his work on *The Irish Administrative System* T.J. Barrington noted the dilemma. “I have,” he wrote,

> “Avoided to test administrative theories for their relevance, or otherwise, to Irish conditions. This is partly because many of the theoretical insights seem to me not to be very helpful, and partly because, given this theoretical poverty, more progress may be made by looking at the issues with a fresh eye, from working along the grain of the wood, from keeping one’s feet firmly on the ground about one”

One group which enquired into the penal system (to which enquiry the author laments having made a submission) stated cravenly: “No one denies the right of the State to penalise, but is it not possible to imitate some of our European neighbours and do it with compassion, understanding and above all with dignity?”\(^{14}\)
The ambivalence of social scientists toward the Irish State is compounded by the deeper ambivalence of the whole notion of the social sciences in a Catholic country, particularly when that State is more religious than secular. Even if, as Herbert Spencer claimed, “the great political superstition of the past was the divine right of kings”, it is a secular luxury to find that “the great political superstition of the present is the divine right of Parliaments”. If the truth be told, Parliament in the Republic of Ireland is about as sovereign as the RC Church allows it to be. Hence the suppression of the social sciences and the popularity of sociology amongst Jesuits.

Where the Church (as in Ireland) checkmates the State, science is confounded by religion and chaos predominates. With Emile Durkheim one is inclined to ask:

“What is the State? Where does it begin and where does it end? We know how controversial the question is; it is not scientific to make a fundamental classification impose on a nation so obscure and so badly analysed”

In the face of such scientific obscurity, it is even vain to try to fall back on Irish history, for Irish Statehood only began under the Free State Constitution.

As early as January 1923, when a Judiciary Committee to advise the Executive Council on the establishment of courts and the administration of justice in Sarostát Éireann was appointed, the need for radical reform was plainly, if rhetorically, expressed by the then President of the Executive Council. In his letter to the Committee, the President wrote:

“In the long struggle for the right to rule in our own country there has been no sphere of the administration lately ended which impressed itself on the minds of our people as a standing monument of alien government more than the system, the machinery, and the administration of law and justice, which supplanted in comparatively modern times the laws and institutions till then a part of the living national organism. The body of laws and the system of judicature so imposed upon this Nation were English (not even British) in their seed, English in their growth, English in their vitality. Their ritual, their nomenclature, were only to be understood by the student of the history of these people of Southern Britain. A remarkable and characteristic product of the genius of that people, the manner of their administration prevented them from striking root in fertile soil of this Nation. Thus it comes that there is nothing more prized among our newly won liberties than the liberty to construct a system of Judiciary and an administration of law and justice according to the dictates of our own needs and after a pattern of our own designing. This liberty is established and the headline is set in the Constitution drawn up and passed by the elected representative of our people. The Committee is requested to approach the matters referred to them untrammeled by any regard to any of the existing systems of judicature in this country, to examine the nature and classification of the legal business, both contentious and non-contentious for the due discharge of which in the interests of justice, machinery and establishment should be provided by the State and to consider and report upon the requirements of the litigants and other persons interested, and especially as to accessibility, efficiency, expedition and cost”.

The committee issued a report in May 1923 and the Government based their Courts of Justice Act (No. 10), 1924, upon its findings. According to one observer the Act effectively secured “the
complete disruption of the system of British Courts in the Saorstáit and introduced most striking
changes both in establishment and administration.”

Apart from its violent beginnings, therefore, the premise of Irish Statehood had its correlate in
the notion of legal hegemony. The new social contract purported to be a new legal one as well. No
doubt the ‘striking changes’ of yesteryear needed to be re-assessed in terms of contemporary
requirements. In any such assessment it is to the Church/State-centred hegemony we must look in
order to appreciate the role played by the legal professions and institutions otherwise disguised
under the euphemism of a “pattern of our own designing”.

From its inception, therefore, we know something of the nature of the State. We know it as a legal
entity, and for the purposes of this study we can describe it in terms of its judicial organs both quan-
titatively and qualitatively. In English law the necessity of considering the juristic nature of the State
was avoided by the expedient of regarding the King (or crown) as a corporation sole. In any event
the Lords Spiritual sat alongside the Lords Temporal and the Church/State antagonism that once
plagued Europe no longer influenced the post-Reformation countries. When the King disappeared
under the Irish constitution a constitutional lacuna was created. In 1949 in Comyn v. Attorney
General it was conceded that the State has the capacity to hold property, though its nature was left
undefined. Kingsmill Moore J, almost in Durkheimian terms, stated:

“Nowhere in the Constitution is the legal or philosophical nature of the State explained or
defined. We are told, indeed, that Ireland is a sovereign, independent, democratic State… The
Constitution has told us a great deal about the State, its organisation, and its rights, its obli-
gations and its attributes; but still it has not attempted to define its juristic nature. Is it a
corporation? Is it, as has been suggested, an unincorporated association? Is it neither of these,
but a level persona of a new type and sui generis?… It is not necessary, and it would be
dangerous, to attempt a full or final answer… All that is necessary is to find that the State is
conceived of as a juristic person or entity having as one of its legal attributes the capacity to
hold property. It may, or may not, be a corporation. It may be a corporation entirely new to
English and Irish law; but I hold it is a juristic person and that it can hold property”.

Successive cases have established that the State is capable of being sued. It purports to be
Christian and Democratic. Its sovereign dimension only holds in external matters; internally it is
distinct from another constitutional entity, the People, who created the State and who, as a nation,
has the sovereign right to choose its own form of Government.

Article 6 of the 1937 Constitution enumerates the powers of Government as legislative, executive
and judicial. This ‘separation of powers’ is not constitutionally prescribed. Although other constitu-
tional articles entrench them in varying degrees and in different respects. As Professor John Kelly
has pointed out, these powers are not ‘hermetically insulated’ from one another in all respects.

Qualitatively, therefore, we know the State through the Constitution and the courts. Even if we
cannot define it or know its reality from a judicial point of view, we can describe it in terms of its
functions. Where ‘legal theory’ loses its influence over us is when legal propriety – contrary to its
Constitutional propriety – permits foreign personnel to use Shannon Airport in time of war, as in the
American/Iraqi war in 2003, without any recourse to legal or constitutional principles. It is as if the
Irish think one thing and do another. This also became clear in the paedophile debacle, when the
‘secular State’ showed its pre-Reformation status in its inability to secure religiously held documents.
Qualitatively speaking, we have another way of describing the State. We can describe it in terms of its judicial organs by counting the amount of litigation, both civil and criminal, which the courts annually contemplate. Parts 2, 3 and 4 of this lecture sketch the outer qualitative limits involved. How we interpret the figures presented in the remainder of this lecture and succeeding lectures depends to a large extent on our view of history and the role of the State.

**Part 2: The Incidence of Litigation**

**Population and Litigation**

In general the population within the national jurisdiction fell from 3.2 million in 1901 to 2.8 million in 1966. Since then it has tended to increase to 3.4 million in 1981. The total volume of litigation in the courts per thousand of population has in general tended to fluctuate upwards over the period under consideration. (*Table 1.1*)

More particularly, it can be estimated that cases contemplating litigation increased from 229,190 in 1936 to 626,297 in 1979. This represented an increase per thousand of population from 77 litigable cases in 1936 to 186 in 1979. Year 1981 (and 1980) is somewhat unrepresentative when compared with earlier years and marks for this period the nadir of litigation in the High Court with the hitherto unprecedented issuance of almost 32,000 summonses at that time.

It must be emphasised that *Table 1.1* is not a record of cases heard annually by the courts. It is rather an estimate of conflicts arising between citizens *inter se* and between citizens and the State, in which a judicial determination of these conflicts is contemplated.

**Courts, Estimates and Jurisdictions**

In general the courts exercised three broad jurisdictions during the period 1950–80 – the High Court, the Circuit Court and the District Court. Each of these courts is controlled by appropriate rules, and each exercises a civil as well as a criminal jurisdiction. The jurisdiction of the lower courts from the point of view of legal practice and procedure was quite limited in present terms, but its litigious significance is unique in terms of its overwhelming numerical preponderance as well as its jurisdictional convenience.

1. The High Court. The litigation-estimate of the High Court is based upon the number of summonses (Plenary, Summary and Special) issued for selected years. As such they are a gross exaggeration of the number of cases actually heard in any given year. Nevertheless, the hierarchical and proportionate nature of the several jurisdictions is apparent in *Table 1.1*. With the exception of 1979 and 1981, and given the increase in the number of summonses issued since 1961, the jurisdiction of the High Court accounts for less than 2% of all cases litigated.

2. The Circuit Court. The litigation-estimate for the Circuit Court, based on the number of ‘new cases entered in each Circuit Court’, accounts for an increase of 22,964 cases between 1936 and 1979, that is, an increase of 159%. Between 1979 and 1981 Circuit Court litigation almost
### TABLE 1.1

Number and Jurisdiction of Litigable Conflicts for Selected Years

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</thead>
<tbody>
<tr>
<td>High Court</td>
<td>(1.8) (0.6)</td>
<td>(1.8) (1.6)</td>
<td>(1.0) (1.3)</td>
<td>(0.6) (1.7)</td>
<td>(1.6) (2.0)</td>
<td>(1.6) (1.6)</td>
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<td>Circuit Court</td>
<td>(4.2) 1.6</td>
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<tr>
<td>District Court</td>
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<tr>
<td>Total Litigation</td>
<td>(91.7) 92.4</td>
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</tbody>
</table>

| Number of Cases per 000 of Population | 77 | 92 | 91 | 90 | 100 | 90 | 100 | 90 | 100 | 90 |

Source: Statistical Abstracts
doubled in an unprecedented manner. Between 1936 and 1979 the court’s share of litigation remained stable at not more than 5% and not less than 3% of all litigation.

3. The District Court. By far the greatest volume of litigation occurs in the lower or District Courts. The administrative work in this jurisdiction, with the exception of 1981, remained at a constantly high level of over 90% of all cases annually listed. Between 1936 and 1979 annual litigation increased from 210,144 to 576,123 cases, an increase of 365,979 or 174%. This estimate is based on the number of ‘charges, summonses, processes and applications entered for hearing’ in each calendar year.

Of course the jurisdiction of the respective courts changes from time to time in accordance with the hierarchy of cases litigated. Throughout the seventies, for example, when inflation was raging the District Court jurisdiction was, broadly speaking, limited in civil matters to £250, the Circuit Court to £2,500, and damages in excess of £2,500 (except by consent of the parties) had to be sought in the High Court. These jurisdictional limits, fixed by the Courts Act 1971, bore little or no relation to the increasing inflationary conditions operative throughout the seventies. Consequently, between 1974 and 1979, for example, High Court summonses issued, and Circuit Court cases entered for hearing, respectively increased by 10%. And between 1979 and 1981, a short period of two years, High Court summonses almost trebled while Circuit Court cases increased by 63.6%

Understandably, therefore, the change in jurisdiction under the Courts Act, 1981, expanded these jurisdictions. The District Court jurisdiction was increased generally to a ceiling of £2,500, a tenfold increase in jurisdiction; the Circuit Court’s jurisdiction was increased generally to £15,000, leaving claims in excess of £15,000 to the jurisdiction of the High Court.

At the time this meant that the 50 thousand civil cases ordinarily arising in the Circuit Court (as in 1981) thereafter fell to the jurisdiction of the District Court. It also meant that a considerable, if incalculable, number of High Court cases simultaneously, though not commensurately, fell to the jurisdiction of the Circuit Court. This jurisdictional reshuffle also meant that when the backlog of cases pending in the High and Circuit Courts in 1982 had been dealt with, pressures on both these jurisdictions – particularly on the High Court, where long delays in getting cases on for hearing was becoming the norm – were relaxed until inflation again enhanced a substantial number of actions ordinarily arising in the District Court and drove them respectively into the Circuit and High Court jurisdictions again.

Apart from the interest, which legal practitioners and administrators might have in this major reshuffle, it also holds an interest for court personnel and, more indirectly, for the public at large.

Any redefinition of jurisdictions contains a converse effect. While the higher courts are relieved of excess pressure, the lower courts are obliged to administer the added and cumulative workload. And notwithstanding the resistance of the District Court clerks to operating the provisions of the 1981 Courts Act, and the High Court’s concern to have the law implemented, there was a third dimension, which needs to be noted. As administrative work in the lower courts increased, particularly the number and volume of cases allocated for trial in those courts, there was an assumption that, ceteris paribus, the average case heard would be dealt with more expeditiously than heretofore. On this reasoning deterioration in the quality of cases heard would necessarily ensue. We shall have occasion to return to this aspect of lower court pressure more than once throughout this enquiry. For the moment, however, we will try and describe the incidence of litigation.
The Rate of Jurisdictional Litigation

As we have already stated, the rate of litigation per thousand of population rose from 77 (in 1936) to 203 (in 1981). This is a national rate, and, like all general notions, it tells us little about how the incidence of litigation is distributed and less about the causes of its increase.

Obviously, to test any litigation- or, indeed criminal-theory, we need to know more about the composition and distribution of litigation cases. But because of the poverty of the material available, the most we can do at this juncture is to describe some demographic movements and their possible connection with litigation.

The Republic at the time was divided up into 23 District Court areas and 8 circuits. The District Court returns, however, gave no information as to their geographical composition. As a result therefore, we must fall back on the Circuit Court figures, and these are very limited. All we can hope to do, then, is sketch a partial outline of litigation in terms of possible industrial development. Although the State at this time substantially intervened throughout the economy, the Constitution countenanced a free-enterprise system. The population, within these outer limits, was thereby induced and self propelled to maximise its own selected individual and group economic interests. From this it can be broadly inferred that the demographic features of Irish society were, at any given time, no accident. Indeed, it is to be nationally expected that the population will follow the uneven composition, combination and distribution of capital itself. And since we have two dominant forms of capital, land (requiring a lower division and intensity of labour) and industry (requiring a higher division and intensity of labour), it follows that in population terms, the former must decrease with the onset of the latter. On the basis that the formation of capital, in effecting job-prospects, ultimately affects Irish demographic movements, and that the movements of capital as well as people affect the incidence of litigation, we can describe the incidence of litigation in terms of very broad demographic shifts.

Until the seventies Irish society was characterised by high emigration, that is, the reproduction of people in excess of productive requirements. Roughly speaking, less than half a million people emigrated between 1950 and 1962. Assisted by the Land Commission, whose activities ranged from those of a rent-fixing body, to a tenant-purchasing agency, and increasingly to a ‘great purchaser and distributor of land mainly for the relief of rural congestion’, 9,000 persons per annum left the land between 1961–66 and 9,900 left per annum between 1966–74. During this period, therefore, the dispossessed had one of two broad options – emigration or urbanisation.

Further, with the increasing combination of industrialised capital, just like the concentration of land capital, not only does more property go to fewer, if more efficient, hands, but also Irish labour, with a high dependency ratio, must increasingly lock future generations into urban employment-expectations.

Despite pre-1981 emigration, “a proportional status quo has been maintained over the past 20 years between the Dublin area and the next 19 towns in the national hierarchy; but although comparability in growth rates has occurred, the absolute size disparity between Dublin and the major provincial cities has increased substantially.” And since the Government’s Regional Policy envisaged (since 1972) at least the “development of Dublin to be such as to accommodate the natural increase of its existing population”, a constant or increasing return of litigation to the scale of urbanisation was to be expected. By 1990, according to contemporary forecasts, Dublin County would rise to a population of 1,140,
500. The fastest rate of increase was forecast for Dublin County (i.e. a rate of 4.4% per annum compared with a national average of 1.1).

Litigation on the eight circuits reflected in an inexact manner this national demographic phenomenon (Table 1.2). These figures comprise the only court statistics available on this topic – that is, except for the crime statistics, which also demonstrated the urbanised nature of litigation.

Between 1946 and 1979 the Dublin rate of litigation – always above the national rate – increased over four fold, while the remaining circuits, excepting the Eastern and South Eastern (and Western which starts from the smallest base) hardly doubled. For years 1966/71/79 the Dublin circuit accounted progressively for 27.65, 28.65 and 29.25% of the national population and simultaneously accounted for 45.5, 53.45 and 51.15% of all Circuit Court litigation. In 1966 the combined Dublin, Eastern and South Eastern Circuits represented 51.2% of the population and 66% of the Circuit Court litigation; in 1979 they represented 53.9% of the population and 69.5% of Circuit Court litigation.

Alternatively, if we compare these eastern and industrialised Circuits with the other five Circuits, we find in aggregate that the litigation rate per thousand of population for years 1966/71/79 in respect of the former was 10.6, 14.1, and 14.5 respectively, while the rates for the latter were 5.6, 6.0 and 7.2.

For the legal year 1981 the three eastern Circuits accounted for 52.6% of national population, 62.6% of Circuit Court litigation, or 21.4 cases per thousand of population. The remaining five circuits accounted for 47.4% of national population, 37.4% of Circuit Court litigation, or 14.2 cases per thousand head of population.

Although the amount of Circuit Court cases is overshadowed by the preponderance of litigation in the District Courts, this Circuit distribution, in the absence of similar figures for the High or District Court business, is an instructive indicator of future expectations. Under no circumstances, however, can the Circuit Court jurisdiction be taken as representative of the overall civil/criminal ratio. Indeed, the criminal content of new cases entered in the Circuit Court is invariably low (245 in 1979), even though the greater share of criminal business is entered in the metropolis. Tables 1.3 and 1.4 respectively show the number and distribution of civil and criminal business throughout the circuits for selected years from 1950 to 1981.

In 1979 the combined Dublin, Eastern and South Eastern Circuits accounted for 66.85 of civil litigation and 77.9% of criminal business. In 1981 they accounted for 62.85 of civil and 64.6% of criminal business. These tables also show the metropolitan bias towards litigation, particularly in criminal matters.

**Part 3: The Civil/Criminal Ratio**

The Civil/criminal ratio is interesting for several reasons, some remote and some immediate

As we have already stated, anthropologists and evolutionary theorists like Spencer, Darwin, Durkheim and Hobhouse have had much to say about law thus analysed. In his ‘Ancient Law’, possibly the first attempt at a socially scientific explanation of law, H.S. Maine observed in
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<td>5.0</td>
<td>8.0</td>
<td>10.9</td>
<td>13.8</td>
<td>13.6</td>
<td>19.5</td>
<td>20.1</td>
<td>26.7</td>
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<tr>
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<td>5.6</td>
<td>4.7</td>
<td>7.0</td>
<td>6.1</td>
<td>7.8</td>
<td>8.2</td>
<td>15.7</td>
</tr>
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<td>4.2</td>
<td>4.7</td>
<td>5.2</td>
<td>6.0</td>
<td>6.1</td>
<td>7.0</td>
<td>7.6</td>
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<td>6.5</td>
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<td>6.7</td>
<td>6.3</td>
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<td>6. Eastern</td>
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<td>4.3</td>
<td>5.8</td>
<td>7.7</td>
<td>9.2</td>
<td>10.8</td>
<td>17.0</td>
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<td>7. South Western</td>
<td>3.4</td>
<td>3.3</td>
<td>2.8</td>
<td>3.6</td>
<td>4.7</td>
<td>5.6</td>
<td>6.5</td>
<td>15.6</td>
</tr>
<tr>
<td>8. South Eastern</td>
<td>2.7</td>
<td>3.4</td>
<td>3.7</td>
<td>4.1</td>
<td>6.5</td>
<td>6.6</td>
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<td>All Circuits</td>
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<td>8.2</td>
<td>10.5</td>
<td>11.2</td>
<td>18.0</td>
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</tbody>
</table>

*Occasionally these circuits are realigned. In 1970, for example, Wexford was transferred from the Eastern to the South Eastern circuit, and on 1st January 1979 Laois was transferred from the South Eastern to the Midland circuit.

Source: Statistical Abstracts C.S.O., and Department of Justice
TABLE 1.3  The Circuit Distribution of New Civil Cases Entered in the Circuit Court

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<thead>
<tr>
<th>Region</th>
<th>1950 %</th>
<th>1955 %</th>
<th>1960 %</th>
<th>1965 %</th>
<th>1970 %</th>
<th>1975 %</th>
<th>1979 %</th>
<th>1980 %</th>
<th>1981 %</th>
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<tr>
<td>1. Dublin</td>
<td>31.6</td>
<td>41.1</td>
<td>44.6</td>
<td>41.6</td>
<td>46.5</td>
<td>48.4</td>
<td>49.2</td>
<td>43.5</td>
<td>43.3</td>
</tr>
<tr>
<td>2. Cork</td>
<td>11.3</td>
<td>10.4</td>
<td>12.7</td>
<td>9.9</td>
<td>10.4</td>
<td>10.3</td>
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<td>5.9</td>
<td>6.2</td>
<td>5.4</td>
<td>5.0</td>
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<td>4. Western</td>
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<td>6.4</td>
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<td>5.8</td>
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<td>5. Midland</td>
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<tr>
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<td>9.3</td>
<td>10.1</td>
<td>9.0</td>
<td>7.4</td>
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<td>6.8</td>
</tr>
<tr>
<td>Total:</td>
<td>99.9</td>
<td>100</td>
<td>99.9</td>
<td>100</td>
<td>100</td>
<td>99.9</td>
<td>100</td>
<td>100.1</td>
<td>100</td>
</tr>
<tr>
<td>Number</td>
<td>13,508</td>
<td>16,091</td>
<td>17,404</td>
<td>17,910</td>
<td>24,351</td>
<td>30,977</td>
<td>28,693</td>
<td>43,067</td>
<td>49,363</td>
</tr>
</tbody>
</table>

Source: Statistical Abstracts
### TABLE 1.4  The Circuit Distribution of New Criminal Cases Entered in the Circuit Court

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>1. Dublin</td>
<td>62.3</td>
<td>61.1</td>
<td>59.3</td>
<td>71.3</td>
<td>74.9</td>
<td>67.5</td>
<td>61.3</td>
<td>61.5</td>
<td>42.9</td>
</tr>
<tr>
<td>2. Cork</td>
<td>4.4</td>
<td>4.9</td>
<td>4.2</td>
<td>3.6</td>
<td>2.8</td>
<td>3.9</td>
<td>4.3</td>
<td>3.9</td>
<td>4.1</td>
</tr>
<tr>
<td>3. Northern</td>
<td>3.1</td>
<td>2.5</td>
<td>8.7</td>
<td>3.4</td>
<td>2.1</td>
<td>3.5</td>
<td>4.4</td>
<td>3.2</td>
<td>3.9</td>
</tr>
<tr>
<td>4. Western</td>
<td>7.7</td>
<td>12.3</td>
<td>4.9</td>
<td>4.4</td>
<td>3.0</td>
<td>3.5</td>
<td>2.7</td>
<td>5.1</td>
<td>7.9</td>
</tr>
<tr>
<td>5. Midland</td>
<td>4.3</td>
<td>5.0</td>
<td>4.6</td>
<td>2.8</td>
<td>2.2</td>
<td>4.3</td>
<td>5.2</td>
<td>3.9</td>
<td>9.9</td>
</tr>
<tr>
<td>6. Eastern</td>
<td>9.6</td>
<td>7.7</td>
<td>10.3</td>
<td>6.9</td>
<td>7.0</td>
<td>7.1</td>
<td>10.1</td>
<td>10.0</td>
<td>16.6</td>
</tr>
<tr>
<td>7. South Western</td>
<td>5.5</td>
<td>3.6</td>
<td>4.6</td>
<td>3.7</td>
<td>3.5</td>
<td>5.4</td>
<td>5.5</td>
<td>5.0</td>
<td>9.6</td>
</tr>
<tr>
<td>8. South Eastern</td>
<td>3.2</td>
<td>3.0</td>
<td>3.4</td>
<td>3.9</td>
<td>4.4</td>
<td>4.8</td>
<td>6.4</td>
<td>7.5</td>
<td>5.1</td>
</tr>
<tr>
<td>Total: %</td>
<td>100.1</td>
<td>100.1</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>99.9</td>
<td>100</td>
<td>99.9</td>
<td>100.1</td>
</tr>
<tr>
<td>Number</td>
<td>1,497</td>
<td>1,388</td>
<td>1,606</td>
<td>3,629</td>
<td>6,819</td>
<td>9,316</td>
<td>9,164</td>
<td>10,419</td>
<td>12,614</td>
</tr>
</tbody>
</table>

*Source: Statistical Abstracts*
the early history of the Teutonic code, a preponderance of criminal measures and sanctions over the number of civil remedies. From this he maintained: “The more archaic the code the fuller and min-uter is its penal legislation”.

Since this is not a simple or an agreed matter, it is first advisable before examining criminal matters to enquire as to what part the State plays in the overall scheme of litigation. That is, before attempting to establish a civil/criminal ratio, we find it necessary to examine more closely the classification of litigation in the lower courts. District Court business has been traditionally divided into three categories, summary and indictable cases, civil proceedings and ejectments, and licences renewed (Table 1.5). Unlike the Circuit Court jurisdiction, the District Court administers to a very high and increasing criminal content. Between 1936 and 1981, for example, this criminal content increased from 126.5 thousand cases to 479.4 thousand, an increase of 352.9 thousand cases or 279%. In 1981 these criminal cases accounted for 79.1% of the workload of the lower courts.

In 1946, immediately following the Second World War, crime controls increased significantly and civil proceedings dropped by 37%. During the emigration years of the fifties crime control decreased while civil proceedings and extended crime controls increased and, for the most part, civil proceedings and licences renewed (except for 1971) declined.

There are several other points to be noted regarding the distribution of work in the District Courts. With the exception of years 1961/66/81 the number of licences renewed and issued has steadily increased over the period. For the purposes of establishing a civil/criminal ratio, however, it is difficult to know how to categorise licences. Applications for such renewals constitute the more mechanical and administrative, side of litigation. Should they, therefore be included as civil or criminal cases?

By their nature, whether they are liquor-licensing applications, licences for hawkers, gaming, dancing, auctioneers or turf accountants, licences are administered by the courts on behalf of the State. The parties to these applications, in so far as there are parties at all, are, respectively, the applicant and the State. Such applications are instituted unilaterally and, if opposed, it is by way of objection. But there is no competing party with the same or a similar interest to that of the applicant or a defendant in a civil action.

The more ‘active’ civil proceedings and ejectments have remained, in numerical terms, comparatively stable over the period between 1936 and 1981. It would seem, therefore, that the major influence on the increased litigation figures has come from the criminal input. In this regard, it should be understood that the criminal figures include summary as well as indictable offences. This distinction between indictable and summary offences is of primary importance and should be noted.

For the moment the difficulties in calculating a civil/criminal ratio are several. The High Court, for example, has an annual criminal content in the criminal jurisdiction of the Central Criminal Court and the Court of Criminal Appeal. The Supreme Court also contained a criminal content. But we have no exact data on what this content was. We have already shown that civil litigation in the High Court, exaggerated in numerical terms by the expedient of counting the annual number of summonses issued, accounted historically for less than 2% of all litigation. Should these High Court figures be included at all?
TABLE 1.5  Number of Charges, Summons, Processes and Applications Entered for Hearing in The District Court in Each Legal Year Ended 31 July.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary and</td>
<td>(60.2)</td>
<td>(74.5)</td>
<td>(70.4)</td>
<td>(57.1)</td>
<td>(61.7)</td>
<td>(71.3)</td>
<td>(77.0)</td>
<td>(76.8)</td>
<td>(78.6)</td>
<td>(79.1)</td>
</tr>
<tr>
<td>Indictable Crimes</td>
<td>126.5</td>
<td>192.9</td>
<td>176.6</td>
<td>137.4</td>
<td>158.0</td>
<td>229.7</td>
<td>312.5</td>
<td>413.7</td>
<td>452.7</td>
<td>479.4</td>
</tr>
<tr>
<td>Civil Proceedings,</td>
<td>(26.7)</td>
<td>(13.6)</td>
<td>(15.5)</td>
<td>(25.1)</td>
<td>(22.9)</td>
<td>(17.6)</td>
<td>(11.9)</td>
<td>(12.6)</td>
<td>(8.9)</td>
<td>(10.0)</td>
</tr>
<tr>
<td>Licences Renewed</td>
<td>27.7</td>
<td>30.7</td>
<td>35.4</td>
<td>42.9</td>
<td>39.9</td>
<td>35.9</td>
<td>45.3</td>
<td>56.7</td>
<td>72.0</td>
<td>66.4</td>
</tr>
<tr>
<td>Total</td>
<td>210.2</td>
<td>258.8</td>
<td>250.8</td>
<td>240.8</td>
<td>257.9</td>
<td>322.3</td>
<td>406.1</td>
<td>538.4</td>
<td>576.2</td>
<td>606.4</td>
</tr>
</tbody>
</table>

Source: Statistical Abstracts

(Figures in Brackets Show The Annual Percentage Distribution of Business)
TABLE 1.6  The Estimated Criminal Content of Cases Contemplating Judicial Determination Expressed As a Percentage of Such Cases and as a Civil/Criminal Ratio for Selected Years 1936 – 1981

<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>% Criminal Content of:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. All Courts</td>
<td>55.7</td>
<td>71.3</td>
<td>65.6</td>
<td>53.0</td>
<td>57.1</td>
<td>66.6</td>
<td>72.0</td>
<td>71.6</td>
<td>70.3</td>
</tr>
<tr>
<td>B. Circuit and District Courts (Ignoring Licences Renewed)</td>
<td>64.6</td>
<td>80.8</td>
<td>77.1</td>
<td>64.6</td>
<td>67.3</td>
<td>75.3</td>
<td>81.7</td>
<td>80.7</td>
<td>73.6</td>
</tr>
<tr>
<td>C. District Court</td>
<td>60.2</td>
<td>74.5</td>
<td>70.4</td>
<td>57.0</td>
<td>61.7</td>
<td>71.3</td>
<td>76.9</td>
<td>76.9</td>
<td>79.1</td>
</tr>
<tr>
<td>D. District Court (Ignoring Licences Renewed)</td>
<td>69.3</td>
<td>84.6</td>
<td>82.0</td>
<td>69.4</td>
<td>72.9</td>
<td>80.2</td>
<td>86.6</td>
<td>85.9</td>
<td>88.8</td>
</tr>
<tr>
<td>E. District Court (Licences Renewed = Criminal Cases)</td>
<td>73.4</td>
<td>86.4</td>
<td>84.5</td>
<td>74.9</td>
<td>77.1</td>
<td>82.4</td>
<td>88.1</td>
<td>87.4</td>
<td>90.0</td>
</tr>
</tbody>
</table>

**% Criminal Content of:**

<p>| | | | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>1/1.3</td>
<td>1/2.5</td>
<td>1/1.9</td>
<td>1/1.1</td>
<td>1/1.3</td>
<td>1/2.0</td>
<td>1/2.6</td>
<td>1/2.5</td>
<td>1/2.4</td>
</tr>
<tr>
<td>B.</td>
<td>1/1.8</td>
<td>1/4.2</td>
<td>1/3.4</td>
<td>1/1.8</td>
<td>1/2.1</td>
<td>1/3.1</td>
<td>1/4.5</td>
<td>1/4.2</td>
<td>1/2.8</td>
</tr>
<tr>
<td>C.</td>
<td>1/1.5</td>
<td>1/2.9</td>
<td>1/2.4</td>
<td>1/1.3</td>
<td>1/1.6</td>
<td>1/2.5</td>
<td>1/3.3</td>
<td>1/3.3</td>
<td>1/3.8</td>
</tr>
<tr>
<td>D.</td>
<td>1/2.3</td>
<td>1/5.5</td>
<td>1/4.6</td>
<td>1/2.3</td>
<td>1/2.7</td>
<td>1/4.1</td>
<td>1/6.5</td>
<td>1/6.1</td>
<td>1/7.9</td>
</tr>
<tr>
<td>E.</td>
<td>1/2.8</td>
<td>1/6.4</td>
<td>1/5.5</td>
<td>1/2.9</td>
<td>1/3.4</td>
<td>1/4.7</td>
<td>1/7.4</td>
<td>1/6.9</td>
<td>1/9.3</td>
</tr>
</tbody>
</table>

*Source: Statistical Abstracts and Department of Justice*
Similarly in the Circuit Court, there is the difficulty that a great proportion of cases, both civil and criminal, arise there by way of appeal from the District Courts. Moreover, those which do not enter the Circuit Court lists by way of original jurisdiction will have already been counted and heard in the District Courts. Should the Circuit Court figures, therefore, be abandoned in favour of the District Court returns which annually account for over 90% of litigation cases? And if we rely totally on the District Court returns, should the figures for Licences Renewed be classified as civil, criminal or neutral in calculating the civil/criminal ratio?

Table 1.6 attempts to overcome some of these difficulties by giving five different readings based on five different computations. Computation A includes all litigation in the High, Circuit and District Courts. Computation B ignores the High Court figures and the number of Licences Renewed in the District Court returns, computation D ignores the number of Licences Renewed, and computation E treats the number of Licences Renewed as if they were criminal cases.

The most conservative reading of Table 1.6 (i.e. a reading of row A) accords the criminal content of national litigation in 1936 at least a greater than half share of judicial business. For years 1971/76/81 the criminal courts dealt with 72.0%, 71.6%, and 70.3% of litigation business respectively, or, converted into a more legible ratio, one civil action per 2.6, 2.5 and 2.4 criminal offences. Viewed in this way, it can be argued that, despite the economic revival of the late fifties and early sixties, the criminal content and the State’s controlling interest has tended over the period to revert to what it was at the end of the Second World War.

The least conservative and more disturbing reading of Table 1.6 accords the criminal content in 1936 a 73.4% share of judicial business, or one civil action per 2.8 criminal offences. Again, by gradations, this criminal content rose to 88.1%, 87.4% and 90.0% in respective years 1971/76/81, or, receptively, one civil action per 7.4, 6.9, and 9.3 criminal offences. Indeed, this is an extreme interpretation, and ought not to be relied upon except as a measure of general State intervention in judicial litigation and, of course, social control.

Less extreme results occur if we accept either B or C computations. Computation B, which ignores the number of Licences Renewed and comprises returns for both the Circuit and District Courts, shows a criminal content which exceeds that based on computation C for every year up to and including 1979. Thereafter computation C, which comprises lower court litigation only and includes the number of Licences Renewed as civil actions, exceeds that of B. In 1981, there was a criminal content of 79.1% or one civil action to 3.8 criminal cases determined in the District Courts.

If we choose to ignore the number of Licences Renewed, that is, by treating them as neither civil nor criminal matter, then the criminal content becomes much more pronounced, as is evidenced by computation D. Indeed, throughout the seventies the civil/criminal ratio exceeds what it was in either 1946 or 1951.

We can see that the criminal business of the courts throughout the seventies (on whatever reading we choose) has never been less than 70% of contemplated litigation. And at no time since 1936 has the annual number of civil actions exceeded the number of criminal offences listed in the courts.

Obviously our interpretation of the criminal content and the civil/criminal ratio (the one being a more direct way of recording the other) will reflect our preconceptions with the role of the State. As an index, it not only records the amount of State control and the number of interventions necessary to police civil society, whether real or merely imagined – but it also reflects the quality of Irish civilisation. Were the number of civil actions to exceed the number of crimes processed by the
courts, then, necessarily, there would have had to be a qualitative social change from repressive measures of social solidarity to restitutive ones. In Durkheimian anthropology the civil/criminal ratio, coupled with an elaborate classification of restitutive and repressive sanctions, is used to indicate change in the social sphere (between mechanical and organic solidarity), in the criminal sphere (between religious and human crimes), and in the penal sphere (between the severity of punishment and the use of imprisonment).

For these purposes, however, it is sufficient to note that, since Licences Renewed exhibited neither the use of a restitutive nor a repressive sanction, the number of repressive sanctions considerably outstripped restitutive ones throughout the seventies (Computation D).

**Part 4: Indictable and Non-Indictable Offences**

It is advisable at this stage to distinguish between certain types of crime. This may, perhaps, mitigate the more sinister side of the civil/criminal ratio. For our purposes it is sufficient for the moment to classify offences into three broad types: indictable offences, minor (or summary) indictable offences, and non-indictable offences. Generally speaking ‘indictable’ means ‘more serious’ and, consequently, triable by judge and jury. ‘Minor (or summary) indictable’ means ‘less serious’ and, consequently, under certain conditions, may be tried before a District Justice. ‘Non-indictable’ means ‘even less serious still’ and, consequently, these offences are always tried before a District Justice.

Non-indictable offences comprise a vast array of regulatory wrongdoings, e.g. offences in connection with dog-licences, the liquor laws, vagrancy, begging, motoring, highway offences and such like. These regulatory offences are of an expanding nature and since our accession to the EEC have witnessed enormous proliferation in respect of areas like vehicular traffic and travel, drink and drugs, computer crime and all sorts of documentation both national and international.

Indictable offences, by contrast, being no less expansive, are offences which the law regards as more serious. The Constitution prescribes that offenders so charged should have the right to be tried by a judge and jury. These offences range from the more serious crimes of murder, manslaughter, rape and armed robbery, to the most venial crimes of larceny and receiving.

It can, of course, be equally argued that non-indictable offences range from the most venial type of offences, e.g. failing to display a Road Fund Licence, to the most flagrant offences of careless or dangerous driving. Though convenient for statistical purposes, this classification and the legal reasoning which supports it is, as we shall see, by no means simple. The difficulty arises when we come to distinguish between ‘indictable’ and ‘minor (or summary) indictable’ offences.

Since all criminal cases begin in the District Court and are either heard there or sent forward for trial, for sentence, or on appeal, we cannot accurately distinguish between indictable and non-indictable offences from the District Court returns. From the Gárda Commissioner’s Annual Report, however, as well as from The Statistical Abstracts, the number of indictable offences recorded by the gárdái and the number of non-indictable offences in which proceedings were taken can be compiled (*Table 1.7*).

There was a decrease in non-indictable offences between the early and late fifties, after which they increased continuously. Between 1951 and 1955 there were on average 125 thousand such offences
TABLE 1.7  Trends in Indictable and Non-Indictable Offences

<table>
<thead>
<tr>
<th>000's</th>
<th>Indictable Offences Recorded</th>
<th>Non-Indictable Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951–55</td>
<td>14 (100)</td>
<td>125 (100)</td>
</tr>
<tr>
<td>1956–60</td>
<td>15</td>
<td>93</td>
</tr>
<tr>
<td>1961–65</td>
<td>16</td>
<td>114</td>
</tr>
<tr>
<td>1966–70</td>
<td>24</td>
<td>167</td>
</tr>
<tr>
<td>1971–75</td>
<td>43</td>
<td>260</td>
</tr>
<tr>
<td>1976–80</td>
<td>63 (450)</td>
<td>354 (283)</td>
</tr>
<tr>
<td>1981</td>
<td>89.4 (638)</td>
<td>474.9 (380)</td>
</tr>
</tbody>
</table>

Source: Statistical Abstracts and Police Reports

*It is not always clear whether the Police Reports or the Statistical Abstracts refer to non-indictable offences or non-indictable persons. In 1973, for example, the Garda Commissioner's Annual Report refers to Appendix E as follows:

“Non-Indictable Offences - Proceedings Dealt with Summarily - Proceedings and Results in Year 1973”

In 1975 Appendix E is referred to as:

“Non-Indictable Offences - Proceedings and Persons Convicted in Year 1975.”

In the 1979 Statistical Abstracts the 1975 figures are referred to as “Number of Persons Proceeded Against…”

TABLE 1.8  Trends in Selected Non-Indictable Offences Annual Average Numbers (figures in brackets show the extent of the increase, treating the annual average for 1958–60 as a base of 800)

<table>
<thead>
<tr>
<th>000’s</th>
<th>Assault</th>
<th>Drunk Driving and Attempts</th>
<th>Dangerous and Careless Driving</th>
<th>Compulsory Insurance Offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>1958–60</td>
<td>1.2 (100)</td>
<td>0.5 (100)</td>
<td>3.0 (100)</td>
<td>2.4 (100)</td>
</tr>
<tr>
<td>1961–65</td>
<td>1.7</td>
<td>1.0</td>
<td>4.7</td>
<td>3.8</td>
</tr>
<tr>
<td>1966–70</td>
<td>2.6</td>
<td>1.2</td>
<td>6.5</td>
<td>6.8</td>
</tr>
<tr>
<td>1971–75</td>
<td>4.8</td>
<td>2.9</td>
<td>8.3</td>
<td>21.2</td>
</tr>
<tr>
<td>1976–80</td>
<td>6.1 (508)</td>
<td>6.1 (1220)</td>
<td>10.9 (363)</td>
<td>40.0 (1667)</td>
</tr>
<tr>
<td>1981</td>
<td>6.2 (517)</td>
<td>7.8 (1560)</td>
<td>11.8 (393)</td>
<td>47.6 (1983)</td>
</tr>
</tbody>
</table>

Source: Statistical Abstracts and Police Reports
proceeded against annually. This average more than doubled for the period 1976/80, and in 1981 474.9 thousand were proceeded against, an increase of 280% on any year between 1951/55.

Indictable crimes recorded, on the other hand, showed a marginal increase throughout the fifties, and have in general continuously increased at a faster rate than non-indictable offences. Non-indictable offences, however, have always occupied a much broader base than indictable offences. On average between 1951/55 for every indictable offence recorded there were 8.9 non-indictable ones proceeded against. Between 1976/80 this ratio fell to 1/5.6. And in 1981 there were almost half a million non-indictable offences proceeded against or 5.3 offences per indictable offence recorded.

Even within the non-indictable category, some types of offences have increased at a faster rate than others. Of those selected (Table 1.8) the fastest rate of increase occurred with motoring insurance offences. Between 1958 and 1960 less than two and a half thousand of such offences were proceeded against. By 1981, no doubt due in part to the use and popularity of motoring at this time, this type of offence has arisen to almost 48 thousand offences.

Insurance offences were followed by offences related to drinking and driving. Minor assaults and dangerous and careless driving offences shared the same general increasing trends, though neither type of offence increased at the same rate as those related to insurance and drunk driving.

In 1981 there were 67.2 thousand non-indictable offences committed by motorists and cyclists solely in relation to driving and insurance. This figure only accounts for 15% of all non-indictable offences in 1981. For the same year there was a total of 89.4 thousand indictable crimes recorded by the gárdáí, most of which related to property offences.

Given these magnitudes it is perfectly arguable that non-indictable offences are in most respects every bit as serious and deserving of our attention as property offences. In this respect it is to be noted that for the three-year period 1979 to 1981 there were 1, 589 fatal traffic accidents on Irish roads in respect of which 1, 749 persons died.

**SUMMARY**

1. The science of criminology attempts to harmonise fact and theory. Within the discipline there are two broad theoretical configurations – conflict and consensus theory. ‘Labelling’ theory can be seen as a third way highly relevant to the CJS.
2. Preliminary matters regarding i. The problem of data-selection, ii. The relation of civil to criminal law, iii. Conflict and consensus theory, and iv. The role of the State, are essentially problems for theory.
3. The immediate concern is to discover and describe the facts as they relate to the CJS (Criminal Justice System) in Ireland between the years 1950 to 1980.
4. It can be estimated that the total number of cases contemplating litigation increased from 229,190 in 1936 to 626,297 in 1979, an increase of 173% and rising. Over the period, the High Court – generally speaking – dealt with less than 2% of all litigation, the Circuit Court dealt with between 5% and 8%, and the District Court dealt with circa. 90%. 1981 represented a significant shift from the lower to the higher courts.
5. As one might intuitively expect, there is evidence to suggest that the incidence of litigation, both civil and criminal, is related to demographic movements as well as to the formation of capital. In 1981 the combined Dublin, Eastern and South Eastern circuits accounted for 62.2% of civil and 64.6% of criminal litigation.

6. It can be estimated that throughout the seventies the criminal content of total litigation was never less than 70%. The criminal/civil ratio is an index representing the use of repressive sanctions over restitutive ones and, as such, it reflects ‘the quality of our civilisation.’ It can be estimated that in 1936 there were 2.3 repressive sanctions to every restitutive one recorded. In 1981 there were 7.9.

7. The distinction between indictable and non-indictable (now arrestable/non-arrestable) offences is a legal and procedural convenience. Between 1951 and 1955 there were on average 14 thousand indictable and 125 non-indictable offences recorded per annum by the Gárdáí, that is, one indictable to 8.9 non-indictable offences. In 1981 there were 89 thousand indictable and 475 thousand non-indictable recorded, that is, one indictable to 5.3 non-indictable offences.

8. Since the late 1950s there was a steep increase in the number of indictable and non-indictable offences recorded, particularly those offences relating to car-driving and insurance.

9. For the remainder of these lectures we are concerned mainly with indictable offences.

Notes


9 See 5 above. See also Taylor, I: Law And Order (Macmillan, 1981);

10 After the fall of the Berlin Wall but more so after 9/11 the ‘new order’ envisaged criticism as subversion and academic pursuits as thoroughly laced with punitive consequences. The response to Bush and Blair was answered immediately in Ireland. At another level, it was perfectly noticeable that not one social scientist, Sociologist, Child-Care worker, or Criminologist had any criticisms to make about either the practices of clerical pedophilia in Irish schools, the Bishops who protected them, the role of Opus Dei and CORI (two religious bodies) and the Department of Education in silencing those who might criticise, or, for that matter, the circumstances under which the Irish citizen was obliged to pay damages for clerical abuse. See also: Clyde Prestowitz: Rogue Nation, (Basic Books, 2003); Dana Priest: The Mission: Waging War and Keeping Peace With America’s Military (Norton, 2003)


13 Ibid. It is hardly necessary to recall the controversial press coverage, either in Britain or America, following the Afghan war. See Irish Independent, Monday, October, 13, 2003


15 The embarrassing success of the worst aspects of the R C Church’s hegemony over every aspect of Irish life has made the practice of the social sciences quite impossible, even within the Universities. If the Children’s Act of 1908 was never amended – not in 100 years – it is purely because there is no such thing as social science in Ireland and the prevailing religious authorities want it that way. If there has been no Penal Commission or enquiry into the Prison system in 100 years, it is logical to conclude that neither the Church nor the State want such an enquiry. Moreover, if out of national and international embarrassment, something by way of an inquiry is contemplated, it is invariably directed and dominated by Jesuit Sociologists’. See MacBride, Sean (ed.) Crime and Punishment, Ward River Press Ltd., Dublin 1982, p. 60) and Report of the Committee of Inquiry into the Penal System (Chair: T. K. Whitaker Pl. 3391) Stationery Office, Dublin 1985


17 Emile Durkheim: The Division of Labour, trans. By G. Simpson, 1933, p. 68 See also the author’s Emile Durkheim on Crime and Punishment, op. cit.

18 Hanna, The Hon. Mr. Justice: Irish Free State Statute Law, 1922 to 1928 (Dublin, 1929, pp. 17/18); See also reference at www.vindicator.ca/history/trinity2.asp

19 Ibid. See note 17 above
20 See Commissioners of Public Works v. Kavanagh 1962 IR 216; 97 ILTR 180; Macauley v. Minister for Posts and Telegraphs, 1966 IR 345; The State (Burke) v. Lennon 1940 IR 136; Ryan v. Attorney General, 1965 IR 294


22 As part of the Constitutional Amendment package in 2002, the Irish people voted, inter alia, to prohibit the death penalty’s re-introduction ‘under any circumstances, even in time of war’, but had no difficulty supporting the Bush/Blair effort to do so.

23 “The counties surrounding Dublin will also experience rapid increases with Kildare rising by 2.8% a year, Meath by 2.3%, and Wicklow by 2.2%. It is also anticipated that the labour force of the Republic will grow at an annual average of 14,300. See Census of Population of Ireland, 1981” (Preliminary Report), CSO, Government Publications. See also B.M. Walsh: The Structure of Unemployment in Ireland, 1954–72, ESRI, Oct., 1974; NESC, No. 63, July 1982; National Economic and Social Council: Urbanization and Regional Development in Ireland, No. 45, The Government Publications Sale Office, Dublin, p. 32

The Dublin Metropolitan area now extends between Howth and Greystones in Wicklow with over a third of the national population. See also Telephone Directory 24

24 Ibid. 25


Q: How can we make sense out of garda statistics? A: With great difficulty!

Ignoring the advent of PULSE and the 2001/2 Garda Reports, we have found it convenient to divide this lecture into two separate but related parts. Part I deals with ‘Criminal Statics’ and Part II deals with ‘Criminal Dynamics’. These rather pretentious names simply mean that we want to examine the composition of indictable crimes, and the manner in which they were processed by the police and the courts for one particular year (Part I).

We then want to find out in what manner the process has changed over time, what trends are established, and, indeed, if there is anything about the system which remains fixed and constant all the time. (Part II).

The following list of contents, replete with tables and notes will help us focus on the two-part concerns of this lecture.

**Part I: CRIMINAL STATICS**

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