Irish Association for the Study of Delinquency

Conference 2004

Positive Interventions and Effective Use of Sanctions for Offenders

Seventh Annual Conference

Cavan Crystal Hotel, Cavan

3rd, 4th and 5th November 2004

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INTRODUCTION

THE HON. MR. JUSTICE MICHAEL MORIARTY, PATRON IASD

Even as recently as the early 1990s, there was a marked and painful shortage of dialogue and liaison between the different interest groups that comprise what might loosely be called the criminal justice industry. Garda Officers, Prison staff, Probation Officers, other legal civil servants, legal practitioners, judges and others involved enjoyed no common forum in which matters of mutual interest might be discussed formally or informally. Accordingly, contacts between the various individuals involved were generally slight, limited to their duties in individual criminal cases, and sometimes marked by a fair element of mutual distrust. The notion of occasional dealings with legal academics or with elected politicians seemed even more far-fetched.

It was against this unpromising background that in and about 1993-1994, some tentative and embryonic contacts took place between a number of individuals who felt that the practicalities of operating a hard-pressed criminal justice system could only benefit from some degree of structured contact and association. What might have been a protracted gestation period was greatly accelerated by a study visit to Ireland by the Scottish Association for the Study of Delinquency. In the course of this, firm associations and friendships were struck and, very largely at the urgings and promptings of Sheriff Richard Scott of Edinburgh and Mrs. Evelyn Schaffer of Glasgow, the Irish Association for the Study of Delinquency came into being. Foremost among the early activists were Martin Tansey, long time Chief Probation Officer and now Association Chairperson; Seán Aylward, now Secretary General of the Department of Justice, Equality and Law Reform; Judge Gillian Hussey of Kilmainham District Court; Bernard Owens of An Garda Síochana; Kieran O'Dwyer of the Garda Research Unit; and Mary-Ellen Ring, BL, Law Library.

From modest beginnings, the number of members enrolled and range of interest groups involved has steadily increased, culminating in an overall attendance of 84 at the November 2004 Conference of the Association at the Cavan Crystal Hotel, the papers and contributions to which form the subject matter of this Report. Apart from

hearteningly increased attendance and involvement from within this jurisdiction, there was sizeable representation from Northern Ireland, Scotland, and England and Wales. A broader international dimension was further provided through important and challenging papers presented by distinguished visitors from Canada and Finland. The annual conference of the Scottish Association is now by common consent regarded as the most important criminological conference each year throughout Scotland. Some work remains to be done if this is to be emulated in Ireland but, more than on any previous occasion, the omens in Cavan were that this is a feasible, desirable and indeed necessary aspiration.

As is self-evident from the title, the bias of the Association has been towards the enhancement of the Irish justice system. Many powerful presentations have in recent years been made at the Society's seminars and conferences on such vital matters as juvenile substance abuse and teenage suicides. An increasing involvement on the part of Government Ministers and other elected politicians who have attended a number of Conferences, of university academics in criminology and sociology, and of a wide range of community-based associations has also led to a welcome diversification of the range of persons contributing. Some study and exchange of learning is of course a vital component of the Association's ongoing plans, but perhaps just as much is involved in different people and groups within the system getting together from time to time in a collegial setting and discussing each others' problems, needs and aspirations. For representatives of some of the more sedate constituencies, Association involvement may even fulfil a need to get out more! Even if it was only for this element of *glasnost* following the long years of minimal contacts, the ongoing development of the Association can surely only benefit the Irish justice system as a whole.

OPENING ADDRESS

MARTIN TANSEY, CHAIRPERSON IASD

Good afternoon ladies and gentlemen, welcome to our Seventh Annual Conference – Positive Interventions and Effective Use of Sanctions for Offenders. A warm welcome to those who have travelled long distances. It is the Association's hope that you will find the days and evenings worthwhile experiences. I particularly want to welcome our speakers and workshop presenters.

The Association, since its foundation, has forged strong links with the Scottish Association and I am delighted to welcome Sheriff Richard Scott, who has been supportive from the very beginning of our existence and attended our first Conference. He has agreed to be one of our after-dinner speakers on Thursday evening.

This year for the first time it has been possible to offer a number of bursaries to both postgraduate students and those from non-governmental organisations working with offenders or ex-offenders. This was made possible through the generosity of the following organisations:

- Irish Prison Service,
- Probation Board Northern Ireland,
- Probation & Welfare Service,
- Special Residential Services Board and
- the Association itself.

When you registered and received the Conference Pack, the Chatham House Rules came into effect, releasing you from your organisation/agency titled position, thus enabling you to participate as an individual. The Conference theme is on the issue of how to apply effective sanctions – striking a balance between the use of community sanctions and imprisonment. It presents an opportunity to examine the workings of criminal justice, its strengths and weaknesses and where should it be going. It raises a number of questions:

- What evidence is there of the effectiveness of action taken through criminal justice intervention?

- Do sentences/sanctions produce the outcomes hoped for by the Courts?

- Are sanctions imposed and managed in the community effective?

- Do prison programmes, where in place, work?

- The recidivism rate in Ireland is very high when compared to countries of similar size and population.

- What is effective in enabling offenders to give up offending?

- Should the Courts have an increased role in sentence management and would this have a positive effect on reducing re-offending?

- How might the sentencing framework be made more transparent and public confidence in sentencing increased?

Legislation enacted decade after decade, in the criminal law sphere, utilised sanctions of imprisonment or fines or both with no formal community (non-custodial) sanctions.

This country is rightly proud of the contribution it has made to the United Nations and to Europe. It is generally pro-active in implementing conventions and recommendations.

One area in criminal law this country has not taken due cognisance of is The Minimum Rules for Non-Custodial Measures adopted at the UN Sixty Eight Plenary Session on 14th December 1990 on the recommendation of the UN's Committee on Crime Prevention and Control.

The Rules, more commonly known as the Tokyo Rules, have the following amongst their

recommendations:

- Member States to apply the Rules in their policies and practice.

- Invites Member States to bring the Rules to the attention of, in particular, law enforcement officials, prosecutors, judges, probation officers, lawyers, victims, offenders, social services and non-governmental organisations involved in the application of non-custodial measures, as well as members of the executive, the legislature and the general public.

- Requests Member States to report on the implementation of the Tokyo Rules every five years beginning in 1994.

I am not going to ask how many of you have a copy of the Rules or have read them or speculate on the Report Ireland presented to the UN in 1999 or indeed what will be included in the 2004 Report.

To avoid any confusion the Tokyo Rules are applicable to those aged eighteen or over.

The UN Rules applicable to persons under eighteen years are set out in the Minimum Rules for the administration of Juveniles and Young People and are more commonly known as the Beijing Rules.

The relevant Parts of the Children Act 2001 are compliant with the Beijing Rules.

Each Member State is obliged to report on the implementation of the Beijing Rules every five years, with the next progress review in 2005.

The Council of Europe – European Rules on Community Sanctions and Measures - adopted by the Committee of Ministers on 19 October 1992 recommends:
"that the Government of member states be guided in their internal legislation and practice by the principles set out in the text of the European rules on community sanctions and measures, appended to the present recommendations, with a view to their progressive implementation and to give the widest possible circulation to this text".

No legislation has been introduced which takes due cognisance of either the Tokyo Rules or the Council of Europe Rules. In fact since the foundation of the State there has been just two pieces of legislation providing for a formal community sanction.

(i) The Misuse of Drugs Act 1977 as amended, and the amendments in 1984, changed the fundamentals of the relevant sections in the 1977 Act resulting in the Courts rarely using formal community sanctions.

(ii) The Criminal Justice (Community Service) Act 1983.

This Act predates both the Tokyo Rules and the European Rules and while a majority of the measures contained in it come within the Recommended Rules it falls down on the main principle – it is not a community sanction in its own right bur rather an option open to the Courts following the imposition of a sentence of imprisonment.

This country is the only common law jurisdiction where probation legislation as originally enacted ninety-seven years ago remains in place.

The Committee of Inquiry into the Penal System 1985, which was chaired by Dr. T.K. Whittaker, stated the following in regard to the use of imprisonment as a sanction:

The "principle" should be that sentences of imprisonment are imposed only if the offence is such that no other form of penalty is appropriate.

The prison population has almost doubled since that "principle" was stated and the Irish Prison Service Annual Report 2002 shows:

- 5,036 people were committed under sentence and of that number:
- 1,909 (38%) serve sentences of less than three months.
- 1,923 (18%) serve between three and six months.

In effect a total of 56% serve sentences of six months or less.

I draw the following conclusions:

- The concept of an integrated approach to offender management needs to be understood, emphasised and developed in a holistic manner.

- Experience internationally demonstrates that non-custodial measures are as valid in overall offender management as imprisonment.

- This needs to be reflected in policy thinking and formation of advancing and promoting the balance and take up of community sanctions and putting in place the necessary legislation. An appropriate level of investment in infrastructure systems and people is required.

- To enable this to occur innovative imaginative and radical reforms will be required in order to bring about a balancing investment between non-custodial and custodial measures.

- Investment in non-custodial management of offenders should not be seen as cheap in financial terms, but rather as being more cost-effective than custody if delivered in a co-ordinated manner.

- It must be remembered that crime is committed in the community by people from the community against individuals in the community.

The Tokyo & European Rules state as one of their guiding principles:
"that the Rules are intended to promote the greater community involvement in the management of criminal justice, specifically in the treatment of offenders as well as to promote among offenders a sense of responsibility towards society".

The challenge to the justice agencies is how they can effectively and safely re-integrate offenders in the community with the support of communities.

KEYNOTE SPEAKER

THE HON. MR. JUSTICE JOSEPH FINNEGAN, PRESIDENT OF THE HIGH COURT

Mr. Chairman, delegates, fellow guests, I am very pleased to have been invited to deliver the keynote address at this the seventh annual conference of the Irish Association for the Study of Delinquency. I am acutely aware of the importance of conferences such as this for furthering thinking in the criminal justice sphere.

I propose to outline for you developments in the criminal justice system since the formation of the Courts Service in 1999 with particular reference to the Central Criminal Court and the Court of Criminal Appeal. This represented a development of great significance for the Courts administration in Ireland. For the first time in the history of the State, that administration was granted a separate institutional identity, with a greatly enhanced level of control over, and responsibility for, the resources allocated to the operation of the Courts. Having forged a new identity separate from the Department of Justice, Equality and Law Reform the Courts Service focused upon the challenges posed by the need to deliver services to court users and the legal profession to the highest professional standards.

Huge demands are made upon the courts system in terms of the volume and complexity of proceedings both civil and criminal and in meeting the expectations of the legal profession and Court users. The Courts Service set itself as its first task the provision of appropriate infrastructure in terms of buildings and information technology. Since its formation, there has been an investment of some €150 million in improving the fabric of existing court buildings and the construction of new buildings and €120 million in information technology. The main court building in each county in Ireland has been entirely restored apart from two where works are continuing. The progress in the areas of buildings and technology has been much more rapid and comprehensive than could have been anticipated and the benefits of the large investment are already being felt in terms of increased efficiency within the courts system and in improved facilities for barristers and solicitors, the parties, jurors and other court users.

I should also refer to the proposed Criminal Court Complex which will be modelled on the most modern buildings of that type in the United Kingdom and continental Europe. The new complex will be located close to the Phoenix Park and will contain 23 dedicated criminal courts for the Central Criminal Court, the Circuit Court and the District Court and also for the Court of Criminal Appeal. Work is expected to begin next year and to be completed early in 2008. The courts will be equipped with the latest technology including video conferencing facilities and audio digital recording, both of which have been shown to increase the efficiency of the operation of criminal courts in other jurisdictions. Bail applications and remands can be conducted using video link to the prison: this will greatly reduce the burden on the prison service in transporting prisoners to and from court. The system will also enable solicitors and counsel in court to consult over video link with their client in absolute security.

The High Court in exercising its criminal jurisdiction in the Central Criminal Court faced serious difficulties at the time of the formation of the Courts Service. The High Court has full jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal. Its jurisdiction extends to the question of the validity of any law having regard to the provisions of the Constitution. The High Court exercising its criminal jurisdiction in the Central Criminal Court and deals exclusively with murder and rape cases and in these circumstances alternatives to custodial sentences are rarely relevant. In relation to murder, the Court has no discretion as to sentencing, a life sentence being mandatory.

The main difficulty facing the Court was that of delay. The legislative structure underlying the Court meant that no more than four Judges could sit in the Court at any one time. There was a delay of two years between a case being ready for trial and the date for hearing. If the hearing did not take place, as happened not infrequently because an earlier case over-ran or witnesses were not available due to illness, a further delay of two years was frequently incurred. Such delay was clearly unacceptable in relation to such serious crimes. Legislation has now been enacted and it is now possible for me to assign additional Judges to the Court. Even in advance of this however considerable progress has been made and the delay between a case being ready for trial and the hearing by the end of 2003 had been reduce to twelve months and now stands at approximately nine

months. By the end of this legal year I am hopeful that a trial date can be given within what I consider the optimum timeframe of four to six months.

The most influential Court within the criminal justice system is the Court of Criminal Appeal and it is this Court which determines the law in relation to criminal matters and trials and sets the standards for sentencing. The Court consists of a Judge of the Supreme Court and two Judges of the High Court and hears appeals by persons convicted on indictment in the Central Criminal Court, the Circuit Criminal Court and the Special Criminal Court. Again this Court was subject to excessive delays. Over the past two years additional resources were assigned to the Court and a blitz carried out on the cases awaiting hearing with the result that the delay has now been halved from two years to one year with considerable further improvement expected before the end of the current legal year. This has been achieved by greatly increasing the frequency with which the Court sits. This, however, has been at the expense of other lists but is recognition of the importance of the prompt and efficient administration of criminal justice. With the additional resources soon to become available in the form of four additional High Court Judges, the Court will sit regularly throughout each term rather than as had been the practice only on the Monday of each week. I am confident that this will ensure that the delays which formerly affected the Court will not recur. The Court of Criminal Appeal deals with appeals against conviction, appeals against sentence and appeals against both conviction and sentence. In addition, under the Criminal Justice Act 1993 section 2, the Director of Public Prosecutions may appeal against sentences which are regarded as unduly lenient. It is a matter of basic justice that a convicted person should know as soon as possible the sentence which he will have to serve. Accordingly it is important that appeals against undue leniency should be disposed of very promptly indeed and I am now happy that the Court is in a position to achieve this objective.

One difficulty with the Court of Criminal Appeal in the past has been that due to limited judicial resources the constitution of the Court was constantly changing. As a result, particularly in the area of sentencing, it was difficult for the lower Courts which depend on that Court for guidance to find a consistent and coherent line of authority on sentencing in the Court's reported judgements. With the additional resources which will shortly be available in accordance with the recommendations of the Fennelly Report the Court will be consistently constituted from a small number of Judges which will assist in

developing its jurisprudence and its being of more assistance to the lower Courts both in terms of the criminal law itself and the principles of sentencing. In addition it is planned to make available statistics on sentencing which will be of assistance to a sentencing Judge: these will reflect not just the those cases where a reserved judgement on sentencing is handed down by the Court of Criminal Appeal but also the far greater volume of cases in which ex tempore judgements are given.

The creation of such a corps of specialist Judges within the area of criminal law will also be mirrored in other lists of the High Court. The practice has developed over the past three years of having specialist Judges deal with particular areas of law. An example is the creation of the Commercial Court and specialist Judges to deal with such matters as competition law, extradition and company law matters. In addition the Judicial Studies Institute provides continuing education and development initiatives for serving Judges on all aspects of the law. A budget of some €400,000 per annum is available for this purpose, approximately half of which over the past two years has been spent on IT training which is now more important than ever. This education process is ongoing and Judges frequently attend conferences such as today's with enormous benefit. Equally Judges partake in conferences to promote a wider understanding of our court system in both criminal and civil matters. I personally find attendance at conferences such as the present informative and productive. It is rare that a person would complain to me in my capacity as a Judge or draw to my attention failings within the court system. However, occasions such as this conference provide an opportunity for discourse outside the formal settings. These occasions are very important for keeping us the Judges in touch with Court users and are just as important as the formal sessions.

In these few words I hope to have convinced you of the commitment of the Judges to contribute to a more efficient criminal justice system, evidenced by our co-operation with the work of the Courts Service in improving the Court's infrastructure in terms of buildings and information technology and our commitment to and engagement in ongoing training and development.

It only remains for me to wish you all an informative, thought provoking and enjoyable time at this important conference.

SENTENCING AND SANCTIONS - FINLAND'S EXPERIENCE

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I INTRODUCTION

The Finnish justice system is manifestly rooted in western, continental legal culture with strong influence from neighbouring Nordic Countries. The Nordic countries share a long legal and cultural history. The connection between Finland and Sweden has been exceptionally close. For centuries, the same laws were in force in both Finland and Sweden, as up to 1809 Finland was part of Sweden. Between 1809 and 1917 Finland remained an autonomous Grand Duchy of the Russian Empire (but still maintaining its own laws). Finland declared independence from Russia in 1917. During the last Century, Finland has undergone three wars (the 1918 Civil War and the two wars against the Soviet Union between 1939 and 1944).

The exceptional wartime and post-war conditions made their mark also on Finnish criminal policy. For instance, the dire economic circumstances were reflected in the prison administration of the time. There was little scope for the treatment ideology, so prevalent in Denmark and Sweden, to catch on in the Finnish criminal policy of the middle of the 20th Century. Instead, the post-war crime increases led to stiffer criminal legislation in the 1950s. In general terms, the criminal justice system of Finland in the 1950s and 1960s was still less resourceful, less flexible and more repressive than that of its Nordic counterparts.

During the latter half of the 20th century, Finland underwent one of the most rapid structural changes seen in Europe, from a rural agricultural country to a developed post industrial Nordic welfare state and thereafter into a highly developed information society. These general structural changes are accompanied by fundamental criminal policy changes as well. Thus our country was changing from a country of high imprisonment rates into a society with a lower level of repression.

The first part of the text examines briefly the changes in the Finnish sanction policy from the 1960s. The second part deals with the main features of the present Finnish sanction

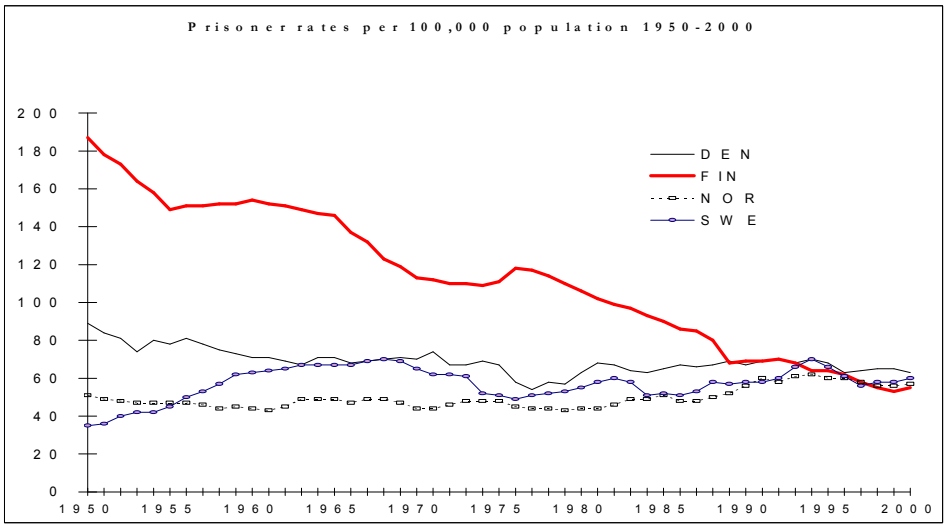
system. The third chapter takes some of the findings into a broader European context.

II THE FALL OF THE FINNISH PRISON RATES

A. The change

At the beginning of the 1950s the prisoner rate in Finland was four times higher than in the other Nordic countries. Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway were around 50. Even during the 1970s, Finland's prisoner rate continued to be among the highest in Western Europe. However, the steady decrease that started soon after the Second World War continued and during the 1970s and 1980s, when most European countries experienced rising prison populations, that of Finland kept going down. By the beginning of the 1990s Finland had reached the Nordic level of around 50–60 prisoners per 100,000 inhabitants.

Figure 1 Prisoner rates in Scandinavia (1950–2000)



Compiled from Falck, von Hofer and Storgaard 2003.

The change has been affected both by macro-level structural factors and ideological changes in penal theory, as well as legal reforms and changing practices of sentencing and prison enforcement. The role of these different factors obviously varies over time.

B. The ideology

Sentencing ideology. In the 1960s, the Nordic countries experienced heated social

debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). The criticism found a particularly apt target in the Finnish system where most of the old provisions of the Criminal Code of 1889 were still in force, representing a sharp contradiction between the values of the class-based society of the 19th Century and the rapidly developing social welfare state of the 1960s.

In Finland the criticism of the treatment ideology was merged with another reform ideology that was directed against an overly severe Criminal Code and the excessive use of custodial sentences. The resulting criminal political ideology was labelled as "humane neo-classicism". It stressed both legal safeguards against coercive care and the goal of less repressive measures in general. In sentencing, the principles of proportionality and predictability became the central values. Individualised sentencing, as well as sentencing for general preventive reasons or perceived risk, were put in the background.

Broadening the strategies of general criminal policy. This change reflects more than just a concern over the lack of legal safeguards. Behind this shift in strategies in criminal policy were more profound changes in the way the entire problem of crime was conceived. The theoretical criminal policy framework (as regards the definition of the aims and the means of criminal policy) underwent a profound change, as the social sciences and planning strategies merged with the criminal policy analysis. The aims of criminal policy were defined so that they were in accordance with the aims of general social policy. Cost-benefit analysis was introduced into criminal policy thinking. In making choices between different strategies and means, the probable policy effects and costs – to be understood in a wide sense, including non-economic costs for the offender – were to be assessed.

One result of all this was that the arsenal of possible means of criminal policy expanded in comparison with the traditional penal system. The possibilities of environmental planning and situational crime prevention in controlling crime were discussed in the late 60s. This new ideology was crystallised in slogans such as "criminal policy is an inseparable part of general social development policy" and "good social development policy is the best criminal policy".

The aims and means of criminal policy redefined. The emergence of the new planning strategies, the functionalistic approach to the problem of crime (the necessity doctrine) and the general mistrust in the effectiveness of penalties (repressive, deterrent or treatment oriented) all formed a theoretical background for the redefinition of the aims and strategies of criminal policy. The traditional main goals (such as simple prevention, the elimination of criminality or the protection of society) were replaced by more sophisticated formulas. From the 1970s onward the aims of criminal policy in Finland were usually expressed with a twofold formula: (1) the minimisation of the costs and harmful effects of crime and of crime control (the aim of minimisation), and (2) the fair distribution of these costs among the offender, society and the victim (the aim of fair distribution).

The aim of minimisation (not "elimination") emphasises the costs and the harmful effects of criminal behaviour instead of the minimising of the number of crimes. In so doing, it also draws attention to means which perhaps do not affect the level of criminality, but which do affect the harmful impact that crime has on different parties. By stressing that not only the costs of criminality, but also the costs and suffering caused by the control of crime must be taken into account, the formula draws attention to the material and non-material losses that arise e.g. through the operation of the system of sanctions. The aim of fair distribution brings into daylight the delicate issues of who should be responsible, and to what extent, for the costs and suffering involved in crime and crime control. The analysis of the different parties (the community and society at large, the potential or actual offender, the potential or actual victim) offers a framework for reasoned choices in the matter, identification of whom it would be fair and just to burden with the cost of different types of offences and situations, and whether the existing practices should be changed in the name of fairness and social justice.

The conceptualisation of the aims of criminal policy and the conscious cost-benefit thinking had a number of practical effects. One result of this new line of thinking was that the role of punishment came to be seen to be relative. Once regarded as the primary instrument of criminal policy, it came to be regarded as only one option among many.

Indirect general prevention. After the fall of the rehabilitative ideal, the aim and the justification of punishment was also subjected to re-evaluation. The shift was once again

towards general prevention. However, this concept was now understood in a different manner. It was assumed that this effect could be reached not through fear (deterrence), but through the value-shaping effect of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals. As a result of this process, the norms of criminal law and the values they reflect are internalised; people refrain from illegal behaviour not because such behaviour would be followed by unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.

This view of the functions of the penal system has a number of important policy implications. To put it briefly: the aim of indirect prevention is best served by a system of sanctions which asserts a moral character and which demonstrates the blameworthiness of the act. The mechanisms require a system that is enforced with "fair effectiveness" and that follows procedures which are perceived as being fair and just and which respect the rights and intrinsic moral value of those involved.

Policy conclusions. The general policy conclusions drawn from these ideological changes can be briefly summarised. In crime prevention, criminal law is only one means among many. Other means are often far more important. This does not mean that we could do without criminal law. It still is of vital importance but its mechanisms are more subtle and indirect than one usually thinks. The effective functioning of the criminal law is not necessarily conditioned by severe punishments, but by legitimacy and perceived fairness. Of course, this is not to say that sentence severity and direct general prevention (deterrence) lacks all relevance. But we should not overestimate the deterrent potential and we should be more aware of the more subtle mechanisms of indirect prevention in order to pursue both rational and human penal policy. We should be realistic as regards the possibilities of achieving short-term effects in crime control by tinkering with our penal system. More importantly, we should always weigh the costs and benefits of applied or proposed strategies of criminal policy. These were the tests that our earlier policy of imprisonment failed to pass. It was difficult to answer convincingly the question of why we should have three to four times more prisoners than do our Nordic neighbours. This also was the beginning of the series of legislative and criminal political reforms that started during the shift of the 1960s and 1970s.

C. Putting ideology into practice: Law reforms and sentencing policies

Between 1970 and 1990 all the main parts of the Finnish criminal legislation were reformed from these starting points. The common denominator in several law-reforms was the reduction in the use of custodial sentences. Systematic legislative reforms towards de-carceration started during the mid-1960s, and continued up till the mid-1990s.

Fines and conditional imprisonment. The Finnish judge has traditionally had quite a limited number of options when sentencing. The two basic alternatives to imprisonment have been conditional imprisonment (suspended sentence) and a fine. But these alternatives have been used quite effectively. The scope of fines and conditional imprisonment (suspended sentence) were extended in the late 1960s and mid 1970s also by a series of law reforms. The clear majority of offences are punished by fines in Finland. Traffic offences excluded, about 80% of criminal offences are punished by fines. Conditional imprisonment has widely been used to replace custodial sentences. From 1950 to 1990 the number of conditional sentences increased from some 3,000 to 18,000 sentences per year. In 1950, 30% of all sentences of imprisonment were imposed conditionally. In 2000 the rate was 63%.

Figure 2 The use of conditional and unconditional imprisonment from 1950 to 2000

	Unconditional N	Conditional N (all)	Conditional % of all prison sentences
1950	6,741	2,812	29.5%
1960	6,900	3,686	34.8%
1970	10,212	5,215	33.8%
1980	10,326	14,556	58.5%
1990	11,657	17,428	59.9%
2000	8,147*	13,974	63.1%

* Excluding sentences commuted to community service

Source: Statistics Finland

Drink driving and property offences. The development in general sentencing practices has widely been influenced by reduced penalties in two major crime categories: traditional property offences and drink driving.

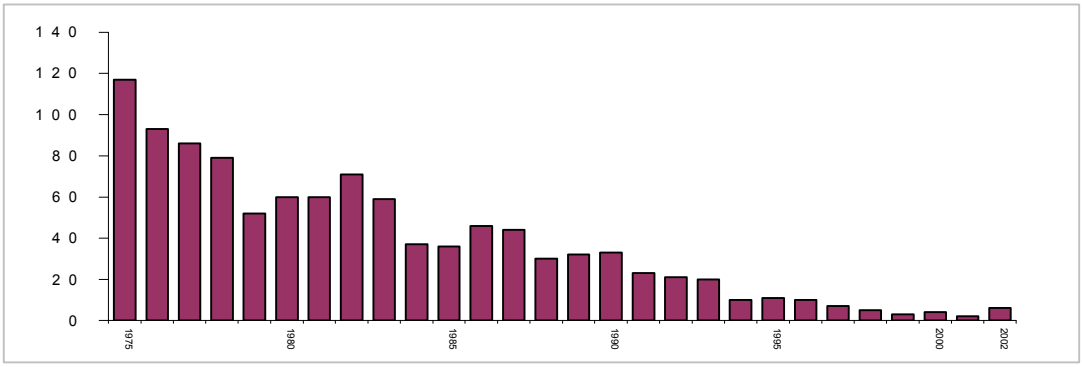
For example in 1950 the average length of all sentences of imprisonment imposed for

theft was twelve months. In 1971 the sentence was still 7.5 months, but in 1991 it was only 2.5 months of imprisonment. In the early 70s about 40% of offenders sentenced for theft offences received a custodial sentence. Twenty years later, this proportion had decreased to 10%.

Drink driving plays a special role in Nordic criminal policy. A substantial part of the Finnish prison problem during the 1960s resulted from fairly long unconditional prison sentences imposed for drink driving. During the 1970s this practice was changed in favour of non-custodial alternatives. In the early 70s, 70% of drink drivers received an unconditional sentence. Ten years later, this proportion had dropped to 12%.

Juveniles. There is no special juvenile criminal system in Finland, in the sense that this concept is understood in the Continental legal systems: there are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. However, the sentences imposed for young offenders are mitigated in several ways. There has also been a deliberate policy against the use of imprisonment for the youngest age groups. The willingness of the courts to impose custodial sentences on young offenders has decreased throughout the 1970s and the 1980s. In addition, the Conditional Sentence Act was amended in 1989 by including a provision which allows the use of unconditional sentence for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on practice. At the moment there are about one hundred prisoners between the ages of 18 and 20 and less than ten in the 15 to 17 age group, while as recently as the 1960s the numbers were ten times higher.

Figure 3 The number of young prisoners (15–17) serving a sentence, 1975-2002

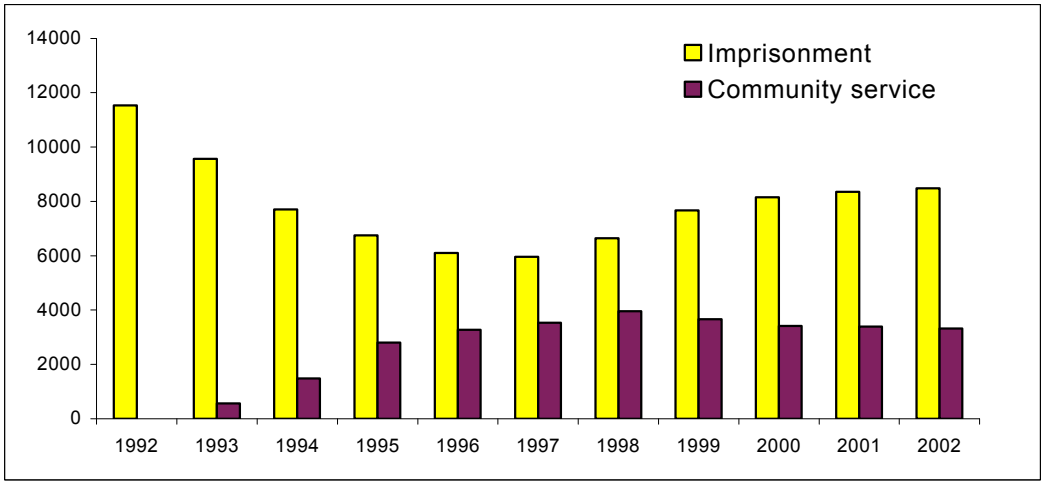


Community service. During the 1990s a new non-custodial sanction – community service – was introduced in the Finnish system with a specific aim to replace short prison sentences.

Community service is imposed in lieu of unconditional imprisonment for up to eight months. In order to ensure that community service will really be used instead of unconditional prison sentences, a two-step procedure is adopted. First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. If the result is unconditional imprisonment, then the court may commute the sentence into community service under the conditions prescribed in the law. The duration of community service varies between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly sixty hours of community service.

The legislators' idea, thus, was that community service should be used only in cases where the offender would otherwise have received an unconditional prison sentence.

Figure 4 Imprisonment sentences and community service sentences in the Finnish court practice 1992–2002



Source: Statistics Finland

Along with the increase in the number of community service orders, the number of unconditional sentences of imprisonment decreased between 1992 and 1997. Between

1998-2000 the number of community service orders had been falling. Now the situation seems to have been stabilised. It is reasonable to argue that, within a short period of time, community service has proven to be an important alternative to imprisonment.

Enforcement practices, parole and early release. Enforcement practices have contributed to this change. A series of legislative acts were carried out in the 1960s in order to restrict the use of imprisonment as a default penalty for unpaid fines. In the early 1970s the use of preventive detention was heavily confined and the use of parole and early release were heavily extended.

The system of parole (early release) has also proven to be a very powerful tool in controlling prisoner rates. The conditions for early release had been gradually released. Today all prisoners, except those few serving their sentence in preventive detention or serving a life sentence, will be released on parole. At the moment, the minimum time to be served before a prisoner is eligible for parole is fourteen days. A series of reforms has brought it down to this figure. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months and finally in 1989 from three months to fourteen days. In a system where the average stay in prison varies around 4–6 months, reductions in the minimum time to be served will have an immediate impact on the prison numbers.

D. Key factors behind the change

The decrease in the Finnish prison population has been the result of a conscious, long-term and systematic criminal policy. What made it possible to carry out these law reforms?

Political culture. Part of the answer could be found in the structure of Finland's political culture. The Finnish criminologist Patrik Törnudd has stressed the importance of the political will and consensus to bring down the prisoner rate. As he summarises, "those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland's internationally high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation" (Törnudd 1993 p. 12). This conviction was shared by the civil servants, the judiciary, the prison authorities

and, as was equally important, by the politicians.

The role of experts. Another, and closely related, way to characterise Finnish criminal policy would be to describe it as exceptionally expert-oriented: reforms have been prepared and conducted by a relatively small group of experts whose thinking on criminal policy, at least on basic points, has followed similar lines. The impact of these professionals was further reinforced by close personal and professional contacts with senior politicians and with academic research. Consequently, and unlike the situation in many other countries, crime control has never been a central political issue in election campaigns in Finland. At least the "heavyweight" politicians have not relied on populist policies, such as "three strikes" and "truth in sentencing".

Politics, trust and legitimacy. To explain why partisan politics has played a much smaller role in the Finnish criminal policy, as compared to the US and UK is, of course, another matter. A mere reference to the "wisdom of the Finnish politicians and their good contacts to penological experts" does not take us very far.

Parts of the penal changes in the US have been explained with a reference to the bi-polar structure of the political system and to the struggle for swing voters between the parties. The Finnish political field with its large number of political parties and broad-based coalition-governments offers less favourable settings for this type of vote-hunting.

The rise in harsh expressive policies has also been explained with a reference to various political reconfigurations which fit equally poorly to the Finnish system. It has been pointed out, for example, that in the US since the 1960s the scope of federal government activity and responsibility expanded into fields like health care, education, consumer protection, discrimination etc. and led to a spiral of political failures. This in turn led to the collapse of confidence. The following expressive and convincing actions against crime were, in part, to save the government's credibility. This too seems to have much less relevance in the Finnish circumstances. The political system has failed in one major respect – in its fight against unemployment– but in many other fields (such as education and social policy) the outcome has been reasonably good. As a result, the Finns seem to have a much higher confidence in both legal and political systems as compared to many other European countries, and especially the UK.

Figure 5 The level of trust (%) in different institutions

%	Finland	UK	Ireland	EU 15
Police	88	55	62	65
Legal system	69	37	50	48
Parliament	58	25	40	35
Government	59	19	39	30
Press	56	20	47	46
Charity	56	65	64	61
Prisoners /100,000 *	71	142	87	..

* www.prisonstudies.org, Eurobarometer 61/2004

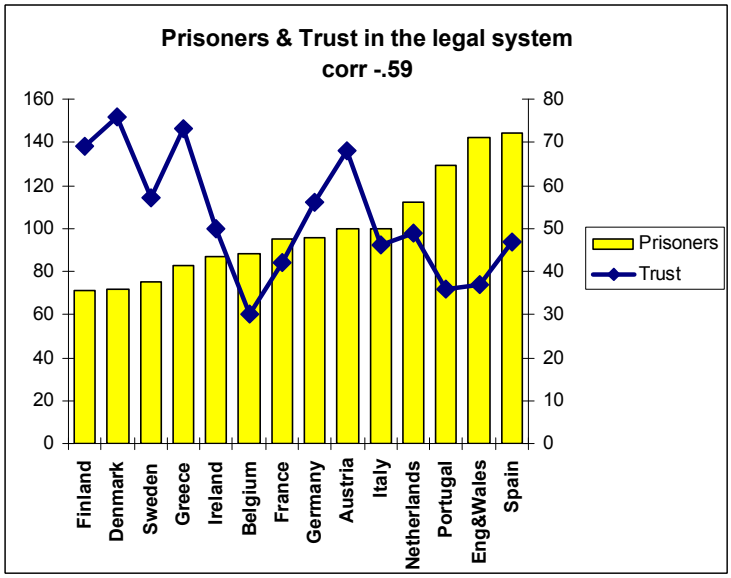
In most areas the Finnish figures are double those of the UK. The only exception is charity organisations which enjoy higher trust in the UK than in Finland. The "trust level" of Ireland seems to lie somewhere between Finland and the UK (as does also the prisoner-rate) .

The fact the Finns have retained a reasonable level of confidence in the political system may partly explain why there has been no need for expressive gestures in penal policies. Of course the problems we are dealing with are different. There is no race problem in Finland and, due to the low number of immigrants, there are far less ethnic and minority tensions to be exploited by right wing-parties.

Trust in the legal system and the police is well above the European level in Finland. The UK level is about half of the Finnish one. It is clear that rough figures such as these do not justify far reaching conclusions. Still, they might give some support for the assumptions that a system which seeks to uphold norm-compliance through trust and legitimacy, rather than fear and deterrence, may manage with less severe sanctions.

We might look at the same figures also from another angle: Comparing the trust figures and prisoner rates form several countries, one might conclude that an extensive use of incarceration may not be a successful way of granting trust and enhancing legitimacy.

Figure 6 Prison rates and trust in the legal system 2003/2004



Sources: http://www.prisonstudies.org, Eurobarometer 61/2004

As the figure itself confirms, the relation seems to be more or less inverse: high prisoner rates seem to correlate with low levels of trust. But again one must be very cautious about these tentative findings.

This leads to another element in the composition of Finnish criminal policy – the role of the media. In Finland, the media have retained quite a sober and reasonable attitude towards issues of criminal policy. The Finns have largely been saved from low-level populism. There is a striking difference between, for example, the British and Finnish crime reports in the media. The tone in the Finnish reports is less emotional, and reports are usually accompanied with research based data on the development of the crime situation.

In fact, the whole structure of the Finnish media market looks a bit peculiar. For the first, according to the information given by the World Association of Newspapers, the most busy newspaper-readers in Europe are to be founded in Finland and Sweden (90% of the population read a newspaper every day, while in France, Italy and the UK the figures are 44, 41 and 33%). Secondly, the clear market leader can be classified as a quality-paper, tabloids have a far less prominent role in Finland than in many other countries (including the UK). Thirdly, only small fraction (12%) of newspapers-distribution is based on selling single copies. Almost 90% of the newspapers are sold on the basis of subscription, which

means that the papers do not have to rely on dramatic events in order to draw the reader's attention each day. In short, in Finland the newspapers reach a large segment of the population and the market leaders are quality papers which do not have to sell themselves every day since distribution is based on subscriptions. This all may have an effect both on the ways crime is reported, and the ways people think in these matters.

In the end, most explanations in penal development return to fundamental changes in social, economic and demographic structures. Factors such as a high level of social and economic security and stability, equality in welfare resources and lack of racial and ethnic tensions seem to contribute to a low level of repression. As a whole, "the case of Scandinavia" might be used as an argument defending some of Garland's hypothesis dealing with the connections between the social and economic security and solidarity granted by the welfare-state and low level of penal repression. The period on penal liberalisation in Finland started on the point where Finland "joined the Nordic welfare-family". Even during the 1990s the welfare state was never openly discredited in Finland or in other Nordic countries. On the other hand Finland experienced heavy welfare-cuttings during the 1990s recession. Still, in political discourse all parties declare their intentions to defend this model.

But while seeking these macro-level structural explanations, one should not forget the micro-level institutional arrangements and specific professional practices.

Co-operation with the judicial authorities – the judges and the prosecutors – and their "attitudinal readiness" for liberal criminal policies has been of great importance in Finland. In many cases, legislators were strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before legislators had changed the law.

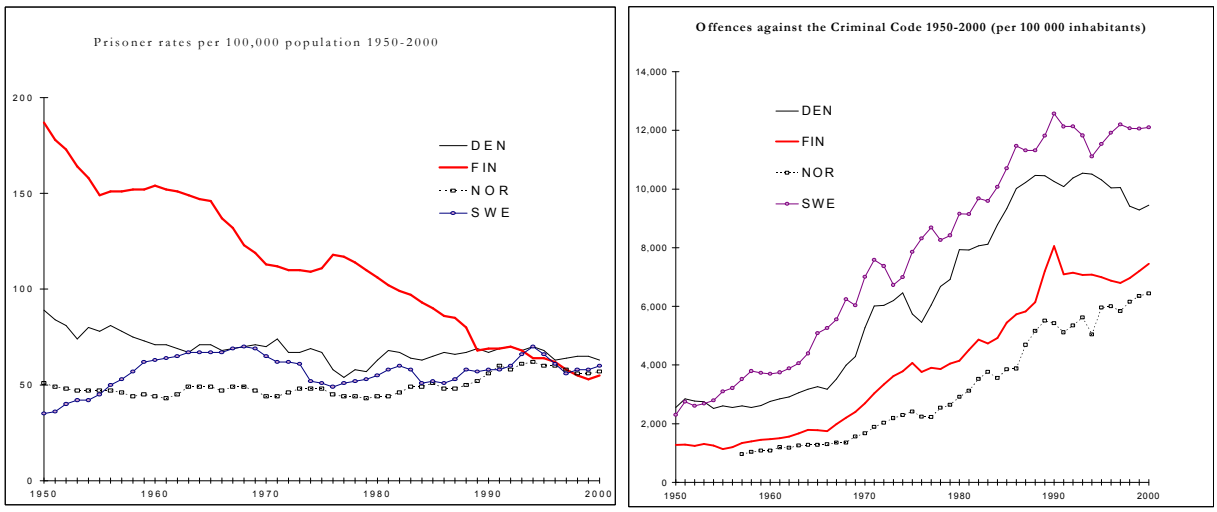
Also the fact that judges and prosecutors are trained career officials who also have received teachings in criminology and criminal policy in the law faculties is a part of the larger picture. In addition, different training courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in co-operation with the universities – have also had an impact on sentencing and prosecutorial practices.

The crime rate also matters. The fact that Finland has been – and still is – a peaceful and safe society with a low level of crime has made it easier to adopt liberal policies in crime control. Even so, it may be argued that this factor has a rather restricted explanatory force. In fact, over a period of approximately twenty years, and especially during the 1960s, Finland experienced severe social and structural changes in its development from a rural/agricultural economy into an industrial urban welfare state. This rapid development had its impact on the crime rate. There was a sharp increase in recorded crime from the mid-1960s to the mid-1970s, and again during the 1980s. However, this did not prevent the prison numbers from falling.

E. Prison rates and crime rates

A fundamental change in the use of imprisonment naturally leads to the question of its effects on crime rates. Time and time again, research confirms the fact that the use of imprisonment is relatively unrelated to the number of crimes committed or reported. There are, of course, several well-known methodological difficulties in combining crime rates with prison rates (and other changes in sentence severity). However, the possibility of comparing countries which share strong social and structural similarities but have a very different penal history gives an exceptional perspective to the matter. In fact, the Nordic experiences provide an interesting opportunity to test how drastic changes in the penal practices in one country have been reflected in the crime rates, as compared to countries which have kept their penal system more or less stable.

Figure 7 Prison rates and crime rates (1950–2000)



Compiled from Falck, von Hofer and Storgaard 2003.

A simple comparison between the Nordic countries reveals a striking difference in the use of imprisonment, as well as a striking similarity in the trends in recorded criminality. The fact that Finland has heavily reduced its prisoner rate has not disturbed the symmetry of Nordic crime rates. The figures start to differentiate only during the 1990s, as reported crime in Norway keeps going up, while the Danish figures go down. However, the imprisonment rates in both countries stay at the same level.

The figures also confirm, once again, the general criminological conclusion that crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.

III THE FINNISH SANCTION SYSTEM

A. Introduction

The Finnish constitution forbids the use of death penalty, as well as any degrading and inhuman punishments. The principal punishments are petty fine, fine, conditional imprisonment, community service and unconditional imprisonment. Conditional imprisonment can be combined with three (supplementary) penalties: The fine, community service and supervision (for juveniles). The law recognizes also a specific legal institution called the waiving of measures. It gives the police, the prosecutor or the judge the power to waive further measures under certain circumstances defined in greater detail in law. Accordingly, the law speaks of non-reporting, non-prosecution and withdrawal from the sentence.

In individual cases the type and amount of criminal punishment is determined by general sentencing rules and the principles defined in the Penal Code. The leading principle in sentencing is proportionality between the seriousness of the crime (harm and culpability) and the severity of the sanctions.

In the course of the 1990s, the formal neo-classical ideal of "simple, straightforward and predictable" sanction system has been somewhat softened by introducing more sentencing alternatives and by allowing more room for other criteria than those related

strictly to harm and culpability. Still, the legislator has stressed the need to maintain the inner relations of the penalties and their reciprocal order of severity as clear as possible. Accordingly, the principal punishments can be arranged in an order of severity from formal warnings to unconditional imprisonment: withdrawal from the sentence, fines, conditional imprisonment, community service and unconditional imprisonment.

The enforcement of criminal sanctions belongs to the administrative field of the Ministry of Justice. Until quite recently, the basic responsibility for probation work was on a semi-official organisation (the Probation and After-Care Association). However, the expansion of community sanctions and the reform of the Finnish constitution led to organizational change at the end of the 1990s. The new constitution requires that all activities involving the use of force and compulsory measures should be in the hands of state officials. Since the enforcement of community sanctions clearly contained these elements, the probation service was removed to the domain of the ministry of justice in 2000. This was done in connection with a larger organisational reform.

Today, both the prison administration and probation service are organized under a specific Criminal Policy Department in the Ministry of Justice. This department draws general strategic guidelines for the sanction policy. Practical work within the enforcement of community sanctions and prison sentences is conducted by a specific agency under this department, the Criminal Sanctions Agency. The functions of the Criminal Sanctions Agency is divided roughly into two parts: the Prison Service and the Probation Service.

The Prison Service enforces the prison sentences and fine conversion sentences judged by the courts of justice and detentions and apprehensions connected to trials. The Prison Service has altogether more than 30 prisons located in various parts of Finland: 17 closed institutions, 18 open institutions and two hospital units. In 2002 the annual average number of prisoners was 3,433 and the number of staff working in prisons was 2,785.

The Probation Service is in charge of community sanctions, which include the enforcement of community service, juvenile punishment, the supervision of conditionally sentenced young offenders and conditionally released prisoners (parolees). The Probation Service has 21 district offices and 11 local offices. In 2002 the average daily number of

community sanctions clients was some 4,200: the figure includes clients under supervision and the ones under the enforcement of community service or young offender punishment.

B. Fines

In Finland (as well as in other Scandinavian countries) fines are imposed as dayfines. The main objective of the dayfine-system (adopted during the 1920s) is to ensure "equal severity" of the fine for offenders of different income and wealth. In this system the number of day-fines is determined on the basis of the seriousness of the offence while the amount of a dayfine depends on the financial situation of the offender. The amount of the dayfine equals roughly half of the offender's daily income after taxes. The number of day-fines varies between 1 and 120.

An example: The typical number of dayfines for drunken driving with BAC of 1,000 would be around 40 df. The monetary value of one dayfine for a person who earns €1,500 euros a month would be €20. For someone with a monthly income of €6,000, the amount of one dayfine would be €95. Thus the total fine for the same offence would be for the former person €800 and for the latter €3,800.

If the fine is not paid it may be converted into imprisonment (default imprisonment) through separate proceedings.

The basic structure of the dayfine system has remained untouched since 1921. However, technical calculating rules (for the monetary amount of one dayfine), as well as the maximum number of dayfines and the rules concerning the use of default imprisonment, have been revised several times. Also the monetary value of dayfines has been raised from time to time. The basic aims of these reforms has been to raise the "penal value" of a fine in such a way that it would provide a credible alternative to imprisonment, especially in the middle rank offences, and to restrict the use of default imprisonment.

A fine may be imposed either in an ordinary trial or, in the case of certain petty offences, through simplified summary penal proceedings (penalty orders). The vast majority of fines are ordered in a summary process. In 1995 the power to order summary fines was transferred from the court to the prosecutor. In addition, for minor traffic offences there

is a summary penal fee that is set at a fixed amount (petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

Around 60% of cases handled by the courts result in fines. Of all criminal cases handled by the courts and/or prosecutor, over 80% are punished by fines. In numbers, this means that the courts impose some 35,000 – 40,000 fines annually, the prosecutors order some 200,000 penalty orders, and the police writes some 100,000 summary penal fees.

C. Conditional imprisonment

Sentences of imprisonment of at most two years may be imposed conditionally, provided that "the seriousness of the offence, the culpability of the offender manifested in the offence, or previous convictions of the offender do not require an unconditional imprisonment". Young offenders under the age of 18 years (at the time of the offence) may be sentenced to unconditional imprisonment only if special reasons call for this option.

If a conditional imprisonment alone is not considered to be a sufficient sanction for the offence, an unconditional fine ("subsidiary fine") may be imposed on the offender as well. If the length of the sentence is between one to two years, short community service order (20–90 hours) may be sentenced alongside conditional imprisonment. Young offenders under the age of 21 years (at the time of the offence) may be placed under supervision.

The three central sentencing criteria defined by the law are: the *seriousness of the offence*, *prior convictions* and the *age of the offender*.

The law gives basic priority to conditional imprisonment. However, the more serious the offence and the longer the sentence to be imposed, the less probable it is that there are sufficient grounds for imposing the sentence conditionally. When the sentence approaches the upper limit of two years, the original assumption in favour of a conditional imprisonment can be said to have been reversed. Special reasons must now be found for imposing the sentence conditionally.

In middle range offences, recidivism is the most influential criterion. In practice, a clear majority of first offenders are sentenced conditionally, provided that the sentence does not extend over one year. While considering the weight of prior convictions, the courts are led by the more general rules concerning the role of recidivism in sentencing. Individual factors that affect the consideration are the number prior of convictions, the degree to which the offence was planned and deliberate and the quickness of recidivism.

In view of the numerous negative side effects the prison environment may have on the subsequent life of young offenders, attempts have been made to limit the use of unconditional imprisonment for the youngest age groups. After the amendment of the Act in 1989, persons who committed an offence under the age of 18 cannot be sentenced to unconditional imprisonment "unless this is called for by weighty reasons". These reasons (favouring unconditional imprisonment) are connected, above all, with the seriousness of the offence and the offender's recidivism.

A fourth significant criterion when considering possible use of unconditional imprisonment has to do with various reasons of equity, reasonableness and "criminal political pragmatism". The possible accumulation of (other) sanctions, the advanced age and poor health of the offender, family circumstances and difficult social situation may favour the imposition of a conditional imprisonment even when the seriousness of the offence or the previous offences of the offender would have required that the sentence be imposed unconditionally.

Imposing the sentence conditionally means that the enforcement will be suspended for a specific probation period determined by the court (1-3 years). The practical meaning of the probation period is that the behaviour of the offender during that period determines whether the original sentence shall be revoked (enforced) or not. A person who has been sentenced to conditional imprisonment can be ordered to serve his or her sentence in prison if he or she commits a new offence during the probation period for which the court imposes a sentence of imprisonment. Thus, a behavioural infraction alone is not enough for enforcement of a conditional imprisonment.

Conditional imprisonment has a strong position as an alternative to incarceration. Currently, over 60% of prison sentences are imposed conditionally. The Finnish courts

impose annually some 13,000 to 14,000 conditional sentences. Each year around 400-500 sentences are revoked (less than 5% of annually imposed sentences).

The wide use of conditional imprisonment has met with some criticism, especially as applied to younger age-groups. Nonetheless, it is likely that extensive accumulations of conditional imprisonments are more rare than has been assumed. A study followed those who, during 1992, received their first conditional imprisonment. During the following three years, only 16% were again sentenced conditionally, and most of these received only one new conditional imprisonment. Only 2% of this sentencing cohort was given more than two additional conditional imprisonments during the three-year period. New conditional sentences were clearly more common among young offenders. Even among this group multiple sentences were presumably less common than assumed. Somewhat over 50% of young offenders received another conditional imprisonment. However, of all the young offenders who are again sentenced conditionally, three out of four received only one or two new conditional imprisonments. Of all conditionally sentenced young offenders 4% belonged to the "problem-group" who, over the next years, receive at least five additional conditional imprisonments and 10% to the group who receive at most four additional conditional imprisonments. Other sentencing alternatives have been sought for this group of young offenders. One such alternative that is being used on an experimental basis is juvenile punishment .

D. Community service

Community service is imposed only instead of unconditional imprisonment. The duration of community service may vary between 20 and 200 hours. The prerequisites for sentencing the offender to community service are (a) that the convicted person consents to this, (b) that the sentence does not exceed eight months and (c) that the offender is deemed capable of carrying out the community service order. Also (d), prior convictions may in some case prevent the use of this option.

The offender's ability to carry out the work is evaluated on the basis of a specific suitability report. This report may be requested by any one of the parties, the prosecutor or the court. The suitability report is prepared by the Probation Service. If the conditions of the community service order are violated, the court normally imposes a new sentence of unconditional imprisonment.

The two-step procedure. In order to ensure that community service will really be used in lieu of unconditional imprisonment, a two-step procedure was adopted: First the court is supposed to make its sentencing decision by applying the normal principles and criteria of sentencing without considering the possibility of community service. If the result of this deliberation is unconditional imprisonment (and certain requirements are fulfilled), the court may commute the sentence into community service. In principle, community service may therefore be used only in cases where the accused would otherwise receive an unconditional sentence of imprisonment.

Imposing community service order. The conditions for imposing community service order are defined in Penal Code section 6:11: *"An offender who is sentenced to a fixed term of unsuspended imprisonment of at most eight months shall be sentenced instead to community service, unless unsuspended sentences of imprisonment, earlier community service orders or other weighty reasons are to be considered bars to the imposition of the community service order. A further condition for the imposition of a community service order is that the offender has given his/her consent to the community service order and that he/she may be assumed to complete the community service order."*

The law creates a clear presumption in favour of community service over unconditional imprisonment. All offenders sentenced to an unconditional prison term of maximum eight months and who give their consent to community service and are considered able to carry out the service should be sentenced to community service. This presumption may, however, be overturned by the offender's previous criminality, especially by his or her previous community service orders.

Of the three criteria mentioned by the law, two - the consent of the offender and his/her suitability (ability to carry out the sentence) for community service - are unrelated to proportionality. The aim of the former is mainly to enhance the offender's own motivation, the latter aims to keep the failure rates at a tolerable level.

The court should always determine the number of hours of community service to be served. The length of community service is at least twenty and at most 200 hours. In practice the length of service depends on the original sentence of imprisonment. One day of imprisonment corresponds to one hour of community service. Thus, two months of

custodial sentence should be commuted into roughly 60 hours of community service.

Community service consists of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days each week. The intention is that this service would be performed over a period that roughly conforms to the corresponding sentence of imprisonment without release on parole.

Approximately half of the service places were provided by the municipal sector, some 40% by non-profit organisations and 10% by parishes. The share of the state has been under 2%. Ten hours maximum can be served in an effort to address the offender's substance abuse problem, either in terms of a traffic safety course organised by the Traffic Safety Organisation or at a treatment clinic.

The Probation Service approves a service plan for the performance of a community service order. The plan is prepared in co-operation with the organisation with whom the place of work had been arranged. The offender should be allowed an opportunity to be heard in the drafting of the service plan.

Supervision and the violation of the conditions. The performance of a community service order is supervised quite closely. The supervision is specifically focused on ensuring proper performance of the work. Unlike in the other Nordic countries, community service does not contain any extra supervision aimed at controlling the offender's behaviour in general. The supervision is strictly confined to his or her working obligations.

Minor violations are dealt with by reprimands. More serious violations are reported to the public prosecutor, who may take the case to court. If the court finds that the conditions of the community service order have been seriously violated, it should convert the remaining portion of the community service order into unconditional imprisonment. The hours that have already been worked should be credited in full to the offender. In this situation, the length of the imprisonment should be calculated by applying the general conversion scale.

The number of community service orders. The legislators aim was that community service should be used only in cases where the accused would otherwise have received an unconditional sentence of imprisonment. As the statistics below shows, this aim was well achieved.

Annually some 3,500 community service orders are imposed by the courts. This represents around 35–40% of the sentences of imprisonment which could have been converted (sentences of imprisonment of at most eight months). Over one half of the community service orders are imposed for drunken driving. Annually some 250,000–300,000 hours of community service are performed. This corresponds to some 400–500 prisoners (10–15% of the prison population) in the daily prison population (assuming that in the absence of community service a corresponding unconditional imprisonment of imprisonment would indeed have been imposed). A typical community service order is for 70 to 90 hours. The proportion of interrupted orders has varied between 11–15% (of those sentences started each year).

According to a study prepared by the Prison Administration Department of the Ministry of Justice, a slight, albeit systematic, difference in recidivism was noted between those sentenced to community service and those sentenced to imprisonment. Of those sentenced to imprisonment, 55% were again entered into the criminal register for a new sentence in the course of the following three years. During the same period, 52% of those sentenced to a community service order re-entered into the criminal register with a new offence. Over a five-year follow-up period, recidivism among those sentenced to imprisonment had increased to 67%, and recidivism among those sentenced to a community service order had increased to 61%. In the study, an attempt was made to ensure that both groups were comparable.

"Suitability" may be defended as a sentencing criterion from a pragmatic point of view, however, it creates a risk of social discrimination in cases when the offenders "unsuitability" results from social problems and difficult personal circumstances. This is typically the case, when an offender's substance abuse constitutes an obstacle to community service. In order to overcome this criticism meaningful alternatives should be provided for those who don't survive this option because of their substance abuse problem. A new type of sanction, "contract treatment" serves as an example of such an

approach.

A plan design for a new sanction: Treatment on contract. A new type of sanction, "contract treatment" is planned for those who suffer from drug or alcohol addiction. The contract plans have been inspired partly by the Swedish law (containing a sanction called "kontraksvard"), partly by the Finnish experiences in Community service. This new sanction is planned to replace only prison sentences, using the same "two-step procedure" employed in connection with community service: First the offender must be sentenced to unconditional prison sentence (max. 8 months). After that the court has to consider whether the sentence may be commuted to treatment. The main condition would be that the offender's criminality is heavily affected by his/her addiction and that the offender is consenting to the treatment. The duration of the treatment is 6 months to 2 years. Part of the treatment is delivered in institutional settings, part in an open environment. If the offender refuses to participate in the treatment or terminates the programme or otherwise breaches the conditions, the sentence may be commuted back to imprisonment.

E. Imprisonment

Imprisonment may be imposed either for a determinate period (at least fourteen days and at most twelve years for a single offence and fifteen years for several offences) or for life. Sentences of imprisonment may be enforced either in closed prisons or in open institutions.

If the sentence of imprisonment is at most two years in length, the sentence may be ordered and enforced in an open institution. A further requirement is that the offender is capable of working or participating in training offered at the institution and that he or she presumably will not leave without permission.

Open institutions hold about one-fourth of the current prison population in Finland. The regime in open institutions is more relaxed. Prisoners receive normal wages for their work. One quarter of their wages is deducted towards their maintenance. Open institutions are in practice prisons without walls: the prisoner is obliged to stay in the prison area, but there are no guards or fences. All open institutions are drug-free institutions in which an inmate is required to make a commitment not to use any

intoxicants.

Prisoners in closed prisons are obliged to work or to take part in vocational training or other activities unless they are relieved from that duty on the grounds of health, studies or for other reasons. Prisoners may also receive permission to pursue other studies either within or outside the institution. Part of the prison sentence may be served also outside the prison in a rehabilitation institution for substance abuse.

The system of prison furlough is in relatively active use: some 12-15,000 prison furloughs are granted annually (with an average prisoner rate around 3,500).

New behavioural and cognitive courses have been adopted as a part of prison activities. Rehabilitation programmes for those suffering from drugs and substance abuse still form the most important single form of treatment.

In Finland all prisoners except those few serving their sentence in preventive detention (see below) or serving a life sentence will be released on parole. In practice this means that 99% of prisoners released every year are released on parole. The minimum time to be served before the prisoner is eligible for parole is 14 days. In general, recidivists are always released after they have served two-thirds of their sentence, and first-time prisoners are released after they have served one-half of their sentences. In all cases, a further condition is that the prisoner has served at least fourteen days.

Release may be exceptionally postponed beyond these minimum periods in general by one month or two, if there is a clear risk of re-offending and / or the offender has violated the conditions of a prison furlough. In all, parole is postponed in about 6% of the cases.

The duration of parole corresponds to the amount of time remaining in the sentence, however, there is a minimum period of three months and a maximum of three years. About one fifth of those released on parole are placed under supervision.

The court decides on revocation of parole if the offender commits an offence during the period of his or her parole and on the grounds of a behavioural infraction. In practice all

parole revocations are based on new offences and only such an offences that would normally lead to a prison sentence may serve as a reason to revoke the parole order. Once the parole has been revoked, the prisoner may be released on a new parole once he/she has served the normal fractions of the "new sentence" plus one month of the "old sentence".

The Finnish law still contains a system of preventive detention. This system is reserved for those violent offenders who have previously been sentenced for a serious violent offence and who are deemed to present a particular danger to the life or health of another. The principal difference between preventive detention and normal sentences of imprisonment is that preventive detention involves an indeterminate sentence. The offender in question need not be released even after he or she has served his or her original sentence if the Prison Court (a special court for these cases) deems that he or she continues to present a danger in the manner specified in the law. However, the actual practice of preventive detention is quite restricted. Recently, there have been about 20–25 prisoners held at any one time in preventive detention. During recent years no one has been kept in custody longer than the term of their original sentence. The significance of the security system is therefore restricted to the fact that a small number of prisoners will not get the benefit of early release on parole.

Even in its limited use preventive detention contradicts the prevailing Finnish sentencing ideology, which is very reluctant to accept assessments of dangerousness as a basis for criminal sanctions. According to a recent proposal, the entire system of preventive detention would be abolished (as was done also in Sweden in 1980s). The dangerousness of the offender could be taken into account through normal rules of release on parole.

F. Juvenile justice

Juvenile justice and child welfare in Finland. From an international perspective, Finland has only a modest level of special arrangements in criminal law in respect of young offenders. In principle, the same system of sanctions has been used for both adults and young persons in Finland, although the sentences have been lighter for young persons. Commission of an offence between the ages of 15 and 17 years is a general ground for mitigation of the sentence. The conditions for the waiving of prosecution and the waiving of sentence, as well as the conditions for the use of conditional sentences

have been relaxed for those in this age group. Prison sentences are enforced in a specific juvenile prison. Young persons are also released on parole earlier than adults (after they have served one-third of the sentence). Yet another difference is that young offenders sentenced to a conditional sentence are, as a rule, placed under supervision. This is not done for adults.

The scarcity of criminal law provisions in Finland on young offenders is connected with the division of responsibilities between different systems. The main responsibility among authorities for the socialisation of young persons belongs to the social welfare authorities and not to the criminal law authorities. This is the case for all offenders under the age of 15 (the age-limit of criminal responsibility). Young persons (15 to 17 years olds) can be subjected not only to criminal law measures but also to a variety of child welfare measures. The criterion for all child welfare measures is the best interests of the child. Interventions in the event of offences are predicated on the fact that the child is endangering his or her future. The authorities should undertake community-based supportive measures without delay if the child's growing environment is endangered or cannot ensure the health or development of the child or young person, or if the child or young person endangers his or her health or development. The most intrusive measures are the transfer of guardianship and placement in a foster home (either in a family or in an institution).

The strict division of labour between the criminal justice agencies and the social welfare agencies has, however, been somewhat softened through the recent reforms and reform plans in the field of juvenile penal law. A new form of punishment for juveniles of 15 to 17 years of age (the juvenile punishment) was introduced into the Finnish criminal justice system on an experimental basis in seven cities in 1997. At the moment the parliament is handling a bill which aims to establish the juvenile punishment as a regular part of the sanctions system.

One of the practical goals of juvenile punishment is to create an additional rung in the system of sanctions and in this way slow the process that would ultimately lead to an unconditional sentence of imprisonment. Persons at this age often repeat their offences and, in a system based on gradually escalating punishments, this would then quickly lead to the last rung on the ladder of sanctions (from where the prospects for a return "back

to the society" are much weaker). Juvenile punishment is also intended to be a more concrete sanction for that group of offenders, who seem not to realise the meaning and content of conditional imprisonment. But the new sanction has also clear social goals. The sanction seeks to establish relationships between the young offenders and their immediate community, help the offender to participate in various activities intended for the same age group, as well as in the better use of social services (of which these offenders are often unaware). The programmes aim furthermore to promote the sense of responsibility and understanding of the causes and consequences of their own actions.

The Probation Service is responsible for the enforcement of the punishment. The Service also prepares the preliminary enforcement plan, in co-operation with the social welfare board of the young offender's place of residence. The purpose of the preliminary enforcement plan is to offer information about the young offender to the court.

The duration of juvenile punishment (in its proposed form) varies from 4 months to one year. The punishment consists of supervision and youth service. Youth service consists of regular unpaid work carried out under supervision as well as tasks that promote social adjustment and that are carried out under supervision. Among the central tasks of the supervisor is to ensure that the enforcement plan is carried out, in other words, see to it that the young offender follows the enforcement plan and any orders given on its basis. This includes regular meetings with the young offender as specified in the enforcement plan. The supervisor should also maintain contact with the site where the young offender is carrying out his or her service in order to ensure that the youth service is being carried out in the proper manner. The supervisor may also, if necessary, be in contact with the parents of the young offender.

A person who was 15 years but not yet 18 years old at the time of the offence can be sentenced to juvenile punishment. The conditions for the imposition of the punishment can be divided into (I) those that concern the offence and its blameworthiness, and (II) those that concern the assessment of the offender's propensity to commit new offences, his or her possibilities of social adaptation, and his or her need for rehabilitation.

I. The first requirement for the application of juvenile punishment is that "*in view of the seriousness of the offence and the circumstances connected with the act a fine is to be deemed an insufficient*

punishment, and there are no weighty reasons that require the imposition of an unconditional sentence of imprisonment." This provision locates juvenile punishment on the level of conditional imprisonment (between the fine and unconditional imprisonment). This decision is taken following the general criteria of proportionality (harm and culpability).

II. The next decision concerns the choice between conditional imprisonment and juvenile punishment. The court must decide in favour of juvenile punishment, if the "*use of juvenile punishment is to be deemed justified in order to prevent new offences and to promote the social adjustment of the young offender*". This gives room both to considerations of the specific circumstances and personal needs of the offender. Since the assessment of the risk of recidivism is heavily influenced by prior offences, prior conditional sentences are the primary source of information in this respect.

If the person sentenced to juvenile punishment violates the enforcement plan or orders given on its basis, the Probation Service should give him or her a written reprimand. In the case of a more serious violation (for example not serving the punishment or interrupting the punishment), a report is prepared for the prosecutor in the matter. In the more serious cases the prosecutor takes the matter to court, and in the less serious cases the matter is returned to the Probation Service, which continues enforcement of the punishment. The court decides on the sanction for a serious violation of the conditions of juvenile punishment. The court may extend the period of supervision or convert the juvenile punishment into another sentence which is to correspond to the portion of the juvenile punishment that has not yet been served. The type of sanction in question would usually be a conditional sentence of imprisonment that is supplemented (in one half of the cases) with an unconditional fine. In most serious cases, for example in cases when the offender had refused to co-operate from the very start, an unconditional prison sentence may be imposed.

IV CONCLUDING REMARKS

A. Enhancing the role of community sanctions

Today's global sanction policies are characterised by two diverting trends: an increasing use of prison and the adaptation of new community sanctions.

The first one reflects the growing punitive and populist trends in national crime policies; the latter seeks to counteract this development by offering more constructive, rational and humane substitutes to incarceration. The overall effect of the expansion of community sanctions may appear disappointing: It appears that the number of community alternatives has certainly grown, but the massive increase in penal repression and the growth of prisoner rates seems to outweigh any practical impacts of this development.

Still, it would be premature to conclude that the efforts to enhance the use of community sanctions have been futile. Some jurisdictions have had successes, giving us information on the models that do work. Failures, on the other hand, may offer important lessons on what not-to-do. The key questions are: (1) how to ensure that these sanctions are applied in the first place, (2) how to ensure that they come to replace imprisonment (instead of replacing other non-custodial sanctions) and (3) how to uphold and maintain the general credibility of these sanctions. Some of the Finnish experiences, combined lessons from other jurisdictions, are useful.

1. Extra barriers should be constructed in order to ensure that the new alternatives are really used instead of imprisonment. In most countries, community service seems to substitute prison sentences only in roughly 50% to 60% of cases. This rate can be improved by demanding directly – as is the case in Finland – that only prison sentences may be commuted to community service (leading to a "replacement rate" of over 90% in Finland). Another way would be to define new alternatives as modes of enforcement of prison sentences, as has been done in Sweden with electronic monitoring (house arrest). The ongoing Swedish experiment of house arrest as a condition for earlier release provides another version of the same arrangement.

2. Effective use of new alternatives and coherent sentencing practices require clear (statutory) implementation criteria. The courts should be given clear guidance as to when and for whom new sanctions are to be used. They should also be provided with all the necessary material, including social inquiry reports that they need, in order to be able seriously to consider the use of these sanctions. The role and position of new alternatives in the existing penal system (how they relate to other sanctions) should also be clarified.

3. The overall success of any community sanction requires resources and proper infrastructure. Community based sanctions can only be applied within a community orientated infrastructure geared to the specific requirements of these sanctions. Their implementation is dependent on the existence of an organisation like the probation service. Often co-operation with private, semi-public and public organisations or institutions is also required. The state and the local communities should provide the necessary resources and financial support.

4. Supervision, support and swift reactions are needed in order to keep the failure rates down and to maintain the general credibility of new sanctions. There is a clear relationship between the failure rate and the quality and intensity of supervision: the less control and supervision, the higher the dropout rate. There should also be a clear and consistent practice when the conditions of the sentence are violated. Varying and sloppy practices create mistrust and resistance on the part of public prosecutors, the judiciary and the public.

5. New alternatives usually require the offender's consent and cooperation. Treating the offender, not as a passive object of compulsory measures, but as an autonomous person, capable of reasoned choices, is a value by itself and should be encouraged whenever possible. In addition, experience indicates that explicit and well-informed consent is a highly motivating factor for the offender. Through his/her consent the offender has also become committed to the required performance in a manner that gives hope for good success rates. Arrangements should be made in order to enhance the motivation of the offender for co-operation and mutual trust.

6. Issues of equality and justice must not be neglected. Community sanctions may often lead to discrimination, since they are easily used for socially privileged groups of offenders. Accusations of social discrimination are weighty counter-arguments. Measures must, therefore, be taken in order to shield the system from these errors. Clear and precise implementation rules and procedures are one important means to this end. Another way is to tailor the system of community sanctions to meet the demands of different offender groups with their different problems. Sweden, for example, has a specific sanction – "contract treatment" – for those who suffer from drug or alcoholic

addiction as a substitute for short- term prison sentences. Finland plans to start a similar experiment where emphasis will be placed on using this sanction for those offenders who are excluded from community service due to their addiction problems.

7. The idea has to be sold over and over again. If it happens that new alternatives prove to be a success, there are no guarantees that this state of affairs should continue just by itself. Prosecutors and judges may lose their confidence, the enforcement agencies may lose their motivation and the general public may withdraw its support. Maintaining the general credibility of the community sanctions and demonstrating their appropriateness is an ongoing process which does not end with the adoption of the requisite legislation and the arrangement of an initial training phase.

8. The key groups responsible for the implementation of the sanctions must be given constant training and general information of the general benefits of community sanctions and the drawbacks of the wide use of custodial sanctions. Taking care of community relations is also important: The community (and of course also the judges and the prosecutors!) should be informed of the benefits and crime control potential of community sanctions. Also the value of volunteer work needs a clear recognition. Finally, the practices must be subordinated to impartial scientific evaluation in order to obtain necessary information for further development.

B. Political constraints and risk-factors

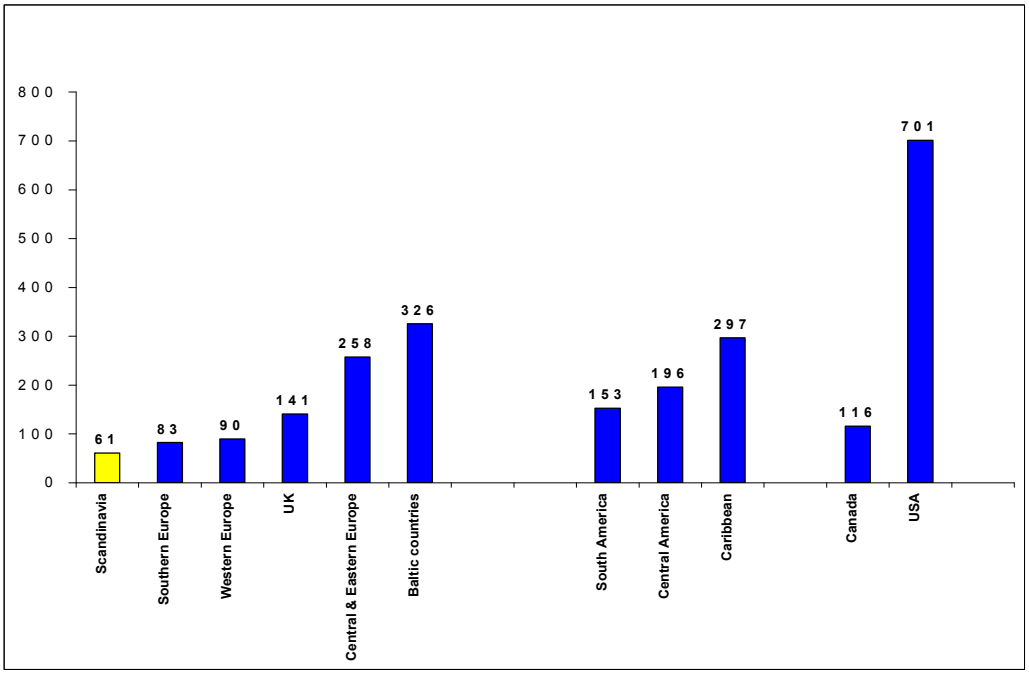
Listing these demands is easy. To realise them in practice is harder. Much depends on the prevailing political culture and the extent to which penal policy is guided by rational argumentation and the extent to which it is subordinated to political motives and a quest for political popularity.

Efforts to enhance the use of community corrections are thus a part of a larger project against ever growing penal populism. This trend constitutes a risk-factor to today's Scandinavian criminal justice systems. These systems present, in an international perspective, an example of evidence-based, pragmatic and non-moralistic approach, with a clear social policy orientation. They reflect the values of the Nordic welfare-state ideal and emphasise that measures against social marginalisation and equality work also as measures against crime. They also stress the view that crime control and criminal policy

are still a part of social justice, not just an issue of controlling dangerous individuals. All of this is under attack at the present time.

Politicisation of crime policy. Criminal policy has become increasingly "a political tool", with quite unhappy results. In the hands of politicians, criminal policy is often just another tool of politics at large, a way to transmit "symbolic messages", a way to "take a stand", a way to "show strength" and so on. Argumentation in matters of penal law remains far from the detached and evidence-based criminal political analyses, where criminal law should be treated as Ultima Ratio – to be used only in cases where other means do not apply, and only when it produces more good than harm. Instead, criminal justice interventions are often determined by a political need just to "do something". The rule of thumb seems to be that the higher the level of political authority, the more simplistic the approaches advocated. The results can be seen in programmes and slogans that are compressed into two or three words, along the lines of "three strikes", "prison works", "truth in sentencing", "war on drugs", and so on. More tangible results can be seen in rising imprisonment rates in most parts of the world.

Figure 8 Prisoner rates (1999-2003) in selected European and American regions.



Source: Compiled from World Prison Population List (fifth edition). Home Office Research Findings 234/2003.

Some signs of a more punitive approach may also be seen in the more recent Finnish debate. The number of prison sentences, as well as the number of prisoners have started to increase. Behind these changes are the increased number of foreign prisoners (mainly from Russia and Estonia), and especially sentences for drug trafficking. Sentences for violent offences have become somewhat stiffer and the number of default prisoners and the use of remand have increased as well.

Despite these changes, there still may be room for some optimism in Finland. The path taken by many other countries is not an inevitable one. Very few of those social, political, economic and cultural background conditions which explain the rise of mass imprisonment in the US and UK apply to Finland. The welfare state was never openly discredited in Finland. The social and economic security granted by the Nordic Welfare State model may still function as a social backup system for tolerant crime policy. The social equality and demographic homogeneity of Finnish society produces less racial and class tensions/distinctions, less fears and fewer frustrations to be exploited by marginal political groups with their demands for increased control and exclusion. The judges and the prosecutors are, and will remain, career officials with a professional approach to these matters. Political culture still discourages the politicians from using tough crime policies as general political strategies. The crime issue is still approached mainly from an evidence-based pragmatic point of view, listening to the voices of criminal justice experts and the research.

The risks of European harmonisation. This all leaves some optimism for those who wish to defend the Nordic rational and humane approach. Unfortunately, the Scandinavian criminal justice systems may be facing yet another risk factor - the harmonisation efforts within the EU. Today's sanction policies in the EU are characterised by a one dimensional trust in the effectiveness of the penal system and especially custodial sentences. According to all our experiences so far, these efforts are leading to an increased repression in the Nordic countries. This risk is the basic reason why a large segment of Nordic scholars in criminal law have remained less enthusiastic towards political attempts to harmonise criminal law. However, that is a topic that must be dealt with elsewhere.

RISK IN IRISH SOCIETY, MOVING TO A CRIME CONTROL MODEL OF CRIMINAL JUSTICE

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1. Introduction

David Garland, in his book, The Culture of Control, has recently set out the following indices of change which he believes are evident in the criminal justice systems of many western countries. They are as follows:

a) the Decline of the rehabilitative ideal

b) the re-emergence of punitive sanctions and expressive justice

c) changes in the emotional tone

d) the return of the victim

e) the public must be protected

f) the politicization of law and order

g) the reinvention of the prison

h) the transformation in criminological thought

i) the Expanding Infrastructure of crime prevention

j) the commercialization of control

k) new management styles

l) a perpetual sense of crisis

2. Not true of Ireland

Given that criminology as an academic discipline was not evident in Ireland until relatively recently, it is difficult to be persuaded by the argument that intellectual currents in the criminological arena have helped to entrench the culture of control and re-orientate Irish sentencing practices. Low levels of recorded crime, the lack of resources and data, and difficulties of access to existing data ensured that crime causation in Ireland remained, by and large, a peripheral issue until the 1990s. The Department of Justice, for example, only established a research budget in 1997. Correctionalist criminology, therefore, is not as vulnerable in Ireland today as it might be in other jurisdictions where the discipline has exhausted itself more over the past four decades. This absence of

correctionalist criminological debate in Ireland for the greater part of the twentieth century, and government apathy regarding the commission of research, stands in marked contrast to developments in other jurisdictions such as the US and England and Wales. As a result, the tendency has been for penal policymakers in Ireland to focus more on pragmatism and expediency than on long term criminologically orientated strategy goals. If nothing else, the lack of a commitment to the discipline in Ireland indicates a significantly different energy and momentum being generated between the various jurisdictions. Of course, policy and intellectual transfer can still take place despite the yawning gap in criminological outputs between different countries. For Ireland at least, however, changing sentencing and punishment practices are not by any means attributable to a home based criminological rejection of the 'project of solidarity'.

3. But where it might be true is in the legal field of crime

It might specifically be true in respect of the deprioritisation of due process values. The thrust of the current trend in Ireland has, I will argue, very much been towards the crime control model of justice as prescribed by Herbert Packer, namely efficiency and outputs, an instrumental logic that emphasises the repression of criminal conduct as a primary concern, an emphasis on administrative fact finding processes, and a dislike of "*equality of arms*" values such as the presumption of innocence and the privilege against self-incrimination. In particular, where biographical knowledge was employed under the modern penal welfarist framework to socialise the deviant, produce new kinds of knowledge about the origins of crime that would facilitate intervention and displace a "*common law polity which presupposed a homogeneous dangerous class*", now it is increasingly employed, as in the extra-ordinary realm, not to normalise but to neutralize the threat posed. Knowledge is now increasingly premised on the maintenance of fragile borders of exclusion through "risk thinking," disciplinary law, a politics of safety and the management of the dangerous, and the perception that due process standards (such as beyond reasonable doubt) are inconvenient legal mantras. Commitment to justice and due process values is weakening, as law making increasingly becomes a matter of retaliatory gestures intended to reassure a worried public that something is being done about law and order. As some commentators have suggested: "*the values of the unsafe society increasingly displace those of the unequal society*."

The collapse of the recent Liam Keane trial in November 2003 led, for example, to

claims about a:

'crime crisis'

suggestions that the *'fabric of society was at risk'*

calls for more *'anti-terrorist type laws'*

and a recognition by our Taoiseach that the Gardaí cannot *'take on a crowd of gangsters with their peann luaidhes'*

Yet the perception presented by those involved in crime control is very different.

The President of the Association of Garda Sergeants and Inspectors attended a meeting of the Joint Committee on Justice, Equality, Defence and Women's Rights where he stated: *"the overwhelming feeling of members is that the criminal justice system has swung off balance to such an extent that the rules are now heavily weighted in the favour of the criminal, murderer, drug trafficker and habitual offender. At the same time, the system is oppressive on the victims of crime, the witness who comes to the defence of the victim and the juror whose role it is to ensure justice is done and seen to be done. Much of the blame for this can be laid at the door of the system. The State has an equal duty of care to the victim, witness and juror as to the accused."* The President went on to call, inter alia, for the removal of the right to silence in relation to the investigation of serious crimes. (Joint Committee on Justice, Equality, Defence, and Women's Rights 8 December, 2003, per Mr Dirwan, President of the Association of Garda Sergeants and Inspectors.)

For example, in April 2003, the Minister for Justice, Equality and Law Reform, Michael McDowell, could suggest that Ireland was the only *"member state of the EU in which individual citizens are guaranteed the constitutional right to due process, exclusion of illegally obtained evidence, to trial by jury in all non-minor cases, to fair bail, to the presumption of innocence, to habeas corpus, and the right to have any law invalidated in the courts which conflicts with his or her rights - and the right not to have any of these rights altered except by referendum."*

4. The Irish experience of this culture

Many of the 'structural properties' identified by Garland vis-à-vis sentencing are discernible in Ireland. To begin with, as the level of recorded crimes has increased, Irish society has experienced bouts of anxiety about insecurity and disorder. Such a phenomenon is also facilitated and shaped by the progressively politicised nature of law and order and the employment of sound-bite criminal discourse. The outcome of such

dynamics in the penal field - in broad terms - has been a series of increases: in the strength of attitudes to crime; the use of imprisonment; the sentence lengths for serious crimes; the commitment to prison expansionism; the targeting of the poor, disorderly and homeless; and in the maximum penalties allowed by statute for various types of offences.

Just deserts and the Law Reform Commission

More specifically, the dynamics have begun to alter relations in the sentencing domain, changing the settled modern paradigm. For example, in 1996 the Law Reform Commission recommended that sentencing policy should be founded upon a policy of just deserts, citing its influence in jurisdictions such as the US and the UK. Such a coherent and reasoned strategy would operate in marked contrast to the disjointed 'instinctive synthesis' approach utilised in many Irish criminal courts. This demand for fixity of purpose in sentencing requires that the severity of the punishment match ever more closely the seriousness of the offence, which would in turn be determined by two factors - the level of harm caused by the offender and his or her degree of culpability.

Presumptive Sentencing

A scheme of presumptive sentencing in Ireland has been provided for under the Criminal Justice Act 1999. The Act, *inter alia*, created a new offence, the possession of controlled drugs worth €13,000 or more with intent to supply. Any person convicted of the new offence, other than a child or young person, shall have a term of at least imprisonment of 10 years imposed on him or her unless there are exceptional circumstances that would permit a derogation.

Compensation Orders

In addition, section 4 of the Criminal Justice Act 1994, as amended by section 25 of the Criminal Justice Act, 1999, imposes what is effectively a mandatory requirement on judges to follow a particular investigative procedure for confiscation of an offender's assets in circumstances where the offender has been convicted on indictment and sentenced for drug trafficking offences. The standard of proof required in any such proceedings is based on the balance of probabilities. There is also a statutory rebuttable presumption under section 5(4) of the 1994 Act that any property appearing to the court to have been received by the offender within a period of six years prior to the

proceedings being instituted constitutes proceeds from drug trafficking offences. Section 9 of the Criminal Justice Act 1994 extends this procedure to all serious crimes. In such circumstances however, an application must be made by the Director of Public Prosecutions stating that the person in question has benefited from the crime before the court can determine whether or not to make a confiscation order.

Miscellaneous

A number of other subtle, but significant, alterations in specific sentencing practices have also occurred in recent years which fit, or have the potential to fit, into the more punitive trajectory depicted by Garland. First, section 2 of Criminal Justice Act 1993 empowers the Director of Public Prosecutions (DPP) to appeal to the Court of Criminal Appeal against unduly lenient sentences imposed on conviction on indictment. Though intended to be used sparingly—particularly given the provision's potential capacity to be utilised to pander to populist and emotive sentiment—one commentator noted that, by early 1999, such appeals "*were coming forward at a rate of one a week*."

Secondly since 2000, the practice of inserting review dates into sentences has been stopped. Prior to this, it was common for a trial judge in imposing a custodial sentence to insert such a date. On this date, the balance of a custodial sentence could be suspended provided sufficient progress, from a rehabilitative perspective, had been made by the offender. In the *People (DPP) v. Sheedy*, for example, Denham J noted:

> *"The review structure is a process by which a judge is able to individualise a sentence for the particular convicted person. It is a tool by which the judge may include in the sentence the appropriate element of punishment (retribution and deterrence) and yet also include an element of rehabilitation. For example, it may be relevant to a young person or a person who has an addiction or behavioural problem and at least some motivation to overcome that problem, it may well be appropriate as part of a rehabilitation aspect of the sentence to provide for a programme or treatment within the sentence as a whole and then to provide for a review of the process at a determinate time".*

The Supreme Court, however, in *Finn* suggested that the practice was in conflict with the power of the executive to commute or remit sentences under section 23 of the Criminal Justice Act 1951. Furthermore it was suggested that the practice breached the

constitutional doctrine of separation of powers. Though such curtailment was founded on a juristic rather than a punitive logic, one of the unintended consequences may have been to restrict offenders' opportunities to have their rehabilitation facilitated, individualised, assessed and encouraged.

Sex Offenders

More generally, the Sex Offenders Act 2001 exemplifies the priority currently given to the control of groups of offenders and the discourse of risk. This is evident in the increase in the maximum sentences available for sexual assault offences, the introduction of a tracking system with notification requirements, provisions for the making of sex offender orders where *reasonable grounds* exist for the protection of the public, mandatory obligations to provide employers with information on previous sexual offence convictions in certain circumstances, and the lack of treatment programmes or places.

In holding that the registration requirements under the Sex Offenders Act 2001 are constitutional, Geoghegan J., delivering the judgment of the court, stated the following: *"The undisputed evidence was that sexual offenders present a significant risk to society by reason of their tendency to relapse. The statistics suggest that the rate of relapse in the year after release from prison is a little higher than later. Also that the currently widely held international view as expressed in the literature is that it is a condition which in general cannot be cured. Further, as a consequence, it is not appropriate from a therapeutic point of view to think in terms of curing but rather risk management of the condition and the putting in place of measures which facilitate personal control and social control. The further undisputed evidence was that from a therapeutic point of view a commitment to register was the lowest level of any interventional programme in relapse prevention. It was stated that sexual offenders thrive on secrecy and have a propensity to move around. The commitment to registration by an individual may have the effect of facilitating personal control and in providing the Garda Síochana with knowledge of the persons whereabouts is a first step in social control."*

Enright v. Ireland and the Attorney General (Unreported, Supreme Court, 18 December, 2002)

The inclusion of post-release supervision orders in the Act, in particular, is of interest from a sentencing perspective. Such an order provides that a sex offender may be required after release from prison to remain under the supervision of the probation and welfare service and comply with such conditions as are specified in the sentence. The combined duration of a custodial term and the period of supervision may not exceed the maximum sentence applicable to the offence in question. However, and echoing the felt

societal need for more protection and more control, the custodial term should not be less than the term the court would have imposed if it had determined the matter without considering the order. In other words, no allowance for the secondary supervisory punishment should be made when considering the primary custodial sanction, albeit that the maximum sentence for the offence cannot be exceeded. Indeed, O'Malley has suggested that the constitutionality of the order, specifically having regard to its proportionality, might be in doubt given that it is a 'collateral hardship.' Such a provision together with the others cited - which are often justified and reinforced by archaic images of 'otherness' - bear testimony to Garland's notion that there is no such thing today as an 'ex-offender'. For sex offenders in Ireland, at least, the following sentiments appear to ring true:

> *Today the interests of convicted offenders, insofar as they are considered at all, are viewed as fundamentally opposed to those of the public. If the choice is between subjecting offenders to greater restriction or else exposing the public to increased risk, today's common sense recommends the safe choice every time. In consequence, and without much discussion, the interests of the offender and even his or her legal rights are routinely disregarded.*

But we can also challenge the notion that sex offenders can never be cured: one recent study found a reconviction rate after 6 years of below 10 per cent of serious sex offenders convicted of another sexual offence (Hood et al 2002 British Journal of Criminology vol 42 (2)).

Victims

In addition, and as part of this reorientation in sentencing practices, a growing consciousness has emerged in Ireland of the need for victims of crime, and witnesses, to be more prominent actors in the theatres of prosecution and sentencing. This nascent pro-victim/witness momentum has ensured a more responsive support structure preceding crimes, more empathetic treatment by criminal justice agencies in the detection and prosecution of crimes, and a more conducive courtroom environment regarding the provision of information on crimes. All of the following relatively recent occurrences assist in rotating the 'axis of individualisation' in Ireland to a plot which is more victim orientated:

- The establishment of Victim Support in 1985 and the publication of a Victim's Charter in 1999.
- Statutory provision for victim impact statements.
- The abolition of a mandatory requirement on judges to warn juries of the dangers of convicting on the basis of uncorroborated testimony.
- The increased use of victim surveys that bring attention to bear on typologies of crime and victimhood.
- The employment of intermediaries, live television links and video testimony for witnesses and victims.
- Separate legal representation for rape victims under the Sex Offenders Act 2001.
- Provisions for greater participation under the restorative justice model embodied in the Children Act 2001.

As a result, the Irish criminal process is increasingly having to accommodate the voices of victims/witnesses within a complex matrix of competing tensions that include the state, society and accused/offenders. Of course, upgrading the status of the victim from 'nonentity' to 'thing' is a laudable and necessary tactic. The danger is, however, that the momentum of this more inclusionary strategy will contribute to a reprioritisation of commitments, to a 'pendulum swing' between offender oriented and offence oriented sentencing policies.

In September, 2003 Mr Justice Hugh Geoghegan, a Supreme Court judge, noted: "*it is an absurd idea that because a judge or other powers-that-be, demonstrate concern for the rehabilitation of the criminal, they are thereby showing lack of respect or lack of concern for the victim.*" The Irish Times September 8, 2003.

The possibility of such a recalibration in the scales of justice is illuminated by Fennell in the context of the prosecution of sex abuse cases where there has been a delay in making the complaint. Such cases often reveal a competing dynamic: on the one hand, the right of the victim to pursue justice in circumstances where the delay was attributable to the alleged dominion exercised by the accused; on the other, the right of the accused to a fair and expeditious hearing. In a thorough trawl through the cases, she cogently argues that the decisions reveal an accommodation, and pursuit, of victims' interests over the competing interests of the accused to a fair trial: *"The triumphing of victims rights on almost*

every occasion transposes the previous position of non-belief of victims to absolute and automatic belief." In addition, she suggests that the judgments reveal an alignment of society's interests with the victims. In effect, the criminal process is witnessing the emergence of a society/victim coalition ranged against the increasingly dissociated accused whose rights are not identified as societal interests. She quotes the following passage delivered by Keane J. in E. O'R v. DPP [1996] 2 I.L.R.M. 128: "*Whatever decision a court arrives at in a case such as this, there is the possibility of injustice; injustice to the complainants and the public whom the court must protect if the proceedings are stayed where the accused was indeed guilty of the offences, and injustice to the accused if he is exposed to the dangerous ordeal of an unavoidably unfair trial.*" See also B v. DPP [1997] 2 I.L.R.M. 118.

To some extent, the wheel in such emotive cases has turned full-circle, from non-recognition of victims in the past, to greater facilitation today, but with the consequence that, in some instances, the rights of the accused are de-prioritised. This very point was picked up upon by McGuinness J in P.C. v. D.P.P [1999] 2 I.R. 25: "*In years gone by, accusations of rape or any kind of sexual assault were treated with considerable suspicion. The orthodox view was that accusations of rape and sexual assault by women against men were 'easy to make and hard to disprove' and judges were required to give stern warnings in their charge to the jury of the need for corroboration and the dangers attached to convicting on the evidence of the complaint alone. No one today would support the orthodoxy of the past and there has been a great increase in the psychological understanding of sexual offences generally. Nevertheless it would be unfortunate if the discredited orthodoxy of the past was to be replaced with an increasingly orthodox view that that in all cases of delay in making complaints of sexual abuse the delay can automatically be negatived by dominion.*"

5. From an adversarial to inquisitorial model of criminal investigation

In recognising the practice of sentencing to be part of a wider trial process, it is possible to unearth further evidence of this changing trajectory. The ratification of increasingly coercive tactics in information gathering techniques—what Keane refers to in Ireland as the movement from an adversarial to a more inquisitorial model of criminal investigation—and the de-prioritisation of the fairness of procedure rights of accused persons also signpost this more punitive 'logics of action.' Indeed the strongest evidence of the possibility of a drift towards a control model of justice in Ireland is manifest in the dissolution of fairness of procedure safeguards. If anything, it could be said that in terms of a devaluation in due process values, Ireland is now a lodestar for other jurisdictions.

This marks a complete reversal in Ireland's usual practice of criminal justice policy imitation from other western countries. Much, though not all, of the impetus for the tooling down of accused/offender rights must be construed against a backdrop of the "extra-ordinary" circumstances posed by the conflict in Northern Ireland. The "proportionate", "emergency" legal responses drawn up to combat the threat posed by paramilitaries have proved remarkably malleable in adjusting to more normal circumstances.

The normalisation process

(i) Wider use of extraordinary powers of arrest and detention

This overspill from the paramilitary realm into the ordinary realm is evident in the Supreme Court's sanctioning of the wider use of the extra-ordinary powers of arrest and detention permitted under section 30 of the Offences Against the State Act 1939. Under section 30 of the Act, a member of the Gardaí is authorised to arrest any person suspected of the commission of an offence under the 1939 Act or an offence which is "scheduled." Section 36 of the Offences against the State Act 1939 empowers the government to declare offences to be scheduled whenever it is satisfied that the ordinary courts are inadequate to secure the effective administration of justice. As noted, a suspect arrested under section 30 may be detained for an initial period of 24 hours followed by a further 24 hours provided a certain direction is given.

(ii) The Retention of the Non-Jury Special Criminal Court for non-paramilitary activities

Further support for this normalisation process can also be gleaned from the retention of the non-jury Special Criminal Court (re-established in 1972) and its use for non-scheduled, non-terrorist offences. The introduction of the Court in 1972, at the height of "the Troubles in Northern Ireland", was justified on the basis that juries were likely to be intimidated by paramilitaries. It continues to be employed today despite little in the way of a risk assessment as to whether or not there was a possibility of continued paramilitary intimidation. Moreover, the Special Criminal Court is increasingly being employed to try cases that have no paramilitary connections. Offences without subversive connections which have been tried in the Special Criminal Court include the supply of cannabis, arson at a public house, theft of computer parts, kidnapping, the murder of Veronica Guerin,

receiving a stolen caravan and its contents, the unlawful taking of a motor car, and the theft of cigarettes and £150 from a shop. Such cases appear to verify Mary Robinson's concern, made in 1974, that the continuation of the Special Criminal Court would abolish the "jury trial by the back door."

Perhaps even more alarmingly, the decision to have such offences tried before the non-jury Special Criminal Court are not subject to any checks or safeguards. Under sections 46 and 47 of the Offences Against the State Act 1939, the DPP has the power to have *any* case heard in the Special Criminal Court where s/he is of the opinion that the ordinary courts are inadequate to secure the effective administration of justice.

(iii) Supergrass testimony

A witness protection programme was set up following the murder of Veronica Guerin, to assist the Gardaí in the fight against organised crime. The type of witnesses protected by the programme are not simply run-of-the-mill self-confessed accomplices, but fall into a definitional category more in keeping with supergrass testimony, a term made infamous following a series of paramilitary trials in the Diplock Courts in Northern Ireland in the 1980s. The damning information which such witnesses have provided has been utilised by the State to apprehend and prosecute a series of high profile individuals operating in the world of organised crime. In return for such information, the witnesses, who themselves had also repeatedly partaken in criminal activities, were given the opportunity of an improved lifestyle.

For example, one witness, Charles Bowden, in return for information on members of the so-called Gilligan gang and their alleged involvement in the murder of Veronica Guerin and drug trafficking, was given a series of privileges. They included: an undertaking from the DPP that he would not be prosecuted for his part in the murder of Veronica Guerin; a very modest prison sentence having pleaded guilty to serious drugs and firearms charges; special concessions while serving the sentence; his wife and children all received the benefit of the witness protection programme and were completely dependent on the State for financial support while Bowden served his sentence; and, it was promised that he and his family would be set up with new identities in a foreign country on his release from prison. All of these tactics - immunity from prosecution, lenient sentences, and resettlement under new identities - were also very evident in the supergrass trials that

took place in Northern Ireland.

In *The People (DPP) v. John Gilligan,* it was pointed out that these witnesses, who were later referred to in court as "perjurers and self-serving liars", were often interviewed by the Gardaí without any record being kept as to the contents of the interviews. Moreover, it was also alleged that payments were made to the same witnesses by the Gardaí, which purported to belong to the witnesses, but which, to all intents and purposes, appears to have been the proceeds of crime. On appeal, McCracken J. noted the following about the witness protection programme:

> *There are certainly some very disturbing factors in the way in which the authorities sought to obtain the evidence…This was the first time that a witness protection programme had been implemented in this State, and one of the most worrying features is that there never seems to have actually been a programme. There ought to have been clear guidelines as to what could or could not be offered to the witnesses. This was not done, and instead there was an ongoing series of demands by the witnesses, most of which, it must be said, were rejected, but the position was kept fluid almost right up to the time when they gave evidence…[T]he authorities appeared at all times to be open to negotiation, but is something which certainly ought not to have been allowed to happen.*

In the same court it was noted: "A further worry arises from the evidence of…an official in the Department of Justice who wrote a memorandum in relation to granting overnight temporary releases to the witnesses which included the following: *"The question of an overnight TR was also discussed. And this was not ruled out by the Gardaí. The granting of an overnight would only be considered for a very special occasion and would be dependent on his performance in court."* He gave that memo to an Assistant Secretary in the Department to be shown to the Minister and the memo came back with the words *'and would be dependent on his performance in court'* crossed out."

Current ambivalence about such testimony and the "fluidity" in the operation of the programme is even more surprising when one considers that only 20 years ago Irish politicians and the general public condemned with gusto the adoption of similar extraordinary practices in Northern Ireland. For example, on 17 May 1984 Fianna Fáil TD, Ben Briscoe, stated in the Dáil: *"The whole concept of the supergrass seems to go against*

human rights…It is important that we are seen to be on the side of justice." In the same sitting, another Fianna Fáil TD, Gerry Collins, referred to the supergrass system as *"not only a travesty but a corruption of justice*." Similarly, the Minister for Foreign Affairs in 1986, Mr Peter Barry, in response to a question in the Dáil about the supergrass system in Northern Ireland, could suggest that he was committed, through inter-governmental conferences, to seeking the "*introduction of measures to increase public confidence in the administration of justice in Northern Ireland*."

In the space of two decades, however, arguments about the right to a fair trial, the protection of the innocent, transparent management, and basic human rights have been displaced by the need for a more efficient "truth seeking" criminal justice system.

More Generally

More generally, and in the ordinary criminal justice realm, the past 20 years have witnessed increased powers of detention for the Gardaí and a substantial growth in their powers of stop, entry, search and seizure. It has also witnessed modifications on the right to silence and presumption of innocence. In respect of the right to silence, sections 18 and 19 of the Criminal Justice Act 1984, for example, allow adverse inferences to be drawn from an accused person's failure to account for objects, marks, or substances in his or her possession, and a failure to account for one's presence at a place at or about the time a crime was committed. Similarly, section 7 of the Criminal Justice (Drug Trafficking) Act 1996 enables inferences to be drawn from a failure to mention certain facts when questioned which are later relied upon in defence at trial. All of these inferences have corroborative value only.

The ordinary criminal justice realm has also recently witnessed judicial validation for shifting the legal onus of proof in criminal trials. Indeed it has led one commentator to suggest that it can no longer "*be confidently asserted that the burden of proof rests with the prosecution or that criminal trials proceed on the basis that the accused enjoys a presumption of innocence*." In addition, the system has witnessed restrictions on the right to bail, non-recognition of the right of the accused to confront his or her accuser in court, and, an increasingly complacent attitude towards the right of a detained suspect to access to a lawyer. This right of access is worth further consideration, given that it is one of the most basic of all procedural fairness rights. The legal and constitutional right of access to a

lawyer is well established in Ireland. It is not, however, absolute and is limited to 'reasonable access'. This has been interpreted by the Gardaí to mean that a detained suspect has a right of access to his or her solicitor for one hour during every six hours of detention.

Moreover, and provided the Gardaí have made *bona fide* attempts to contact a solicitor, they are entitled to proceed to question the detained suspect. Given that no duty solicitor scheme operates in Ireland, and given that there is anecdotal evidence to suggest that the Gardaí arrest suspects during weekends in cases where it may have been possible to effect the arrests during 'office hours', securing the services of a solicitor may be more difficult than would otherwise be expected. Even if contact is made with a solicitor, and assuming he or she is available to come to the station, there is nothing to prohibit the Gardaí questioning the detained person until such time as the solicitor arrives. Furthermore, even when the solicitor presents himself or herself at the station, he or she is not entitled to sit in on the interrogation – the right to reasonable access does not extend to having a solicitor present during the interrogation. Nor is the solicitor entitled to have an audio-visual recording of the interviews or to see the interview notes during his or her client's detention. The stark lack of protection afforded to a detained person regarding access to a solicitor - and narrow judicial and Garda constructions as to what constitutes reasonable access - raises, as one commentator noted, questions about the commitment of the institutions of the Irish State '*to the protection of basic human rights and to the dignity of its citizens as human persons.*"

Though the fairness of procedures provisions inherent in the Constitution can act, to some extent, as a counterpoint to the rising tide of punitiveness, increasing authoritarianism and a swingeing disregard for procedural safeguards are also palpable in Ireland. Encroachments into the right to silence and presumption of innocence, restrictions on the right to bail, the virtually unchecked ability of the Director of Public Prosecutions to have ordinary crimes listed in the non-jury Special Criminal Court, the capacity of the Gardaí to employ emergency provisions in the ordinary criminal justice realm, the state's seeming indifference to international human rights provisions and decisions, increased powers of detention, search and seizure for the Gardaí, and illiberal interpretations of what constitutes reasonable access to a lawyer, all facilitate the reconfiguration of power relations between the State and the accused. This overspill

from the subversive domain into the ordinary criminal justice realm and the expanding powers of law enforcement and prosecutorial agencies is part of a long-term, often unnoticed, shift in the civil liberties landscape, to one more closely aligned with the state's result oriented needs and its desire to control more effectively. As one of the leading commentators on criminal procedure in Ireland recently noted:

> *"The heavy emphasis on due process values which imposed a heavy burden on the State to prove guilt against a passive defendant has been replaced by a model in which, at the very least, the State can coerce a much greater degree of co-operation from the suspect, both directly and indirectly, in the investigation of his or her own guilt than had been the case previously."*

Hitting criminals in their pockets

Perhaps nowhere is this results orientated penchant more palpable than in relation to the enactment of measures by which the proceeds of crime can be confiscated. The Proceeds of Crime Bill was mooted in Ireland in the mid 1990s to combat the dangers posed to society by drug-related crime. The current Act was initially proposed as a private member's Bill, one week after the assassination of Veronica Guerin**.** Five weeks later, the normally sluggish and consultative legislative process was complete and the Proceeds of Crime Act was law. The Act's cardinal feature permits the Criminal Assets Bureau to secure interim and interlocutory orders against a person's property, provided that it can demonstrate that the specified property - which has a value in excess of €13,000 - constitutes, directly or indirectly, the proceeds of crime. If the interlocutory order survives in force for a period of seven years, an application for disposal can then be made. This extinguishes all rights in the property that the respondent party may have had.

The speed with which the legislation was introduced is a cause of concern, not least because of the manner in which it seeks to circumvent criminal procedural safeguards guaranteed under Article 38 of the Constitution. In particular, the legislation authorises the confiscation of property in the absence of a criminal conviction; permits the introduction of hearsay evidence; lowers the threshold of proof to the balance of probabilities; and, requires a party against whom an order is made to produce evidence in relation to his or her property and income to rebut the suggestion that the property constitutes the proceeds of crime. This practice of pursuing the criminal money trail

through the civil jurisdiction raises all sorts of civil liberty concerns about hearsay evidence, the burden of proof, and the presumption of innocence. Moreover, and given the revenue producing capacity of the Criminal Assets Bureau, the temptation, as Lea notes, "*to displace concerns of justice with those of revenue flows cannot be ruled out*." Indeed, and in something of a reversal of the established position in Ireland of political imitation and policy transfer from other jurisdictions, the "*structure and modus operandi of the Criminal Assets Bureau have been identified as models for other countries which are in the process of targeting the proceeds of crime*."

A more variegated approach

What appears to be emerging is the increasing adoption of a more variegated approach - straddling both civil and criminal jurisdictions - to the detection, investigation and punishment of offences. For example, the organisational make-up of the Criminal Assets Bureau comprises Revenue Commissioners, Department of Social Community and Family Affairs officials and Gardaí, all directing their respective competencies at proceeds from criminal activities. Moreover, the number of agencies with the power to investigate crimes in specific areas and to prosecute summarily has increased dramatically in recent years and now includes the Revenue Commissioners, the Competition Authority, the Health and Safety Authority, and the Office of the Director of Corporate Enforcement.

Alongside this multi-agency approach, greater levels of responsibility are being assigned to a variety of agencies and institutions to report criminally suspicious conduct and activities. Under the Company Law Enforcement Act 2001, for example, an auditor who unearths information during the course of an audit that reasonably leads him or her to believe that an indictable offence may have been committed under the Companies Acts is mandatorily required to notify that information to the office of the Director of Corporate Enforcement, which in turn can refer it to the Director of Public Prosecutions (DPP). Similarly, the Criminal Justice Act 1994, as amended, provides that designated bodies such as banks and building societies are obliged to prepare reports for the Gardaí and the Revenue Commissioners where they suspect that offences of money laundering or offences dealing with customer identification or record retention have been committed.

The Criminal Justice Act 1994 Regulations of 2003 provide that solicitors are also bound by the provisions. They too are now required to take measures to identify new clients and maintain records of their identities; maintain records of all relevant financial transactions of clients; and report suspicious transactions to the Gardaí and Revenue Commissioners. This latter obligation strikes at the very heart of the solicitor/client relationship. Indeed so great is the infringement of this relationship that the Law Society of Ireland recommends that solicitors who make such reports should immediately cease to act for the clients in question for any purpose. Obliging professionals and institutions to become "information reporters", is, as Lea has noted, all part of an emerging "continuum of surveillance" in which there is "increasingly a need perceived by the authorities to *proactively establish* forms of surveillance and communications under *their direction and control*."

Many of the phenomena highlighted point to a "downwards pressure" on standards of proof, indicative perhaps of increased support for a risk management standard as opposed to the more traditional criminal standard that was designed to afford accused persons every possible benefit of law. This criminal standard, which imposed a rigorous burden of proof on the state, was traditionally justified on the basis of the great disparity in resources between the state and the accused. Today the gap in state-accused relations has grown ever wider, whilst burdens and safeguards which were designed to remedy the imbalance are increasingly being dismantled. Provisions for the imposition of sex offender orders where there are *reasonable grounds* for believing that they are necessary; refusal of bail where it is *reasonably considered necessary* to prevent the commission of further offences; confiscation of a criminal's assets post-conviction on the *balance of probabilities*; seizure of the proceeds of crime in the absence of a criminal conviction on the *balance of probabilities*; and the imposition of an obligation on a variety of institutions and professions to report *suspicious* financial transactions are all designed to identify and manage perceived crime risks. Such measures are no longer driven by respect for due process values and civil liberty safeguards that guarantee some element of parity between the state and the accused. Instead, they are organised around a desire to maximise efficiency, enhance control and minimise risk. Moreover, the sanctions referred to - such as sex offender orders, confiscation orders, and injunctions to seize assets thought to be the proceeds of crime - are not designed to re-orientate human behaviour or to reintegrate those that are deviant. Instead, they employ techniques which will neutralise

rather than alter deviant behaviour.

Conclusion

As Ashworth has noted: Public protection and security are extremely important and are essential goods in a society. What we want for ourselves, our families, our friends and even our mother-in-laws is to be able to flourish in our lives without risk of assaults on our persons or property. This is clear. But in a society premised on respect for human rights and civil liberties, a reasonable balance must be maintained between the individual's right to liberty and freedom and society's right to protection. As Garland has noted:

> *We allow ourselves to forget what penal-welfarism took for granted: namely that offenders are citizens too and their liberty interests are our liberty interests. The growth of a social and cultural divide between 'us' and 'them', together with new levels of fear and insecurity, has made many complacent about the emergence of a more repressive state power. In the 1960s, critics accused penal-welfare institutions of being authoritarian when they wielded their correctional powers in a sometimes arbitrary manner. Today's criminal justice state is characterised by a more unvarnished authoritarianism with none of the benign pretensions.*

We also allow ourselves to forget that the appeal of risk thinking in relation to due process values often underplays the problems of effectively identifying and dealing with risk and has also led to a neglect of discussions of values and principles. In focusing on the technologies of protection, we tend to forget that this highly pragmatic risk thinking is also value laden – we tend to ignore the moral dimensions of the debate. Even if risk thinking was neutral and apolitical in design, it has not been established that there is a simple hydraulic effect between toughening the rules against the accused and better protection for victims: any curtailments and restrictions should be evidenced based, but they are not at present. What does appear to be clear today is that the old adage that it is better that 10 guilty persons should go free than for one innocent person to be convicted seems to have very few adherents now.

REDUCING RE-OFFENDING: COMMUNITY PUNISHMENTS AND PROGRAMMES

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Introduction

This paper explores various principles, approaches and strategies to effectively reduce recidivism and promote public safety. Community corrections were considerably disabled in the 1970s by the assertion that rehabilitation efforts failed to have an effect on recidivism. Research since then has appropriately shifted the focus on identifying the types of interventions that have an impact on reducing re-offending. In the time allowed I hope to discuss, however briefly, what we have learned.

The messages are clear:

- Community corrections programmes can make a difference in reducing recidivism.
- What we know about criminal behaviour and re-offending can be used to identify principles about effective corrections programming.
- Specific strategies are needed to respond to the quite varied and different needs of offenders and communities.

There are a number of key components in terms of effective action:

- Know the individual by assessing the individual's situation and orientation to criminal offending.
- Engage and work with the individual - respond to those unique needs.
- Provide intensive experiences for high-risk and high-need individuals. The implications from the research are clear - such experiences are most effective.
- Deliver intensive and effective programmes by well-trained and supervised staff.
- Allocate sufficient resources for effective programmes. The pay-off is clear - effective correctional programming results in reduced recidivism, which means safer communities and less investment in institutions.

It is important for us to keep a clear perspective on the offender population. Generally

the vast majority of offenders will be first-time offenders who likely will never come into contact with the criminal justice system again. Therefore, the majority of our concern will be with effective programmes to reduce re-offending and is focused on the critical few offenders who represent the greatest risk to public safety.

WHAT WORKS? WHAT MATTERS?

1. The Attack on Rehabilitation and Treatment

In 1974, Robert Martinson's, "*What Works? Questions and Answers about Prison Reform*," had a major impact on public policy with respect to the issues of rehabilitation and recidivism in corrections. In the United States, this challenge to rehabilitation resulted in the emergence of prison-building as the fastest growing industry in the nation. The article and the subsequent debate fed into a conservative agenda to fight crime by punishment, not rehabilitation.

Martinson presented the results of 231 evaluations of treatment programmes conducted between 1945 and 1967. He stated, "*with few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.*" The claims led to disillusionment and the abandonment of rehabilitation in many quarters.

The fallout from this has been most dramatic in the United States, but was also evident in Canada. Much of the attack on rehabilitation in Canada has emerged in response to sensational crimes, mostly notably, sex crimes and youth violence.

2. Reaffirming Rehabilitation

Research published in the late 1980s and 1990s gave clear indications that Martinson had overstated the case for the demise of rehabilitation. Many of these findings emerged through a review of existing outcome studies of programmes that attempted to reduce the likelihood of an individual re-offending. Through a comprehensive meta-analysis, researchers discovered that a number of programmes were effective.

These early studies indicated that there had been a reduction in re-offending, but that it depended whether or not the programmes were appropriate and well managed with trained staff. Out of these studies emerged a set of principles that formed the basis of

what we now call evidence-based practice. In this literature effectiveness is defined as reducing recidivism. In fact, if "rehabilitation" is to be acceptable it must be seen to provide for public safety. The "what works" movement aims at reducing re-offending as the end state of correctional interventions.

3. Linking Risk/Needs Assessment and Programme Strategies

The central theme of effective interventions involves both the linking and matching of programmes, services and agency approaches to the needs of the individual. Therefore, the identification and assessment of individual needs become critical components of all effective interventions. The results of this process provide the context for exploring the answers to the question, "Why have you ended up here and what are the issues we need to work on to ensure that you never re-offend?" In criminal justice and corrections, the first step in this process is usually the completion of a risk/needs assessment.

During the late 1970s and early 1980s, researchers struggled with the issue of whether we could reliably predict who might be successful on parole, and who was likely to re-offend in the future.

A parallel effort contributed to the foundation of research on risk/needs assessment. It emerged out of the work with probationers in Ontario. The initial questions that guided this inquiry included "How can we possibly manage the enormous caseloads we are responsible for?" and "How can we identify those individuals who are at risk of re-offending?".

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Research over the years has helped to refine this instrument in terms of identifying those individuals who present the greatest risk for re-offending, along with the dynamic or criminogenic needs that, if addressed, should reduce the risk of re-offending. It also led to the identification of key considerations related to risk/needs assessment and programme effectiveness, as follows:

Dynamic Assessment. Once in the correctional system, individuals are subject to events and experiences that may produce shifts in their chances of recidivism. To detect shifts in the chances of recidivism, risk factors that are dynamic (criminogenic need) must be assessed. For the purposes of accurate prediction of recidivism, the important

information is not risk at intake, but risk later in the sentence.

Focused Intervention. Research findings are beginning to support the view that an important task of corrections is to manage the sentence in such a way that low-risk cases remain low risk, and higher-risk cases move in the lower-risk direction.

Risk-Need-Responsivity: Three principles are important in the management and treatment of offenders in this way:

- The risk principle assists in deciding who might profit most from intensive rehabilitative programming. The risk principle suggests that higher level of service should be allocated to the higher-risk cases. The research literature suggests that lower-risk cases may be assigned safely to the least restrictive correctional settings. In fact, amplified supervision of low-risk cases may increase the chances of recidivism.

- The need principle suggests the appropriate targets for change for effective rehabilitation. The need principle asserts that, if correctional treatment services are to reduce criminal recidivism, the criminogenic needs of offenders must be targeted. For instance: if recidivism reflects antisocial thinking, do not target self-esteem, target anti-social thinking; if recidivism reflects difficulty in keeping a job, do not target getting a job, target keeping a job.

- The responsivity principle has to do with the selection of appropriate modes and styles of service. Two components are important: 1) what styles of service work for offenders in particular and 2) within offender groups, are there special responsivity considerations?

The following factors reflect some of the key considerations that have emerged from this search.

Major Risk Factors

- Anti-social attitudes, values, beliefs, rationalisations and cognitive-emotional states (such as anger, resentment, defiance or despair).

- Anti-social associates.
- A history of anti-social behaviour.
- Temperamentally aggressive, callous, egocentric, impulsive, psychopathic, weak socialisation, problem-solving or self-management skills.
- General problems at home, school, work or leisure.

Minor Risk Factors

- Lower-class origins.
- Personal distress indicators.
- Biological and neuro-psychological factors.

Most provincial and territorial departments of corrections, along with Correctional Service of Canada and the National Parole Board, use some type of risk/needs assessment instrument, coupled with other social and psychological reports, as a means both to classify offenders and develop correctional plans.

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Another major challenge emerges from the importance of social and economic marginalisation of many of the individuals who end up in the criminal justice system and ultimately in our jails. The focus on assessing needs is primarily on changing the individual offender. This makes sense because the individual is usually contained and easily accessible. It may be shortsighted, however, if we are truly to prevent crime. The real difficulties emerge in changing societal conditions that lead to poverty, homelessness, physical and sexual abuse, violence and inequality.

4. Principles of Effective Programming

- Intensive programmes, which are behavioural in nature, are provided to higher-risk offenders and are targeted to their criminogenic needs.

- Effective programmes ensure responsivity, carefully matching offender, therapist, and programme. Treatment programmes should be delivered in a manner that facilitates the learning of new pro-social skills by the offender.

- Effective programmes involve programme contingencies/behavioural strategies

being enforced in a firm but fair manner.

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- In effective programmes, staff relate to offenders in inter-personally sensitive and constructive ways. Staff are trained and supervised appropriately.

- Effective programme structure and activities disrupt the delinquency/criminal network by placing offenders in situations (people and places) where pro-social activities predominate.

- Relapse prevention in the community. This is essentially an "out-patient" model of service delivery that is applied after the offender has completed the formal phase of a treatment programme, be it in a prison before release or a community residential setting.

- There is a high level of advocacy and brokerage as long as a community agency offers appropriate services based on these principles. Where possible, it is desirable to refer offenders to community-based services that provide quality services applicable to offenders and their problems. Therefore, it is vital that community services be assessed in this light in as objective a manner as possible.

- Effective interventions (treatment and rehabilitation programmes) with offenders reduce the likelihood that offenders will offend again and be incarcerated again. Conversely, ineffective strategies increase recidivism.

- Interventions are more effective when they are based on an assessment of the risk associated with an offender's reintegration into society and the needs of the offender in terms of change. The Level of Supervision Inventory (LSI-Revised) is an effective way of measuring risk and need. In other words, not just any programme works. Effective programmes are those that are targeted to the offender and the areas of his/her life that must change.

- Treatment and programme interventions are more effective when they are delivered in the community, or as close as possible to release to the community.

- Treatment and programme interventions, combined with supervision (that is the capacity for a quick response to violations) increase public safety.

- Treatment and programme interventions are most effective when delivered to higher-risk cases, in contrast to lower-risk cases.

- What is needed is a system that will ensure that as many offenders as possible are appropriately supervised and receive appropriate supports in the community.

FOCUS ON THE INDIVIDUAL MATTERS

At the centre of effective programming and support to individuals in their efforts to reintegrate into society is the principle of keeping the focus on the individual. To act on the principle, workers in community agencies develop individual supervision plans with individual offenders. To assist in implementing those plans, it is necessary that community workers put their energy into facilitating learning and action by individuals who are trying to reintegrate, rather than only supervising and monitoring the activities of offenders. To ensure that everything is on track, it is very important to assess whether or not the implementation of the plan has actually made a difference. In terms of public safety it is important that we work towards the reduction of non-compliance not merely report non-compliance!

a) Correctional Supervision Plans

A Correctional Supervision Plan can go by many names, but the idea is to engage in a process whereby the offender, the worker, and possibly others (such as referring agencies or people significant to the offender) agree on the offender's needs and on a plan for meeting those needs. The goal is to have the offender actively involved throughout the process. In this way the plan supports rather than controls the offender. The Correctional Supervision Plan is intended to reflect the offender's perceptions of his/her problems, as well as those issues on which the offender is now ready to work.

The development of a plan of action involves a process of contracting with the offender so that the plan becomes a series of concrete steps to be performed within a time frame, and all involved are committed to the plan and know what they are responsible for doing.

A plan is only as good as the results. There should be a process of evaluating the results of the actions taken, by the offender, the worker, and others. This information becomes the basis for developing the next steps and altering the plan, as appropriate. This planning dialogue is ongoing and dynamic throughout the time the worker and the offender are together. Issues, answers, and actions appropriate to the dialogue will change over time.

b) Needs Analysis

Needs analysis (in contrast to needs/risk assessment) focuses on the offender's needs. Often formal intake and assessment procedures are used to identify needs. And sometimes, the process is more like a conversation that covers important areas in the offender's life. The areas often included in both formal and informal needs analysis includes situations that have contributed to the offenders past difficulties such as:

- Employment
- Educational or vocational training
- Alcohol and/or drug abuse
- Money management
- Family support/problems, parenting problems
- Difficulty in getting along with people
- Emotional stability
- Friends without a criminal orientation
- Ability to recognize problems
- Relationships with preferred sexual partners
- Expectations of life on the street
- Personal appearance and hygiene
- Physical health
- Use of leisure time and physical activity
- Perceptions of authority, right and wrong and the inferences made on another's actions.

The process is most meaningful when the offender takes part in defining his/her needs, the changes required to satisfy them, his/her strengths and what is required to support them. Some agencies will add more questions related to risk analysis, involving such

issues as past history, behaviour in the institution, and the severity of the present offence. The focus is on identifying the level of risk the individual presents to the programme and/or the community.

Offenders will come with their own ideas about what they want, and ways of meeting their needs. A helping relationship starts to develop between the individual and worker as they explore these ideas.

Agencies will utilise assessment processes that dictate the level of involvement they are prepared to engage in with the individuals in their care. For some, this may begin with an extensive psycho-social and family history, and initial assessment of the criminogenic needs and the contextual situations in which the individual has difficulties. Agencies that provide treatment or psycho-educational and social learning strategies may utilise a variety of assessment instruments as a means of both understanding the issues and in assessing the effectiveness of intervention strategies.

Issues that emerge during assessments have a greater likelihood of being addressed if offenders understand their relevance in terms of their perceptions of the world, themselves and the impact on their daily living. This material often encourages "ahas" or insight into one's behaviour, and thus becomes added motivation to change.

It is important to respect the fact that "needs analysis" is not a mechanical process. It is a process that takes time so that both worker and individual have a good understanding of the individual's needs and the actions required. Part of developing this deeper understanding of the individual involves the worker making a very general assessment of the individual's readiness to get involved in a personal change process, the individual's resources and rationality.

Offender Readiness. Individuals come to a programme for a variety of reasons, usually as a condition of probation or parole release. The individual may also have had experiences with other social agencies, correctional facilities, and other community corrections programmes. These background factors play a part in determining whether or not the individual is ready to work in a particular programme (residential or otherwise) at a particular point in time.

The forces for change within the person and his/her environment must be greater than the forces that work against change. The individual might dislike the idea of change, but may also simply have no other, or very few, options. S/he may be under pressure from creditors, police, family and others. These factors will play a part in answering some central questions: Is now a good time to work for change? Is the individual ready? If s/he is not ready or not suited for this particular programme, is there a more appropriate alternative for which the individual might be ready?

Offender Rationality. One reason for individual failure in programmes is the presence of a severe psychological disturbance. The worker is trying to make a tentative decision. Is this individual able to understand and benefit from the interventions the agency has to offer? Is the individual emotionally and psychologically stable enough to pursue the goals and do the necessary work? Is the offender on any psychotropic (mood altering) medications and, if so, what effect will this have on his/her Correctional Plan?

In the final analysis, the worker must decide that the offender has the intellectual ability and emotional stability to understand what is going on and to do the necessary work required in the program. Part of the analysis must also involve the ability of the programme to adapt to the abilities and stability of the individual. This is the responsivity principle which involves matching both the worker and the approach to the characteristics of the offender. Questions of readiness, resources and rationality can apply as much to the setting as they do to the individual.

c) The Process of Planning

The actual content of a plan, the particular short- and long-term goals, and the results achieved from action are, of course, important. Of even greater importance is the individual becoming involved in his/her personal plan. "Taking control over one's life" is very important to the process of reintegration. The individual learns to solve problems by thinking, planning and then acting in a deliberate and rational manner to achieve certain ends, and then evaluating them. Acquiring such skills is critical to the individual's ability to learn how to satisfy his/her needs in a legal and responsible manner.

The essence of this approach to planning with an adult is to do it with, not to or for the

person. This is a basic tenet of adult learning. Research shows that involving the offender in the development and implementation of the Supervision Plan is one of the most helpful things that any programme can do. It is an enabling and empowering process in which the offender learns the skills to do it for her/himself.

d) The Need for Review and Revision

As the worker and offender develop a relationship, the individual will start to trust. With trust comes the ability to explore personal aspects and areas that the individual may not have been aware of or avoided. Over time, understanding deepens and more information becomes available. As a result, the Supervision Plan will change. Planning is an ongoing, dynamic, cyclical process. Ongoing review is part of the process.

e) Approaches to Developing Supervision Plans

There is great diversity in the approaches to needs assessment and planning from agency to agency and from programme to programme. Many residential programmes not only offer housing, but also employment services, personal and vocational counselling, referral services, and opportunities to participate in community activities. Many programmes are designed to address the specific requirements of specialized offender groups (for instance, drug/alcohol dependencies or mental health problems), and their procedures reflect their particular focus. Some programmes have very simple intake forms, while others have detailed tools and procedures derived from psychology, psychiatry, social work, nursing, and other disciplines. Settings that are actively involved in treatment and therapy often have more complex assessment processes compared to those that focus on basic support and providing a structured environment.

f) A Brief Note about the Worker/Supervisor

The primary purpose of the helping relationship is to facilitate the offender's growth and development so as to reduce the likelihood of his re-offending. A relationship built on trust and mutual agreement between the worker and the individual is required. In order to develop this relationship, certain skills are required. The common characteristics of effective supervisors are:

- empathy
- respect, acceptance and warmth
- genuineness

- concreteness and immediacy
- objectivity
- stability

In addition to these core characteristics, there are other skills workers should have, including:

- self-disclosure that is appropriate in content and timing;
- confrontation about discrepancies in the relationship with the worker;
- concretization of a course of constructive action; and
- fair but firm consequences of actions.

These are more advanced skills that workers develop over time with practice and supervision.

g) Individual Differences

Each person the worker becomes involved with is unique. The individual's needs, problems, strengths, attitudes and behaviours are different from all others. The worker should expect each individual to be different and respect those individual differences.

There are many experiences and conditions that may have major effects on individual attitudes and behaviours, including socio-economic status and class, age, race, religion and ethno-cultural background. To help offenders, workers must be sensitive to these experiences, and appreciate the importance of them in the individual's life.

The helping relationship must start from the offender's reality. For some, only someone who has shared that reality (for instance, being a woman or Native person) can fully understand and work with the individual. Some workers will find the differences of individual life experiences, values and attitudes mean that they do not have the necessary experience or specialized knowledge to relate to and help the individual. All workers, however, can convey an "unconditional positive regard," a deep interest in and respect for the person.

The development of a correctional supervision plan, a helping relationship, and a supervision process are all part of the same generic process - a helping intervention into

another person's life. The level of the intervention is determined by the individual's wishes, the worker's skills and experience, and the philosophy and mandate of each programme.

Restorative and other Community Approaches to Offending Behaviour

Across North America, there is growing experience in communities with initiatives that focus on keeping individuals out of the criminal justice system altogether, or at least out of prison. Most involve alternative sentencing. The variations are primarily in terms of who decides the disposition, then what the alternatives are. Some measures are taken before charges are laid, others before a trial, and others before sentencing.

These alternative approaches have quite varied histories. Some are small projects; others are long-standing programmes. Some deal with young people, while others respond to adults, or specific population groups such as Aboriginal people, or offences of specific types or severity.

The following summarises some alternatives that are implemented in various ways across Canada and the United States.

Different Ways of Responding to Criminal Offending

Community Sentencing and Conflict Resolution. In some cases, respected community members recommend a course of action. This might be a sentencing circle, a youth mediation committee, Band Council, a community council, or a community reparation board. In other cases such as Family Conferencing, all of the parties involved (young people, the victims of crime, their respective families, neighbours and other affected members of the community) come together to find lasting solutions.

Circles of Support and Accountability. This programme originated in Canada, and is a response to the high-risk high-profile sex offender who is released from prison after expiry of the sentence. The main goal of the programme is to offer safety to the community by a supportive supervision approach and to provide for the offender's safety from the community by providing for the re-integrative needs of the offender.

Individual Mediation, Reparation and Conflict Resolution. In these approaches mediators bring victims and offenders together to reach resolution. Alternatively, an agency may develop a plan for restorative resolutions that are then recommended to the judge. The agency would then supervise the implementation of the plan.

Diversion Programmes. The offender admits responsibility for the alleged offence, and then meets with a diversion worker to plan an appropriate response to the offence, such as verbal or written apologies, restitution or community service work. As a result of diversion, an individual does not get a criminal record, increasing the chances that s/he will not offend again. The police and/or Crown decide whether to divert a case.

Different Types of Resolutions

Community Service Orders. This sanction requires offenders to do a certain number of hours of voluntary community work to fulfill the conditions of the sentence by carrying out a "reparative" gesture that can benefit the community.

Various programmes and opportunities. Often the disposition involves a combination of conditions. For instance, one case was resolved with the following requirements: a three-year suspended sentence with a very lengthy probationary period, plus 200 community service hours; alcohol assessment, counselling and treatment; life skills training; educational upgrading; and a curfew from 10pm to 7am.

Other kinds of approaches and programmes include: referral to a programme that helps youth get a job, and thereby earn money to compensate victims; literacy programs; shoplifting programmes; intensive in-home family interventions; obtain an addictions assessment then attend an addictions or AA programme regularly; counselling; drunk driver programmes; parenting programmes and family counseling.

Bail option programmes allow for the release of the offender into the community under responsible supervision. **Fine option programmes** allow for administrative sanctions (for instance, non-renewal of driver's license) and other alternatives (for instance, community service) to serving time in prison because of the inability to pay for a fine. These programmes help people who cannot afford bail or a fine.

Concluding Remarks:

I firmly believe that community corrections is critical to the success of the criminal justice system and it is time that efforts to develop community justice, expand restorative approaches and employ evidence-based programmes for the reduction of offending be given the support they require to be effective deliverers of community safety services. There are at least nine ways in which it can be said that community corrections matters. It matters because it is:

- A way to protect the public and reduce re-offending.
- A way to provide support to victims of crime.
- A way of working together to promote effective use of sanctions and resources.
- A way of building public confidence in the justice system.
- A way to promote innovative and flexible programmes for the management of offenders.
- A way to provide post-custody supervision and support.
- A way to not only bring offenders to justice but to assist them in breaking the cycle of offending.
- A way to re-think how justice is delivered in communities.
- A way to engage the community and build community capacity.

These nine ways underscore the fact that community corrections matters and can be a major contributor to community safety and to the enhancement of community life.

THE MANUALISATION OF OFFENDER TREATMENT

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Introduction

In criminal justice systems worldwide, offender treatment programmes have become a significant part of the work of prison and probation services, driven by evidence from meta-analyses of offender treatment studies from the 1980s onwards. The 'What Works' meta-analyses show offending to be most effectively reduced through structured, cognitive-behavioural treatment programmes that address 'criminogenic need' in high-risk offenders (see McGuire, 2001). Accreditation of offender treatment programmes followed from the 'What Works' findings in a number of jurisdictions, e.g., Canada, England & Wales, and Scotland. Programmes are judged by a panel of experts against criteria that capture the findings of the 'What Works' meta-analyses of what makes an effective treatment programme. An example of these criteria is given as follows:

HM Prison Service's programme accreditation criteria:

- There must be a clear and coherent model of change.
- There must be a clear statement of the types of offender for whom the programme is designed.
- A range of dynamic risk factors must be targeted.
- Effective treatment methods must be used.
- The programme must facilitate the offender's learning of skills.
- The programme must be of adequate duration and intensity, and must be appropriately sequenced.
- Attention must be paid to engaging offenders and maintaining their treatment motivation.
- The programme must integrate with the offender's overall sentence or supervision plan.
- The implementation of the programme must be monitored to ensure that it is run as designed (programme integrity).
- The process and outcomes must be evaluated.

The accreditation process requires that programmes be documented in a set of treatment manuals so that a panel of experts can judge the programme according to the criteria. Manuals are required to describe: (1) the model and evidence that underpins the design of the treatment, (2) the intervention, (3) evaluation, (4) staff training, and (5) case management. In any treatment there are a number of variables that influence effectiveness of that treatment: what is being done with whom and under what conditions. In this paper, I will examine one of the variables in treatment that might influence effectiveness – treatment manuals. I am interested primarily in the quality of the facilitator's manual that is the manual that guides the professional through the treatment sessions.

Surprisingly, despite the proliferation of manualised treatments for offenders, relatively little attention has been paid to what makes a good treatment manual. There is some information in the clinical literature, and we have begun some research of our own, which I will describe. I will examine the advantages and disadvantages of treatment manuals and identify, as far as we know, what makes a good treatment manual. I will do this with reference to two manualised treatments that I have been involved in developing: a treatment programme for personality disordered offenders, and one for alcohol-related violence.

Advantages of treatment manuals

Treatment manuals that guide the practitioner in the application of psychological therapies have three principal advantages. One is that they enhance treatment integrity, the second is that they facilitate staff training and supervision, and the third is that they permit treatments to be replicated.

Enhance treatment integrity: Effective treatment is theory-driven and evidence-based. Once a treatment programme has been designed according to theory and evidence, adherence to these principles in practice is important. This is the concept of 'treatment integrity' defined by Hollin (1995) as meaning 'that the programme is conducted in practice as intended in theory and design' (p. 196). Fundamental to programme integrity is a clear statement of what is to be done in treatment and how, and manuals do this to a greater or lesser degree.

Facilitate staff training and supervision: Manuals can provide the basis for training new practitioners and also for training experienced clinicians in new treatments. Furthermore, treatment integrity requires that trained staff are monitored and supervised so that their practice develops appropriately, preventing drift from the original principles. Treatment manuals provide a focus for these activities.

Facilitate replication: As well as promoting the use of treatments that have an evidence-base, manuals have a role in contributing to the build-up of that evidence-base. The ability to replicate a treatment and evaluate it with different therapists and different clients is important, and manuals assist with this.

Criticisms of treatment manuals

The main criticisms of manualised treatments are that they are standardised, and are therefore insensitive to individual needs, too narrow in their focus, and kill the 'art' of therapy.

One size fits all: One major criticism of treatment manuals is that all clients are treated with a standard approach that does not permit the use of clinical judgement. The question this raises is, does the use of clinical judgement lead to more effective treatment? It may be that clinical judgement is not as good as we would like to think (Wilson, 1996; 1998). Clinicians, as others, are prone to short-cuts and biases of information processing. They form opinions early on, based on their own beliefs about the world, and they look for information to confirm these opinions. Wilson (1996) suggests that, since clinical judgement may be inaccurate, it could actually lead to inferior results compared with a standard treatment. Using the most effective approach known for a particular problem has a good chance of being effective in an individual case. A standard treatment may be seen as the first line in a stepped care approach, where individualised treatments by experienced therapists may be a next step if the standard treatment fails.

Focus is too narrow: Another criticism is that a client's problems are often wide and varied, and are not covered by the narrow focus of some manualised treatments. One response to this is to increase the flexibility of manuals (Henin et al., 2001). Flexibility

can be increased by using a modular approach, fitting people to the aspects of treatment that meet their needs, or by less prescriptive manuals, where the session format is specified, but not the session content, which is guided by the patient's current problems.

Kill the 'art' of therapy: Another concern is that manualised treatments reduce the 'art' of therapy. This has led to attempts to define the nature of this art and an assessment of whether or not this really is curtailed by manualised treatments. Clinical judgement may be removed to a degree, as we have seen, but clients' needs will still have to be assessed for modular treatments and the less prescriptive manuals require clinicians to be responsive to the issues the client raises. Furthermore, if art is taken to mean building rapport, engaging the client, and developing a therapeutic relationship, then manualisation does not remove the need for these clinical skills (Wilson, 1996). When training to use a manualised treatment, therapists are often initially thrown by the apparent emphasis on technique over process, but the techniques cannot work in the absence of a therapeutic alliance.

What works best with whom?

It is likely that there is a client x therapist x therapy x manual interaction in achieving successful therapeutic outcome. Looking at the therapist, treatment manuals have a particularly important role in providing support and structure to less experienced practitioners. Crits-Cristoph et al. (1991), in a meta-analysis of psychotherapy outcome, found that the use of treatment manuals reduced variability in treatment outcome across therapists. This means that manuals may reduce the effectiveness of the best therapists, but adherence to manuals offers a minimum quality assurance.

Therapists of different levels of experience may work better with different types of manuals. There are those manuals that are prescriptive, detailed, session-by-session recipes for treatment, and those that are more conceptual, emphasising an individual case approach (Addis & Krasnow, 2000). Less experienced therapists may work more effectively with more structured manuals and more experienced therapists may work better with less structured manuals.

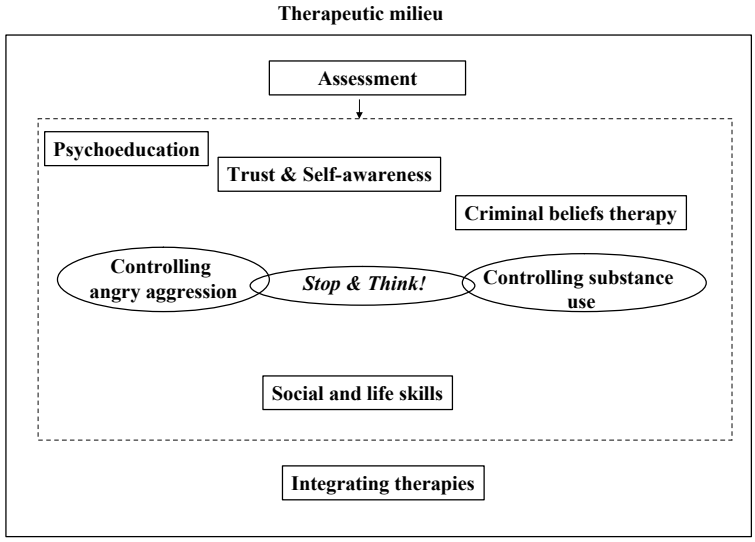
Just because a treatment is manualised does not mean that it is simple. As with all treatments, support and supervision are vital to ensure the integrity of manualised

treatments (Castonguay et al., 1999). Wilson (1996) argues that having the content of treatment manualised enables supervision to focus less on techniques and more on the process aspects of implementation.

Arnold Lodge Personality Disorder Unit

The first example of a manualised treatment is a multi-component treatment programme for people with personality disorder developed at Arnold Lodge, a secure forensic mental health unit in Leicester, UK (McMurran & Duggan, 2005). The PDU treatment programme aims to develop and maintain therapeutic relationships, to teach people skills for appropriate containment of their behavioural disturbance, and to address some of the interpersonal difficulties that are at the core of personality disturbance. The components of the PDU programme are shown in Figure 1.

Figure 1. The Arnold Lodge PDU treatment programme



The manualisation of the PDU treatment programme was a collaborative effort of all disciplines involved in the design, development, and application of treatments. The programme is described in an overview (theory, selection, assessment, operational guidelines, audit procedures, and staff selection and training) and seven treatment manuals:

- Psychoeducation – clarification of diagnosis
- Trust and self-awareness – exercises to foster group cohesion
- Stop & Think! – social problem solving therapy

- Controlling angry aggression
- Controlling substance use
- Criminal thinking/belief therapy
- Skills for living – interpersonal skills training

Modular: Although admission depends upon a psychiatric diagnosis of personality disorder, people need not be treated according to their diagnosis, but rather treated according to the problems they typically experience. This leads to a multi-component treatment, which Henin et al. (2001) noted as one way to increase the flexibility of manualised treatments to meet the individual's needs. The PDU programme is modular, permitting a degree of tailoring to meet clients' needs. There are components in which every patient is expected to participate (e.g., Stop & Think!), there are others that are optional, depending upon need (e.g., Controlling Angry Aggression and Controlling Substance Use).

Variable structure: The treatment is a mix of structured and conceptual approaches, and different manuals will appeal to different practitioners: less experienced practitioners may prefer the highly structured manuals (Controlling Angry Aggression, Controlling Substance Use), and experienced practitioners may prefer the conceptual manuals (Psychoeducation, Stop & Think!). Structured manuals allowed for the training of health care assistants in the delivery of therapy, which meant more staff trained in the therapy components and consequently fewer logistical problems in providing therapy consistently, enhanced integrity of the therapies overall, and increased job satisfaction for this staff group.

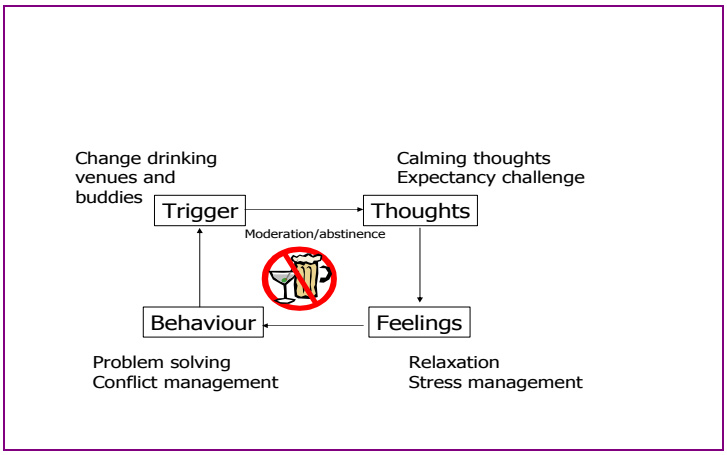
Process of constructing manuals: The process of constructing these manuals has itself contributed to the evolution of the PDU treatment programme. First, the documentation of treatment created the need for clinicians to specify their treatments and clarify the rationale behind them, thus advancing their thinking. Second, external assistance in compiling the manuals contributed a refereeing and reviewing aspect. Third, the availability of the manuals allowed for peer reviewing among members of the clinical team, creating the opportunity for reflexive development of all aspects of the treatment programme so that they fit better with each other. There is, therefore, a valuable iterative process in the construction of manuals.

Evaluation: Another advantage was that formally specifying treatment components emphasised the opportunity of evaluating each part of the treatment programme separately, checking to see whether clinical targets were met. In particular, patients showed rapid improvement over 3 months on social problem-solving, as measured by a psychometric test, maintained at 15 months (McMurran et al., 1999; McMurran, Fyffe, et al, 2001). Controlling Angry Aggression also led to improvement on psychometric measures of anger and anger control (McMurran, Charlesworth, et al., 2001). Although these measures say nothing about eventual successful resettlement, they do show that the programme is working as intended. This incremental and intermediate approach to the evaluation of treatment is particularly important for units like the PDU where the treatment is lengthy (average 18 months) and the final outcomes are available only after a considerable follow-up period.

COVAID

Control of Violence for Angry Impulsive Drinkers (COVAID) is an individual treatment programme for people living in the community. COVAID explains the 'anger and aggression system' and how this is exacerbated by alcohol. The treatment involves addressing each aspect of this system to reduce anger, impulsive behaviour, and drunkenness, and so reduce the likelihood of drunken violence (see Figure 2).

Figure 2 The COVAID intervention



Our initial evaluation of COVAID with offenders on probation gave positive results on psychometric tests, showing improved anger control and reduced impulsive problem-

solving style, and reduced aggression and violence during COVAID and in the 4 months afterwards, as measured by self-report and Probation Officers' reports, although COVAID's effect on drinking and drunkenness is as yet unclear (McMurran & Cusens, 2003). These are indicators that COVAID is worthy of further implementation and evaluation. In light of this, we decided that we would need to offer COVAID to other practitioners to implement and collaborate with us in the evaluation.

Our experience of training others to use the manual quickly showed that, as academics, we had concentrated on substance over form. We could see what we meant by the manual's instructions, but others could not. We turned our attention to issues of layout and style - larger font, graphics to highlight the purpose of each section at-a-glance, reproducible materials on CD.

Users' views

At this stage it became plain that we were really just guessing about the best way to design a treatment manual, and we thought it might be of benefit to survey users' views on what makes a good treatment manual. My colleague Anna McCulloch is currently undertaking a survey of experienced trainers, i.e. those who train programme facilitators, to collect their views on what makes a good treatment manual. Trainers are an interesting group because they have usually been programme facilitators and many are familiar with a number of programmes and so they can compare different manuals. Using the Delphi method, she has done the first round of the survey, and some of the key identifiers of what makes a good treatment manual are:

- There is a clear theory manual
- Theory and practice are linked
- Learning points are listed throughout
- There is a clear framework for sessions
- Layout is clear (big font, well spaced)
- Different types of activity are visibly distinguished (e.g., by icons, different font, section demarcation)
- Plain English is used
- The sessions are not too prescriptive
- Creativity is permitted within boundaries of integrity

- There is information on style of delivery
- Assessment materials are integral
- Materials are available on CD

These are just a few of the initial opinions of experienced trainers which will be refined as the procedure progresses.

Conclusion

Development of greater effectiveness in offender treatment requires that we move on from asking the question 'Are offender treatment programmes effective?' The better question that begins to address the finer points is: 'What treatments for what problems in which offenders work best under what conditions?' Manualised treatments have many advantages, but they should NOT be seen as the easy option. The early promise of manualised treatments in reducing reconviction rates has in places led to a speedy roll-out of programmes, in both prison and probation services, with high throughput targets and resources attached to meeting those targets. The risk is that offender selection criteria may not be adhered to, staff selection, training and supervision may be less rigorous, and the offender's experience may not be as good as it once was. Because a treatment is manualised does not make it suitable for all or easy to administer by anyone. We need to take care and ask: "*What kind of manuals used by which workers, with what type of clients, and in which settings work best to reduce re-offending?*"

THEMATIC REVIEW OF WORKSHOP DISCUSSIONS

Conference delegates were divided into workshop groups that met for two closed sessions. The purpose of the workshops was to provide participants with an opportunity to discuss issues and experiences and to chart possible ways forward. Each Rapporteur presented a summary of their group's findings to the main Conference when it reconvened.

WORKSHOP 1: SENTENCING – HOW BALANCED IS IT?
FACILITATOR: JUDGE MICHAEL REILLY
RAPPORTEUR: DEIRDRE HEALY

Judge Michael Reilly very kindly agreed to step into the role of Workshop Facilitator in the absence of Tom O'Malley. The Council is indebted to Judge Reilly for his willingness and enthusiasm in doing so.

Should the purpose of sentencing be punishment or reform?

- Deterrence: prison incapacitates offenders and may prevent future offending;
- Few alternatives to prison sentence available – need new range of sanctions;
- Reform can happen in communities with the combined support of the offender, relevant agencies, community and family members;
- Reform in prison is limited, given the very few programmes available to the offender and the poor facilities;
- Sentencing sets and maintains society's norms;
- Positive sentence management should include a 3 phase approach e.g. immediate post-sentence (prison), transitional (dealing with services); re-integration when sentence ends;
- Little sentence management is currently in place; Post-Release Programmes should be run by Probation & Welfare Service.
- Nenagh Reparation Project takes responsibility for re-integrating the offender back into the community. The Project should be used as a model for other communities to base similar projects on.

What factors should be taken into account when sentencing?

- Offender characteristics, early plea, seriousness of offence, remorse, victim impact statements;
- Judicial discretion – no fixed tariffs for most offences;
- Media & political pressure: selective reporting, notorious cases – independence of judiciary should guard against;
- Voluntary participation in programmes should reduce tariff – reward or motivation; low take up of prison programmes;
- Increased role for Probation and Welfare Service;
- Management of sentences by Judges vs. Parole Board.

WORKSHOP 2: PARTNERSHIP IN, WITH AND THROUGH COMMUNITIES, THE MOST EFFECTIVE SUPERVISION – NORTHERN IRELAND EXPERIENCE

FACILITATOR: NOEL ROONEY

RAPPORTEUR: LARAINE HANLON

Noel Rooney, Chief Executive Probation Board Northern Ireland, introduced the workshop by explaining the structure and functions of the Probation Board Northern Ireland:

- PBNI is an independent, community-based board with 18 non-executive members with mandatory and discretionary functions;
- It is Government funded, with 20% of its budget spent on community development programmes, e.g. family support, educational opportunities, employment services;
- Being a community based organisation is vital to its success;
- Priorities include public protection, reducing reconvictions and social inclusion;
- Building strategic partnerships in relation to: Youth Justice, Community Safety, District Police Partnerships, Prison Service, Courts Service, Victims, Restorative Justice.

What are the most effective interventions for diverting young people from crime?

- Education is a key intervention in youth diversion;

- Intervention and/or education aimed at parents and grandparents is essential in order to break inter-generational cycles of offending behaviour;
- There is a case for pre-emptive intervention before a child reaches court or commits his/her first offence;
- Is restorative justice effective in the long term?
- Currently, there is no single body with the sole responsibility for identifying children at risk of offending. Essentially there should be one group to identify children at risk and take immediate action, without waiting for an offence to be committed. However, every effort must be taken to ensure that children do not become labeled through this process;
- Mentor programme for vulnerable children – needs to be a long-term service and not a project based scheme;
- Timely intervention in many cases could prevent the development of problems – assessment followed by fast tracking of intervention.

Whatever the intervention, does it have to be community owned and based?

- State funded agencies vs. independent agencies – need co-operation between all agencies involved;
- Co-operation between agencies particularly vital in restorative justice;
- Community based intervention important in building trust by the community, and strengthening community in order to help it deal with its own issues, e.g. reintroduction of child offender into the community;
- Local ownership of scheme from design to operation.

What is the best organisational structure for delivery?

- Proposed merger of Probation Service with Prison Service in Northern Ireland a major organisational issue.

WORKSHOP 3: WIPING THE SLATE CLEAN – A BUSINESS PERSPECTIVE

FACILITATOR: TINA ROCHE / PADDY RICHARDSON

RAPPORTEUR: ELIZABETH CAMPBELL

Tina Roche, Chief Executive of Business in the Community, introduced the workshop by outlining the issues facing an employer in considering whether to employ a person who has broken the law and/or has addiction problems.

Why should I employ an ex-offender?

- Ex-offenders can be very motivated and skilled;
- Wasteful to exclude a whole category of potential employees;
- Employment has an important role in preventing re-offending;
- Short-term perception problem: if first three to six months go well, general attitude to the person changes.

What information should I have about an ex-offender?

- Managing information sensitively;
- Confidentiality: should information be disclosed to others?
- Health & safety considerations – is disclosure necessary to ensure health and safety laws are not breached;
- Opinion of staff and customers, will staff blame ex-offender if something goes missing?
- Need to develop senior management support.
- Does the nature of the offence matter e.g. violent robbery versus public disorder offence.
- Should ex-offenders work with vulnerable people?

Drug treatment

- Person should try to arrange methadone treatment outside working hours if possible. Alternatively time off could be given to the individual and salary reduced.

What support is available for employers?

- Probation and Welfare Service have many years experience of dealing with offenders, and fund projects that support the re-integration of ex-offenders.

WORKSHOP 4: PAROLE – A SCOTTISH PERSPECTIVE

FACILITATOR: PROFESSOR JAMES MCMANUS

RAPPORTEUR: SINÉAD MCPHILLIPS

Professor McManus, Chairperson of the Parole Board for Scotland, introduced the workshop by explaining the Scottish parole system:

- Independent parole board with quasi-judicial functions;
- No involvement of Scottish Minister for Justice;
- Different rules on parole for different categories of prisoner - sentence of less than 4 years; more than 4 years; or life sentence.

How to justify parole?

- Parole can only be justified if it works: Scottish evidence suggests that prisoners released earlier in their sentences have a lower rate of reconviction; however this may be skewed by the selection of low risk prisoners for earlier release;
- Success of parole directly related to the quality of supervision provided;
- In Ireland there is a very low recall rate for prisoners with life sentences released on parole; however this is influenced by small numbers involved and close supervision.

Should Ministers for Justice be involved in parole decisions?

- Why should Ministers want to be involved? no political advantages;
- Possibly a safety net for Parole Board in hard cases;
- Parole in Ireland is an administrative function, whereas the new Scottish system makes parole a quasi-judicial decision – complete culture change involved;
- Could be pressure from European Court of Human Rights to change.

How to ensure fair procedures?

- Scotland – parole board member who interviews the prisoner is not involved in

the decision on release in order to avoid accusations of prejudice;

- Ireland – full parole board interviews the prisoner;
- System of formal hearings chaired by legal personnel in Scotland is designed to ensure fair procedures.

Comparison of parole systems in Scotland and Ireland	
Parole Board statutory	Parole Board non-statutory
Parole Board makes decisions	Parole Board makes recommendations
No involvement by Minister other than appointing Parole Board members from a list supplied by an interview board	Minister retains final decision-making power
Assessment of prisoners – formal system of assessment in first year of sentence to devise a training plan	No uniform system of assessment in early stages of sentence
Detailed supervision of prisoners on parole seen as key to avoiding re-convictions	No supervision for releases on remission; supervision if paroled before remission
Parole Board member who interviews the prisoner not involved in decision on release	2 Parole Board members who interview the prisoner are key to Board's recommendation
Prisoner released on parole can be recalled for any breach of conditions e.g. moving house without notification	Prisoner released on parole can be recalled if charged with a new offence or breaches the conditions of temporary release

WORKSHOP 5 AFTERCARE: REALITY OR MYTH?

FACILITATOR: RITA O'HARE

RAPPORTEUR: JULIE BOWE

Rita O'Hare gave a brief introduction on the current aftercare system in Northern Ireland. It was said that aftercare is one of the central tenets of the criminal justice system and has been available since the 1980s. To this end mention was made of Criminal Justice Review and how its recommendations have impacted on the provision of aftercare. Also, the Criminal Justice Order 1996, effective 1998, is said to be the most critical piece of legislation for the probation services in Northern Ireland as it essentially

brought aftercare back into the agenda.

Should aftercare be voluntary or compulsory?

- Aftercare should be an automatic entitlement regardless of whether based on a voluntary or compulsory basis;
- The minute prisoners left prison they were essentially on their own;
- Prisoners have stated that on leaving the system they just cannot cope;
- Reference was made to the Children Act, 2001 in Ireland: this is the only legislation making provision for part-custodial sentencing and part supervisory;
- Criminal Justice Review in Northern Ireland & the existence of the Criminal Justice Inspectorate. Such reforms now place Ireland behind the North;
- In conclusion, an outside – in approach is needed.

What processes do we create to achieve the re-settlement aim?

- Aftercare needs to be applied from the very first day that a person enters the prison system;
- The removal of prisoners from their community is inappropriate given the enormous difficulties and indeed costs involved in re-integrating such persons after their release;
- It was stated that aftercare should be provided for on a compulsory basis by the State. However, there was no overall consensus on this issue.

What factors are relevant in the process of the re-integration of an ex-offender back into the community?

- Employment is generally the major stepping stone to re-integration of offenders;
- The existence of a stable relationship is also extremely important;
- Family relationship needs active and continuous encouragement;
- Emphasis must be placed on the offender whose situation on leaving prison is quite desperate. Many experience enormous difficulties relating to access to health facilities, social welfare payments etc;
- Services need to be provided on a non-9-5 basis;
- Crisis situations generally occur outside normal office hours.

THE IMPACT OF DEVELOPING SKILLS AND COMPETENCES FOR THOSE DEALING WITH OFFENDERS: STRIKING A BALANCE BETWEEN THE INDIVIDUAL AND JUSTICE

JOHN RANDALL

SKILLS FOR JUSTICE, ENGLAND AND WALES

All professional practice is about making difficult judgements, and in particular, striking the balance between sometimes conflicting claims and responsibilities. Striking the balance between the individual and justice is at the heart of the professional responsibilities of all those involved in the administration of justice.

The balance, and the difficulties inherent in striking it, are well illustrated by the rules of conduct that apply to solicitors. The solicitor has a duty to the court – he or she is an officer of the court. The solicitor has a duty to their client – the paying customer. The rules of professional conduct state that the solicitor shall not do anything in the course of their practice:

"which compromises or impairs or is likely to compromise or impair:

- *the solicitor's independence or integrity;*
- *a person's freedom to instruct a solicitor of his or her choice;*
- *the solicitor's duty to act in the best interests of the client;*
- *the good repute of the solicitor or the solicitors' profession;*
- *the solicitor's proper standard of work;*
- *the solicitor's duty to the Court."*

All good stuff, but full of difficult balances to strike! It might be argued that it is in the best interests of a guilty client to lie to the Court, in the hope of avoiding a prison sentence. But a solicitor cannot connive in the pursuit of that "best interest", as the solicitor has a duty to the Court which includes not misleading the court. There is also a duty to the proper standard of professional work, the reputation of the profession, and the independence and integrity of the individual practitioner. Deciding that these other

duties over-ride the interest of the client in lying his way out of a prison sentence is what those younger than I might call a "*no brainer*", a decision so obvious that it requires hardly a moment's thought.

But not all professional judgements are so straightforward. Professionals are constantly challenged by difficult decisions, where there is no absolutely right or wrong answer.

Striking the balance between apparently conflicting courses of action applies at a policy level as well as at the level of individual cases. There are understandable, human reactions to offending, not least from the victims. Those who have suffered the theft of a car, a burglary or mugging, or whose children have been subject to the unwanted attentions of teenage drug pushers may not have rehabilitation uppermost in their minds. Those who live in fear of crime (even when statistics show that recorded crime is falling) may well be responsive to calls for zero tolerance and exemplary sentences. Those working in the field of criminal justice are, largely, public servants with a duty to respond to those concerns. But, as professionals, they also have, in many cases, a personal relationship with offenders in their care. For them, rehabilitation so as to reduce the risk of re-offending will also be a prime concern.

Just as solicitors have sometimes to strike a balance between the best interests of their clients, and their duty to the Courts, so all professionals in the criminal justice field, and especially those working with young people, have to strike a balance between retribution and rehabilitation.

I make these references to professionalism, because any development of the skills and competences of those who deal with young people in the criminal justice system must take place against a background and an understanding of the nature of professionalism.

What are the characteristics of a profession?

Mr Justice Brandeis, of the United States Supreme Court, writing in 1933, defined them as follows:

> *"First, a profession is an occupation for which the necessary preliminary training is intellectual*

in character, involving knowledge and to some extent learning, as distinguished from mere skill.

Second, it is an occupation which is pursued largely for others and not merely for oneself.

Third, it is an occupation in which the amount of financial return is not the accepted measure of success."

So far, so good. But these definitions do not, of themselves, address the three practical elements of professional regulation: competence, conduct and compliance. There is a reasonable expectation that a professional person will hold a qualification attesting to competence in their field, will abide by rules of conduct, and will be subject to some form of monitoring of compliance with those rules. Possession of a qualification alone is a necessary, but not a sufficient requirement of professional status. It is the existence and enforcement of a code of professional ethics that is the defining characteristic of a true profession. The seminal writing on this matter is by Sir Roger Ormrod (as he then was). Ormrod was a both a doctor and a lawyer, and his 1967 paper "Medical Ethics" is a standard text on professional conduct for students of both disciplines. He said:

"The existence of a code of ethics is often regarded as one of the most important characteristics which distinguish the occupations known as professions from all others. So clearly is this recognised that one of the first steps taken by any body or group which aspires to recognition as a profession is to establish one, and to set up some form of disciplinary tribunal to deal with members who offend against it and then to seek from Parliament statutory powers to inflict sanctions on them."

Codes of professional ethics are often regarded with suspicion by laymen, sometimes being seen as a manifestation of Shaw's conclusion that:

"All professions are conspiracies against the laity".

Dicey's scathing comments about legal etiquette in the Fortnightly Review of 1 August 1867 support that conclusion:

"The Bar rules are regulations which have a two fold aim: firstly to promote honourable conduct;

secondly to check competition. All the rules which have the first aim may be summed up under the one law – thou shalt not hug attorneys. Under this head must be brought many minor regulations, such as rules against frequenting public coffee rooms, or unduly cultivating the society of attorneys during circuit. No doubt these rules are extremely indefinite. No two lawyers will agree as to exactly what they are. Pedants and purists will enumerate a hundred little rules of etiquette, some of which they impose upon themselves, and all of which they are ready to impose on the less experienced and more docile members of circuit. Men of more sense and vigour do not pay much attention to the minutiae of the professional code. Still, all persons will acknowledge that there are some social rules of the kind referred to which it would be well for any barrister to observe who did not wish to incur considerable odium."

Not much recognisable public interest there, rather rules of etiquette concerning the social graces necessary to ensure that the professional classes behaved with a dignity appropriate to their rank. That, at least, is the charitable explanation. Dicey was right to observe that the rules were as much about inhibiting competition as anything else. It was not mixing socially with a lesser breed of lawyer that was the real offence, it was using that mixing to steal a march on the competition by touting for business.

For an articulation of the public interest case for a code of professional conduct we must return to Ormrod. He observed:

"Firstly, a professional man does not meet his patients or clients on equal terms. He is consulted for his special knowledge and experience by people who are in no position to make an informed or valid judgement about his skill or ability or integrity.

Secondly, the discipline of the market, which, at least in theory, controls the conduct of the trader, is quite inappropriate to control though not by any means wholly without effect on the conduct of the professional man."

From this statement of the inherent inequality between the professional person and the client Ormrod defined the true function of a code of conduct:

"The primary function of a code of professional ethics is to adjust the balance of power so as to protect the patient or client against the practitioner who has the immense advantages which are

> *derived from knowledge and experience. A secondary but no less important function of a code of ethics is to protect the main body of practitioners who comply with its provisions against exploitation by the black sheep who are prepared to defy them."*

In conclusion:

> *This, then, is the real stuff of professional ethics. They are codes emanating from a general consensus of each profession and reflect the profession's own sense of the need for a discipline, primarily to prevent exploitation of the public by its superior power of knowledge and secondarily of the profession itself by its dissident members."*

Adjusting the balance of power so as to protect the client against the practitioner is not exclusively a professional problem, nor is it in any way new. Ormrod observed that one of the functions of the City Guilds in medieval times was to protect the public from exploitation by the various tradesmen on whom it was dependent. However, he said:

> *"What really distinguishes the professions seems to be the fact that they have developed their codes spontaneously in response to a general feeling in the professions themselves of the need for a professional discipline."*

That will strike a chord with anyone concerned with quality of provision. Quality cannot be imposed from outside, it must be generated internally. It is the combination of spontaneous development of codes, and the need for peer review to ensure effective compliance with them, that gives professional self-regulation its importance. However, self-regulation has had a bad press in recent years. Is it an option that is still available?

Formal self-regulation fails where it lacks accountability, or has insufficient regard for the wider public interest. And not everyone shares a selfless desire to be regulated. In 1973 a report of the Securities Subcommittee of the United States Senate described the limitations inherent in allowing an industry to regulate itself:

> *"The natural lack of enthusiasm for regulation on the part of the group to be regulated, the temptation to use a façade of industry regulation as a shield to ward off more meaningful regulation, the tendency for businessmen to use collective action to advance their interests through the imposition of purely anti competitive restraints as opposed to those justified by regulatory*

needs, and a resistance to changes in the regulatory pattern because of vested economic interests in its preservation."

Thus, a century after Dicey commented on the restrictive practices of the English Bar, the criticism of the anti-competitive nature of self-regulation remained. It may be too much to expect a saint-like perfection from professionals, but one could reasonably expect a conscious effort to uphold the primacy of the client interest. Zander put it well:

"It is probably naïve to suppose that any profession could be expected to prefer the public interest to its own, but service to the public interest is one of the central elements of the professional man's ethic and one is entitled to expect the professions to try to conquer the natural temptation to put their own interests first."

But does self-regulation depend upon the formal framework of a professional body? In many senses I think it does not. Self-regulation is all about the checks and balances of everyday working life, the examples set by the experienced to the newly qualified, the peer pressure to conform to appropriate standards of conduct, and the willingness to blow the whistle when things are going badly wrong.

I think that all of those who work in criminal justice, but especially those who work with young people, need the attributes of professionals, whether or not they are within the scope of a formal professional body. Look again at Ormrod's definition of the primary function of a code of professional ethics. Protecting the client in a relationship in which the client is in no position to make an informed or valid judgement about the skill, ability or integrity of the professional. Protecting the client against the practitioner who has the immense advantages which are derived from knowledge and experience. Protecting professionals themselves against the misbehaviour of the errant few within their own number.

Add to all of that the fact that, for most who work with young people in the criminal justice system, their clients are there not out of choice or necessity, but because of decisions of the courts, and their vulnerability is almost absolute. The need for professionalism in their treatment is equally absolute.

Let me pursue a little further my argument that professional conduct may not depend on the existence of professional bodies. Professional bodies are, essentially, a Victorian creation. They hark back to a time when the relationship between the professional man (and man it always was!) and his client was personal. Professionals were sole practitioners who, as Ormrod described, banded together to protect their common interests.

But in the 21st century the sole practitioner professional is a rare creature. In most professional fields the relationship is no longer personal. The client deals with a corporate entity. If regulation is to be client centered, then it must focus on whom the client deals with, often now an institution rather than an individual. The legal limit on professional partnerships to a size of twenty was abolished some years ago, and many professional partnerships are now multi-national, multi-million pound enterprises. Within these, professional standards of personal conduct continue to apply, but redress for the client when things go wrong will come more effectively from the employing institution.

Professional services are provided by large institutions, be they firms of solicitors or accountants, hospitals or universities. Criminal justice services are provided by large, national organisations, which will accept a corporate responsibility for the standards of performance and behaviour of their staff. In short, the responsibility for professional standards has passed, increasingly, from professional bodies to service providers. And that means that, in turn, the individuals who work within those service organisations are as much subject to requirements of professional conduct as are the members of the longer established professional bodies.

I have dwelt at some length on the nature of professionalism, and its expression in 21st century organisations, because it is central to what I want to say about developing skills and competences. Occupational qualifications are no longer the exclusive preserve of the established professions. Nevertheless, they are the foundation of professionalism. Zander observed:

> *"It is, of course, in the very nature of a profession that there should be at least one restrictive practice – limitation on entry to those who pass qualifying examinations."*

Increasingly, the requirement for qualifications is not that of a self-governing professional body, but of the employers who are the providers of services. Significantly,

to spearhead its drive towards a better qualified workforce, the United Kingdom government turned not to bodies comprised, on the professional model, of individuals working in a given field. Instead they looked to bodies representative of employers to oversee the preparation of occupational standards and to set up first National Training Organisations and now Sector Skills Councils. That may be seen as a reflection of the reality that services are provided largely through corporate entities, rather than by individuals.

So, are Sector Skills Councils the new professional bodies? In many respects I think we are. In the case of Skills for Justice, through occupational standards, we define the competence needed for the professional roles within the criminal justice sector. But, as those of us committed to the use of occupational standards have argued for many years, the standards are not just about qualification, they have many other functions also. In the justice sector, standards must capture the ethical behaviour that is at the heart of professional conduct. In a real sense, good occupational standards will act as the foundation for a code of professional conduct. And those same standards provide the basis for compliance work, whether it be by managers through their monitoring and mentoring of their staff, or by providing a yardstick against which individuals can judge whether whistles ought to be blown.

The richness of good occupational standards allows complex judgements to be made about performance, judgements that are equivalent in many ways to judgements about the adequacy of professional service made by the conventional professional bodies. Such judgements are a long way removed from a performance measure I was told of by one senior civil servant.

As a part of his career development, he had visited institutions run by other government departments, including a prison. He asked the prison governor how he judged his performance, what were his measures? "*789*", came the reply. When the puzzled mandarin sought elucidation, the governor said "*I have 789 cons locked up here tonight, if there are still 789 here in the morning, then my performance is fine.*"

That story – perfectly true, by the way – illustrates the challenge that we face in criminal justice. Too much of our thinking is in silos. The prison governor thought of his

performance only in terms of containment. And he is not alone in his silo-bound thinking. We need to be better at taking a holistic view of criminal justice. In the United Kingdom the Carter Report has challenged us to think outside the silos. We are now establishing a National Offender Management Service. "Joined up thinking" is an over-used term, but it describes precisely what is needed. Carter challenged us to think in terms of a criminal justice system that has the objective of reducing re-offending, rather than being pre-occupied with managing our separate silos of detection, prosecution, sentencing, imprisonment and probation.

Interestingly, Carter found that the youth justice service was better at thinking holistically. It was less institutionally constrained, and was more driven by the objective of reducing re-offending.

The system as a whole needs to place the victim at its heart. Too often, as the offender is processed from silo to silo, we forget the needs of the victim, the survivor, and the witness without whom no prosecution could succeed.

So what does all of this mean for setting standards? We need to think holistically, and to take a cross sector approach to skills. For much work in the criminal justice field there is a common core of knowledge and understanding that is required. This includes such things as understanding and challenging offending behaviour, criminal law and human rights law. By encouraging agencies within the criminal justice field to take a common approach to training and staff development we do more than build an understanding of how the different bits of the system fit together. We can enhance efficiency.

For example, there has to be a synergy between investigation and prosecution. The investigation process must result in a case that can be prosecuted successfully. Investigators need to understand the needs of prosecutors, and prosecutors need to understand the constraints within which investigators work. Standards of competence that provide a secure linkage between the two functions foster the synergy, and joint training helps to build shared understanding.

Let me finish with a brief account of the main work that we will be undertaking as a sector skills council.

Delivering criminal justice reform depends on the skills of the workforce – skills of leadership and change management; skills of communication, customer service and partnership working; professional and technical skills. These skills are vital to deliver a high standard of service to victims and witnesses, to secure the efficiencies that will bring more offenders to justice, and to bring rigour to enforcing compliance with sentences and orders of the court.

Narrowing the justice gap by catching and bringing to justice persistent offenders, improving public confidence, and delivering value for money all depend on having staff with the right skills, and with an understanding of the inter-dependencies of all parts of the criminal justice system. Our approach to skills training and career development is sector wide, aimed at breaking down silo mentalities, opening up career pathways, and fostering mutual understanding of complementary roles.

To identify current skills gaps and future skills needs we conduct regular **foresight** surveys of employers, and publish the results to inform recruitment and workforce development strategies.

We develop **occupational standards** that define the competences needed to carry out all of the main functions that are the responsibility of the criminal justice sector. For each function, the relevant standard provides a measure of competent performance, and defines the knowledge, understanding and skill needed to do the job properly. Our standards will seek to "raise the bar", to drive continuous improvement.

We work with educational providers to ensure that **courses and qualifications** they offer are demand led, and meet employer needs. We will **accredit** courses to enable managers to identify those that meet the specific needs of the criminal justice agencies.

Through all of our work, we will operate on a **cross-sector** basis, identifying needs that are common to more than one part of the sector, looking for economies of scale in provision, and opportunities to develop joint training to enhance mutual understanding of the inter-dependencies within the sector. But we will not lose sight of the need for specialist training for the many specialist functions within the sector.

Finally, and because I do not want to end on an apparently functional note, let me return to my starting point of professionalism. Good professionals are reflective practitioners, reflecting constantly on their work, on what they can learn from their experience, and on how they can improve. The reflective practitioner will pose to him or herself the classic self-evaluation questions: What do I do? Why do I do it? Why do I do it in the way that I do? How do I know I am succeeding?

These are simple questions, but they are not always easy to answer. Often, they will involve reflecting on the difficult balances I mentioned at the start of this talk. Good standards of competence will help that process of reflection, not because they provide easy or standard answers, but because they address the richness and complexity of the modern professional role within the criminal justice system.

REGULATING ANTISOCIAL BEHAVIOUR: A CRITICAL PERSPECTIVE

PROFESSOR PHIL SCRATON, QUEEN'S UNIVERSITY BELFAST

Introduction

Until 1996 and the build up to the UK General Election the following year the term 'antisocial behaviour' had appeared occasionally in popular discourse and the responses of politicians to a perceived breakdown in working class communities. The focuses of attention were 'problem families', 'lone mothers' and 'persistent young offenders'. Immediately prior to and after the Election antisocial behaviour gained significant political currency as a 'catch-all' phrase that represented all that was ill with estates and neighbourhoods from town to city; a depiction that something was rotten at the core of the urban heartland. The background to and significance of these political developments, their media representation and policy consequences have been detailed elsewhere (see: Scraton 1997; Haydon and Scraton 2000; Scraton 2002a; Scraton and Haydon 2002; Scraton 2004). Within a year of being in office the Labour Government introduced the 1998 Crime and Disorder Act which made antisocial behaviour subject to a civil injunction: the Anti-Social Behaviour Order (ASBO). Further legislation was introduced four years later by which time antisocial behaviour had become established as an issue central to the Labour Administration's political programme. Yet, in definition and in context antisocial behaviour has remained loose conceptually resulting in inconsistent, and occasionally bizarre, interpretations and applications in the courts.

Within a relatively short period ASBOs have developed from being used against children only in exceptional circumstances to a situation in which the majority are targeted against children and young people. Based on primary research and drawing on previously published work (Scraton 2004), this paper traces these developments in the UK. It then moves on to consider the implications of the extension of the legislation to Northern Ireland (Anti-Social Behaviour [Northern Ireland] Order 2004). It argues that the failure to consider the particular circumstances and complexities of context within which antisocial behaviour is defined and regulated is markedly significant in Northern Ireland where punishment beatings and exiling already prevail in many communities.

Naming and Shaming

As had happened throughout the trial and incarceration of Jon Venables and Robert Thompson, the national media promoted the debate over children and antisocial behaviour, regularly running news stories and features exploiting the absence of reporting restrictions. Liverpool's first ASBO was served on a disruptive 13-year-old. On 5 June 2002 the *Liverpool Echo* dedicated its entire front page to the case. A large photograph of the child's face was placed alongside a banner headline: 'THUG AT 13'. Within a month he was sentenced to eight months for his third breach of the ASBO. Also in June 2002 the *Wigan Reporter* gave its front page to a 'mini menace' who was to be 'sent on a trip to a remote Scottish island' where 'there was nothing to break and nothing to steal'. The headline read 'COUNCIL FUND SCOTTISH TRIP FOR A TINY TERROR'. The caption under the colour photograph named the 13 year old, stating: 'The youngster leaves court, pretending to play the flute with his screwed-up anti-social court order'. A case in West Lancashire, involving the banning of a brother and sister from a specified neighbourhood, was headlined 'STAY OUT!' and 'Taming two tearaways' (*Skelmersdale Advertiser* 30 May 2002). Such cases are not exceptions. Children, neither charged with nor convicted of any criminal offence, have been named and shamed ruthlessly. In each case communities were invited to note the conditions attached to the ASBOs and report any breach to the authorities.

The following examples demonstrate the vilification endured by children, none of whom had been charged with a criminal offence. On 20 March 2002 *The Mirror*, proclaiming on its masthead the award of 'newspaper of the year', devoted the full front page to the photographs of two boys, aged 15 and 17. Above their faces ran the heading: 'REVEALED: The lawless teenagers who are laughing at us all. Every town has them'. Beneath the photographs, occupying a quarter of the page was the word 'VILE'. Under each photograph were boxes arrowed to the faces above: 'Ben, age 17 Crimes: 97'; 'Robert, age 15 Crimes: 98'. The distinction between 'crime' and 'antisocial behaviour' was not made and the two page coverage inside the newspaper would not have been permitted had they been convicted of crimes.

In September 2003 the ASBOs were obtained against seven young men. One was issued for life, a second for 10 years and the remainder for five years. The hearing lasted for 15 weeks and there followed a five week hearing in the crown court which dismissed their

appeal application. 3,000 copies of a police approved leaflet entitled 'KEEPING CRIME OFF THE STREETS OF BRENT' were distributed. They contained photographs of the seven young men, their names, their ages and the details of the orders. The local authority posted details of the proceedings on its web-site, describing the gang as 'animalistic', 'thugs' and 'bully-boys'. It justified the publicity by stating the necessity to keep people in the community fully informed. The behaviour of the seven young men had been threatening, abusive and violent to the extent that many residents on the Neasden estate where they lived were fearful in their homes. The use of leaflets, the web-site and the community newsletter was considered an exceptional response to an exceptional case. Yet it had set a precedent in issuing photographs and personal details, demonstrating a commitment to using publicity as part of the ASBO enforcement strategy.

On 17 February 2004 the *Daily Express* devoted its front page to the headline: 'TERRORISED BY GIRL GANG BOSS AGED 13 She led 50 hooligans on violent rampage'. Alongside the story, particularly significant because of her age and gender, was her photograph and name. Under the Page 9 headline, 'High on glue, the teen gang leader who spread alarm and fear to a city', were the 12 conditions of her five year ASBO. Among these were: mixing with 42 named young people, 'the Leeds Town Crew'; using the terms 'Leeds Town Crew, 'LTC', 'TWOC Crew', 'GPT', 'Cash Money Boyz', or 'CMB', in any correspondence, spoken or written; barred from areas of central Leeds unless accompanied by parent, guardian, social or youth worker; travelling on buses unless accompanied by parent or guardian; wearing a hood or scarf that might obscure her identity. As she left the court she pulled up her hood to guard against the press photographers and instantly breached her ASBO.

The *News of the World* (10 October 2004) took 'naming and shaming' to new depths exposing a young child and his family to serious risks of reprisals. Across two inside pages it ran the 'Exclusive': 'Stefan is first 11-year-old to have Anti-Social Behaviour Order served on him'. A full page showed Stefan behind a driving wheel, the headline took up half a page: 'YOUNGEST THUG IN BRITAIN!' Alongside a 'stamp' marked 'OFFICIAL', it listed the 'Tiny tearaway's rap sheet from hell'. The list included: 'Theft'; 'Drugs'; 'Booze'; 'Arson'; Joy-riding'; Truancy'. It concluded: 'TOTAL NIGHTS LOCKED UP IN JAIL: 50'. On the opposite page was a photograph of Stefan seated

with his mother and father and seven brothers and sisters. Under the heading 'Crowded house', Stefan's face and those of his parents were visible. The faces of the other children were pixillated to 'protect their identities'. The headline was condemnatory: 'Yob's jobless parents rake in equivalent of more than £40k a year'. The story-line was unforgiving: 'He's 11 years old – and terrifying. A swaggering little shoplifting, fireraising, joyriding, fighting, drinking, drug-taking, nightmare doted on by his benefit-sponging parents'.

The child protection issues in the presentation of this story are self-evident but the *News of the World* was fortified by the fact that earlier in the week 'three yobs failed in a High Court bid to prove that publicity about their ASBOs had infringed their human rights'. This was a reference to the 'right to privacy challenge' brought by three claimants supported by the civil liberties' group, Liberty, against the Metropolitan Police Commissioner, the London Borough of Brent and the Home secretary over the 'Keep Crime off the Streets of Brent' leaflet referred to above. The claimants alleged that the extent of the publicity was unlawful, breaching Article 8 of the European Convention on Human Rights. They argued that the publicity was disproportionate and unnecessary particularly in its reference to personal details couched in sensational language. Responding that the content of the publicity was already in the public domain, the police submitted that public confidence had to be restored, ASBOs required local support in their enforcement and publicity was an essential factor in securing deterrence.

The Court held that where 'publicity was intended to inform, reassure, assist in enforcing the orders and deter others, it would not be effective unless it included photographs, names and partial addresses'. Local residents had experienced 'significant criminal behaviour' over an extended period, the individuals concerned were well known in the area and the publicity was central to ending their antisocial activities. The publicity's 'colourful language' was necessary to draw residents' attention to the issue. LJ Kennedy criticised the claimants' protracted legal challenges, stating that time limits should be imposed on contesting ASBOs. The claimants 'had been shown to be members of a gang responsible for serious antisocial behaviour over an extended period' and had been 'stopped, searched arrested and brought before the courts' yet they had 'continued with antisocial behaviour and defiance of authority' (quoted in *The Guardian*, 8 October 2004). In this context the publicity and language was appropriate.

The Leader of Brent Council expressed surprise that Liberty had supported the case given the claimants' 'serious and persistent bad behaviour' which had been 'dangerous, threatening and violent'. The judgment, she stated, had been awaited with interest by local authorities throughout England and Wales. A Home Office spokesperson considered that it supported the Home Secretary's policies determination to tackle antisocial behaviour. The principle, that 'publicity is necessary to help with the enforcement of an order', had been established by the court. It was clear that the judges took the view that the criminal and antisocial behaviour of the extended gang had been so serious and sustained that their identities were already well known, their reputations well established. By their actions they had compromised their right to privacy. Thus it is not surprising that within days of the judgment the *News of the World* published the story of 11 year old Stefan, complete with photograph and details of his ASBO. As the article inferred, naming and shaming had now received the endorsement of the courts.

'Crusading Against Crime'

Naming and shaming played a significant part in Newtown's determination to 'get tough' on antisocial behaviour. It was here that the local newspaper ran the front page headline 'FIRST YOBBO TO BE BARRED: Tough new line to stop louts terrorising neighbourhoods'. The newspaper published two photographs and stated that the 10 conditions imposed on the 18 year old ended the 'yob's reign of terror'. Within a year he was given a custodial sentence for breaching his ASBO. This resulted in an open letter from the Chief Executive, 'on behalf of all law-abiding citizens', thanking the local newspaper 'for again giving front-page coverage to the crusade against crime'. The 'jailing' had 'remove[d] from the streets the streets an individual who appears to be hell-bent on causing mayhem and who appears to show no remorse'. Also, 'particularly because of the high profile coverage and the fact that the [newspaper's] editorial line has not minced words on this issue – we have sent out a message loud and clear to '[Name] Wannabies' that the community will not stand idly by watching their thuggery go unchecked'.

The local antisocial behaviour co-ordinators stated their reluctance to be over-eager in seeking ASBOs, stating that they should be used as a last resort and then only in extreme cases and with appropriate and workable arrangements for their administration in place.

Yet the political dynamics were considerable:

There was massive pressure on us. We needed an ASBO. The [area] hadn't had one and the Chief Executive was on the case all the time. The police hadn't had one, the Council hadn't had one, so we had to get one …

The investment in and success of the antisocial behaviour unit was tied to:
…how many evictions I get and how many antisocial behaviour orders, injunctions and how many notices seeking possessions I serve. It always gets in the paper and I know that's how my bosses think I'm doing my job well … the more evictions and antisocial behaviour orders I get, the better I'm doing.

Carry on Regardless …

As the academic debate regarding 'responsibilisation' and 'communitarianism' has continued, it is clear that in the public domain the 'responsible community' is mobilised as a blunt instrument to regulate, marginalise and punish children whose behaviour has been labelled in some way antisocial. Far from selective and exceptional use, the popular and much publicised assumption is that ASBOs apply primarily to the behaviour of children and young people.

While local authorities have been inconsistent in their implementation of the new legislation, new interventionist initiatives have continued to develop. The Government's Social Exclusion Unit, through its National Strategy for Neighbourhood Renewal, prioritises target-setting for measurable reductions in antisocial behaviour. Central to this process is the adoption, by the Youth Justice Board, of a Risk Factors Screening Tool as 'suggested by research' (YJB/CYPU, 2002:15-16). Local authority, multi-agency specialist teams are expected to identify 'hard core' perpetrators and those 'at risk', the objective being to assess, track and monitor children and young people 0 to 16 years. 29 risk factors are specified. They include: holding negative beliefs and attitude (supportive of crime and other antisocial acts – not supportive of education and work); involved in offending or antisocial behaviour at a young age; family members involved in offending; poor family relationships; friends involved in antisocial behaviour; hangs about with others involved in antisocial behaviour; underachievement at school; non-attendance or lack of attachment to school. Further examples of the breadth of assessment criteria are lack of participation in structured, supervised activities and 'lack of concentration'.

Youth Justice Board approved schemes such as the unfortunately named GRIP (Group Intervention Panel) in Lancashire have adopted, apparently without question, previously discredited forms of classification such as Criminogenic Risk Factors.

National policies for tackling antisocial behaviour are presented as thought-through, coherent and comprehensive, protecting those 'at risk', processing effectively a 'hard core' of repeat offenders and challenging 'deep-seated' problems within the most vulnerable and 'deprived' areas. Yet, as far as children and young people are concerned, the indications are that antisocial behaviour units, and those recruited to them, are engaged in a targeting process which selectively employs a range of risk factors, each open to interpretation. These are new, broad discretionary powers implemented by teams more informed by an ideology of policing than one of support. For example, the opening sentence of Liverpool Anti-Social Behaviour Unit's draft strategy for 2003-2006 states that the Unit enjoys 'notable success as a reactive punitive service' (Liverpool ASBU 2003:1).

Despite concerns being raised regarding the administration, use and consequences of the 'first wave' of ASBOs the Home Office launched new guidance in November 2002. Home Office Minister John Denham renewed the call for a 'crackdown on antisocial behaviour' through maximising the use of ASBOs, extending and strengthening powers through the 2002 Police Reform Act. These include: the issuing of interim ASBOs; the widening of their geographical scope up to and including England and Wales; the extension of orders against people convicted of a criminal offence. In April 2003 Acceptable Behaviour Contracts (ABCs) were introduced. These are voluntary agreements through which those 'involved in' antisocial behaviour commit to acceptable behaviour.

Denham reaffirmed the Government's unswerving commitment to ASBOs and ABCs. They constituted 'key tools in tackling low level crime and disorder' while increasing 'the community's confidence in the ability of the local authority and the police to deal with the problem' (Home Office Press Release, 12 November 2002). Children and young people 'must be dealt with in a way that ensures they fully appreciate the consequences of their actions on the community'. He reinforced the demand for 'all areas of the community' to accept their professional and personal responsibilities in 'effectively

tackl[ing] this problem that is such a blight on people's lives'.

Two days later the Home Secretary, David Blunkett, announced the appointment of the Director of the newly established Home Office Anti-Social Behaviour Unit, intended as a 'centre of excellence on anti-social behaviour, with experts from across Government and local agencies' (Home Office Press Release, 14 November 2002). Blunkett stated the Unit's 'support' for 'local delivery' of policy and practice to lead the 'culture change that we need to rebalance rights and responsibilities'. The announcements, made by the Home Secretary and his Minister, John Denham, coincided with the Queen's Speech prior to the new parliamentary session. Her Government would 'rebalance the criminal justice system to deliver justice for all' while 'safeguard[ing] the interests of victims, witnesses and communities' (*The Guardian* 13 November 2003). A White Paper on antisocial behaviour was announced.

In March 2003 the White Paper, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, was published. David Blunkett introduced the document with a challenge to parents, neighbours and local communities to take: "a stand against what is unacceptable… vandalism, litter and yobbish behaviour" (Home Office, 2003: Foreword). He continued: "We have seen the way communities spiral downwards once windows are broken and not fixed, streets get grimier and dirtier, youths hang around street corners intimidating the elderly… crime goes up and people feel trapped" (ibid). Blunkett's agenda included: more police officers, the consolidation of community support officers, neighbourhood warden schemes, crime and disorder partnerships, increased use of ASBOs, fixed penalty notices for disorder offences and new street crime initiatives.

Chapter Two of the White Paper focused on families, children and young people with particular reference to the prevention of antisocial behaviour. Its premise was that 'healthy communities are built on strong families' in which parents 'set limits' and 'ensure their children understand the difference between right and wrong' (ibid: 21). On the justification that children and young people were 'at risk', a 'new Identification, Referral and Tracking system (IRT)' was to be universally adopted 'to enable all agencies to share information' (ibid: 22). Information on antisocial behaviour given to the police would be 'shared with schools, social services, the youth service and other agencies …'

Families 'described as "dysfunctional"' or 'chaotic' would be targeted. Parenting classes were regarded as 'critical in supporting parents to feel confident in establishing and maintaining a sense of responsibility, decency and respect in their children and in helping parents manage them' (ibid: 23). The White Paper quoted the Youth Justice Board's evaluation that Parenting Orders issued under the 1998 CDA 'contributed to a 50% reduction in reconviction rates in children whose parents take up classes' (ibid: 25). Parenting Orders would be extended giving schools and local education authorities powers to initiate parenting contracts. Refusal by parents to sign contracts would constitute a criminal offence. Intensive fostering would be imposed on families unwilling or unable to provide support.

YOTs were also to be given powers to initiate Parenting Orders 'related to anti-social or criminal type behaviour in the community where the parent is not taking active steps to prevent the child's behaviour …' (ibid:34). The issuing of children under 16 with ASBOs would oblige courts to serve a concurrent Parenting Order. Based on 2001 figures, which number persistent young offenders in England and Wales at 23,393, Intensive Supervision and Surveillance Programmes (ISSPs) would be initiated, 'combin(ing) community based surveillance with a comprehensive and sustained focus on tackling the factors that contribute to a person's offending behaviour' (ibid). Individual Support Orders will be used to ensure that children aged 10 to 17, against whom more than half all ASBOs are issued, address their antisocial behaviour.

Fixed Penalty Notices (FPNs) were to be administered by police officers, school and local education authority staff to parents who 'condone' or 'ignore' truancy. FPNs might also be issued to parents of children 'where the children's behaviour would have warranted action … were they to be 16 or over' (ibid : 9). The White Paper stated that sanctions directed towards children and families 'involved in anti-social activity' were 'strong' but the 'principle' remained 'consistent' – 'the protection of the local community must come first' (ibid : 35). This brief excursion into the White Paper's proposals demonstrates that harsh measures and unprecedented discretionary powers became central to essentially authoritarian cross-agency interventions.

On 14 October 2003 the Prime Minister and the Home Secretary outlined the

Government's renewed and strengthened 'action plan' to confront antisocial behaviour. They quoted a Home Office survey which, on the basis of evidence from 1500 organisations, recorded 66,000 antisocial behaviour incidents at an estimated daily cost of £13.4 million. Tony Blair stated that it was 'unacceptable' that the powers given to local authorities under the 1998 Crime and Disorder Act were not being used consistently throughout England and Wales. 'Loutish behaviour', he stated, 'is loutish behaviour wherever it is'. Powers should be used 'not occasionally, not as a last resort' but 'with real energy'. And should the extended powers of the imminent legislation prove insufficient 'we will go further and get you them' (*The Guardian* 15 October 2003). The Home Secretary dismissed critics of ASBOs as 'garbage from the 1960s and 1970s' stating that it was inappropriate to be 'non-judgemental when you live next door to the neighbours from hell' (ibid).

The potential for applying ASBOs with 'real energy', however, was not lost on judges. In February 2003 a Manchester district judge lifted reporting restrictions on a 17-year-old and, in addition to serving an 18 months detention order, imposed an ASBO. Breach of the ASBO carried a further period in detention of up to 5 years. Eight months later, also in Manchester, another 17-year-old was served with a 10 year ASBO in addition to an 18 months detention and training order. In this case the ASBO was sought after sentencing and while the young person was detained in custody. The terms of the ASBO were not restricted to his home area but extended throughout England and Wales. A Manchester City Council representative was unequivocal regarding the purpose of the ASBO: 'It stands as a stark warning – behave or risk a long ban … [he] must tread very carefully wherever he goes. One slip and he could find himself in custody again' (*Press Release* Manchester City Council 10 November 2003). In this context, ASBOs used alongside sentencing become a form of 'release under licence'.

While Manchester City Council led the way in the use and expansion of the terms of ASBOs the picture across the UK remained inconsistent. It is important to reflect on the available statistical evidence. From April 1999 to March 2004 2,497 ASBOs were applied for throughout England and Wales. Only 42 were refused by the courts giving a 98.3% success rate. It is clear that the lower burden of proof, the admission of hearsay evidence, the use of professional witnesses and easily convinced magistrates each contributed to this high success rate. The overall figure, however, was not evenly distributed over the

five years. In the 12 months to March 2004 more ASBOs were issued than in the preceding four years taken together and there was a 60% drop in refusals. There were inconsistencies between local authorities with comparable demographics. For example, West Mercia used six times more ASBOs than did Gloucestershire. More ASBOs were issued in Greater Manchester than in any comparable area but they were concentrated within two district authorities. Further, a quarter of all Greater Manchester ASBOs extended throughout England and Wales. Those local authorities that use ASBOs most regularly also have, proportionately, the lowest rate of refusals in the courts.

Throughout the five year period 74% of all ASBOs were issued against under 21s and of these 93% were to boys or young men. 49% of all ASBOs were issued against children aged 10 to 17. between June 2000 and December 2002, the most recent figures available, of those young people prosecuted and found guilty of breaching their ASBO 50% were sentenced to a Young Offenders' Institution. The Home Office has not provided current information on breaches. Given the increase by a factor of five in the issuing of ASBOs between April 2003 and March 2004 it is fair to project the previous figures on breaches and custodial sentences by a similar factor. This would suggest 300 to 400 custodial sentences each year for breach. Put another way, these are children and young people who receive a custodial sentence having not been charged with a crime other than a breach of a civil injunction.

The 2003 Ant-Social Behaviour Act was introduced gradually during 2004 'to provide tools for practitioners and agencies to effectively tackle anti-social behaviour'. As expected the new powers included: widening the use of Fixed Penalty Notices and applying them to 16-17 year olds; interventions to close 'crack houses'; dispersal of groups in designated areas; aggravated trespass; unauthorised encampments; restrictions on replica guns; enforcing parental responsibility for children who behave 'in an anti-social way in school or in a community'; fly-tipping, graffiti and fly-posting; closure of establishments creating 'noise nuisance'; enabling landlords to act against ant-social tenants. Actions to 'improve the operation of ASBOs were introduced in January 2004 followed by parenting contracts and orders including their attachment to ASBOs in February and increased powers to agencies to issue ASBOs in March. Fixed Penalty Notices were introduced for parents of truants (February), for graffiti and fly-posting (March) and for disorder (March). Curfew Orders and Supervision Orders were

introduced in September.

The Northern Ireland Context

ASBOs were introduced to meet a gap in dealing with persistent unruly behaviour, mainly by juveniles, and can be used against any person aged 10 or over. (NIO 2004:4)

It is instructive that when the Northern Ireland Office (NIO) published its consultation document, *Measures to Tackle Anti-social Behaviour in Northern Ireland*, it misrepresented the initial focus of ASBOs, making it appear that they were primarily directed towards children. The brief and limited consultation was predicated on a previous consultation (NIO 2002) and strategy document (NIO 2003) each entitled *Creating a Safer Northern Ireland Through Partnership*. The consultation paper 'used recorded crime data, research findings on victimisation and the fear of crime, and consultation with key people working in community safety, to identify specific issues which needed to be addressed' (NIO 2002). From this, 'street violence, low level neighbourhood disorder and anti-social behaviour', emerged as significant and the resultant community safety strategy 'identified that the legislation in England and Wales on anti-social behaviour needed to be examined to see if it was appropriate for Northern Ireland' (NIO 2003). ASBOs were to be given particular consideration.

The 2004 consultation also included the proposed introduction of Anti-Social Behaviour Contracts (ABCs): 'voluntary written agreements between a person who has been involved in anti-social behaviour and one or more local agencies whose role it is to prevent such behaviour … most commonly used for young people' (NIO 2004:7). Three specific measures were proposed within the 2004 Consultation document. First, the development of ABCs as a non-statutory intervention which might provide a sufficient warning to people considered to be involved in antisocial behaviour. For children it would involve parents or carers and could be used as a precursor to enforceable interventions. Second, the introduction of ASBOs as an option in cases where there already has been a conviction for a related criminal offence. Third, the use of ASBOs without any related criminal offence administered through a partnership between the police, district councils and the Northern Ireland Housing executive.

Considerable controversy surrounded the consultation and the children's sector was

united in its opposition to the introduction of ASBOs. The Northern Ireland Commissioner for Children and Young People (NICCY), with support from the leading children's NGOs challenged the proposed legislation on several grounds, not least the lack of consultation with children and young people. In rejecting the application J Girvan concluded:

… *one wonders in practical and realistic terms what meaningful response could be obtained from children unless they were in a position to understand the legal and social issues to anti-social behaviour, the mechanisms for dealing with it. The shortcomings of existing criminal law and the effectiveness or otherwise of the English legislation and its suitability for transplant to the Northern Ireland context, and the interaction of Convention and international obligations [sic].*

The Anti-Social Behaviour (Northern Ireland) Act was introduced on 25 August 2004. In welcoming the legislation the Home Office Minister for Criminal Justice, John Spellar, stated:

Government is pleased to be introducing this important piece of legislation which provides another tool in dealing with behaviour of this kind which can ruin lives and local communities. It complements measures which already exist and lets those who act in an anti-social way that they will face firm sanctions. We will be working with all the agencies to make sure this legislation is used early and effectively. (NIO *Press Release*, 25 August 2004).

At no point in the Consultation document or in the statements made by the Minister or his associates was any reference made to the circumstances unique to Northern Ireland. The fact that antisocial behaviour, particularly that of children and young people, has been identified as an issue within communities was taken as sufficient justification to introduce legislation that is already controversial in terms of children's rights breaches in England and Wales. No serious consideration was given to the success of restorative justice and youth conferencing approaches in Northern Ireland and the potential disruption of those approaches through the introduction of a more directly punitive and criminal justice oriented mechanism. In its well argued submission to the Consultation an umbrella children's organisation observed that ASBOs have 'the potential to demonise and further exclude vulnerable children who already find themselves on the margins of

society and the communities in which they live' (Include Youth 2004:5).

Further, and carrying potentially serious consequences, is the relationship of ASBOs to paramilitary punishments of children. For ASBOs and evictions have been introduced in circumstances where naming, shaming, beatings, shootings and exiling already exist regardless of their effectiveness. As a children's NGO focus group concluded: 'It's seen and represented as justice. It's concrete and immediate … a quick fix. It doesn't work. It's brutal, inhuman and ineffective and doesn't challenge antisocial behaviour' (research focus group, Belfast, May 2004). Negotiations are already well developed within communities regarding paramilitary and vigilante interventions in the lives of children and young people. It is within this delicate climate, a process of real transition that antisocial behaviour legislation has been imposed. Additionally, as the Human Rights Commission (2004:8) noted: 'Information regarding the identity, residence and activities of those subject to an order [will] be in the public domain and could lead to the breach of a right to life were paramilitaries to act on that information'.

Within a month of their introduction the following unattributed poster appeared in East Belfast:

DUE TO THE RECENT UPSURGE OF ANTI-SOCIAL BEHAVIOUR AND THE VERBAL AND MENTAL ABUSE ENDURED ON A DAILY BASIS BY THE ELDERLY PEOPLE IN THE SURROUNDING AREA. YOU ARE FOREWARNED IF THIS DOES NOT STOP FORTHWITH IT WILL LEAVE US WITH NO ALTERNATIVE BUT TO DEAL WITH THE SITUATION AS WE DEEM NECESSARY NOTE: NO FURTHER WRITTEN OR VERBAL WARNING WILL BE GIVEN. BE WARNED.

A research focus group (May 2004) concluded that 'Supporting ASBOs and supporting paramilitary beatings are derived in the same emotion: they're about revenge'.

The debate over the continuing conflict in Northern Ireland, particularly regarding the control of the streets and public space within communities returns the analysis to context. Hillyard et al (2003:29) make the important point regarding poverty:

… the impact on the development and opportunities of these 150,000 children and young people [living in poverty] should not be under-estimated. The wider consequences and costs for society as a whole must be a concern. These children and young people occupy … 'spaces of dispossession', growing up as excluded people in excluded families increasingly characterised by antisocial behaviour, insecurity and threat.

Children in Northern Ireland in conflict with the law cannot be viewed as simply manifesting antisocial behaviour in a form and content that is consistent with children in Liverpool, Glasgow, Birmingham, Dublin or Limerick. Their behaviours are rooted in the recent history of the conflict. The following comments, from community-based or children's sector NGO workers are typical:

These are children of those whose childhood was dominated by the Troubles. We're talking about the experiences of children: house arrests, military presence, parents imprisoned, parents on the run, parents shot and killed. No allowances have been made in school. These experiences and their lasting effects aren't recognised.

House-raids have lessened and the physical harm is over, to a point, but emotional harm is still there. Children and their parents are in dire need of medical support. The children are accused of misbehaving, of antisocial behaviour rather than their mental ill-health being recognised.

Whether it's antisocial behaviour or suicidal tendencies, you cannot disconnect that from the anger of death in the communities. Shoot-to-kill, plastic bullets, collusion … these are the experiences. Children often took over running of the home. The physical and psychological impact means these children have never been able to take their place in society. Transgenerational trauma affects every part of their lives: education, mental health, social participation. And in schools, in criminal justice agencies, trauma is not even part of the equation.

Without taking these dynamics into account and contextualising the perceived and experienced antisocial behaviour of children and young people in Northern Ireland's most economically marginalised communities, the authoritarianism of ASBOs as they have been administered in England and Wales has the potential to feed into that which already exists. It also has the potential to corrode the significant advances in alternatives to the 'criminal justice' option in undermining, both in philosophy and political direction, youth conferencing, parent support and restorative justice. They are incompatible with

the draconian measures that constitute the armoury of the ever-expanding punishment industry.

As this paper has argued, under the auspices of inter-agency co-operation and the promotion of 'collective responsibility', the veneer of risk, protection and prevention coats a deepening, almost evangelical, commitment to discipline, regulation and punishment. As the grip tightens on the behaviour of children and young people minimal attention has been paid to social, political and economic context. The reality is one in which authoritarian ideology has been mobilised locally and nationally to criminalise through the back door of civil injunctions. In-depth, case-based research already indicates that the problems faced by children and families are exacerbated by the stigma, rumour and reprisals fed by the very public process of naming and shaming.

PLENARY SESSIONS

Chairpersons:

Brian Purcell

Noreen Landers

Dr Ursula Kilkelly

During the plenary sessions, the following questions were debated, with contibutions from a large number of participants.

1. How appropriate is pre-emptive intervention?

- The concept of preventative justice should be examined regarding children of 12, 13, or even younger. Issues need to be addressed in order to prevent future problems arising. Key prevention efforts must necessarily involve the family and school system. Schools can sometimes shut out the community and this needs to change. The earlier that a person is introduced to the criminal justice system, the longer they remain in it. As has been stated repeatedly, more attention must be paid to prevention initiatives. There are clearly inter-generational issues in relation to offending behaviour. Early intervention will only work if parents are positively engaged in the process of providing appropriate services to their children. Interventions need to be structured to ensure that they are not perceived as labelling children.

- Co-operation between agencies, and between agencies and parents or guardians, is seen as the key to successful early intervention. Co-operation between agencies is seen as fundamental to the operation of new legislation with regard to children in trouble with the law but, for instance, the Children Act enshrines a replicated role in terms of family conferences for two very different agencies (the PWS and the Gardaí). There are constitutional considerations in relation to the role and responsibility of parents for children's behaviour. There may be a conflict between the constitutionally enshrined role of parents and the family and the new Children Act.

- Poverty and an ineffective education system are the central tenets of inequality in our society. The vast number of young offenders in places of detention have

always been from economically and socially deprived communities. Resources and revenue are needed to alleviate such basic inequalities. This needs to be developed and changed to ensure that young people at risk are included rather than excluded.

- Costs of early intervention are much lower than the cost of keeping one person in prison (average €87,000 per person per year in 2003). Alternatives and interventions have a much greater chance with active community involvement. In relation to young offenders, the longer that they can be kept out of custody the better.

2. What is the best way of preparing offenders for release from prison?

- Programmes aimed at improving "employability" are the most useful. Enhanced literacy and numeracy skills are key to the possibility of employment. Feedback is needed from employers on the types of trades for which longer-term prisoners could be trained.

- Ex-offenders have the right to be re-integrated into society and treated as equal citizens. They lose certain rights while in custody, but these rights should be restored when they leave custody. Ex-offenders need community support in order to re-integrate.

- There is also a problem of offenders ageing in prison. On release, such people are past the age of education, suitable employment programmes etc. In addition, the needs of people with extremely limited or basic mental function have not been met. A new response is needed.

3. Could you explain the Nenagh Reparation Project?

- The Nenagh Reparation Project was established as a charitable company, with 10 board members from the local community. As an alternative to conviction and a possible prison sentence, a contract is drawn up between the community and the offender for the management of the person within the community for a period of between six weeks and six months. All of the person's time is accounted for by work on literacy skills, substance abuse, reparations to the victim or community

work, as appropriate. The contract is presented to the judge in court for approval. If the contract is successfully carried out, the Gardaí will ask for the case to be struck out or the Probation Act applied at the end of the period. If unsuccessful, the offender will be convicted. The project is non-statutory. A booklet on the project was published last year.

4. Have Anti-Social Behaviour Orders in the UK been successful?

- Anti-Social Behaviour Orders only address the offence, and not the underlying issues which the child presented with. These issues are displaced by such orders. There is a danger of turning communities against young people. In the UK, the de-criminalising initiatives of the 1980s have now been abandoned. Funding of services is now based on crime prevention rather than welfare. Thus, the focus has moved away from the rehabilitative model. It is necessary to ensure that this development does not occur in Ireland.

5. Are conferences useful in promoting a multi-disciplinary approach?

- There is a need for joined-up thinking in all spheres of criminal justice. Conferences such as this provide an invaluable networking opportunity. The movement towards more joint work will maintain the momentum from such conferences.

6. What strategies could be used to improve co-operation between agencies?

- One of the immediate challenges is to define the agencies where co-operation is sought. In Ireland there is, in general, a low level of involvement in the criminal justice field by non-statutory agencies providing services, and where such agencies exist they tend to be local rather than national. Local non-statutory service providers also tend to be core funded by state agencies and tend to have a limited and service driven perspective. Thus we find that when we are talking about effective co-operation between agencies we tend to think of the core state agencies, the Garda Síochána, Irish Prison Service and the Probation and Welfare Service. We also tend to think of the Courts, but there are very specific issues related to the courts and the judiciary which will impact on co-operation. There is also the question of effective co-operation between the agencies and the local providers and community groups. Therefore we should consider the various

levels of co-operation, the different fields and spheres of co-operation.

- In considering the relationship between the various statutory agencies there is the potential to use the partnership model but this model is only really of use if the agencies seeking to work together share a model of partnership. In short this means that there are core common goals that are shared and agreed and that agencies recognise and understand both their own and their partners organisational goals and drivers. Effective co-operation means recognising the common ground and being prepared to move in relation to areas where there may not be shared goals or where there are approaches or agency beliefs that are oppositional or divergent. Co-operation which is informed by these principles can be set up at a range of levels from service-level agreements to localised interventions.

- One of the challenges we are faced with in considering how we can improve practice and co-operation is the structures of the agencies involved. In this area the structure of the Judiciary, which is central to the delivery of an integrated and effective Criminal Justice System, mitigates against partnership as there is effectively no agency for the other partners delivering criminal justice to interact with. There is a structure, the Courts Service, which provides the structural and administrative support to the Judiciary but there is no agency structure in relation to Judges, and the concept of judicial independence is central to the operation of the Courts as currently constituted. Local partnerships can of course potentially develop within this model, but it is very difficult to set these up on a national or regional level.

- Agencies are co-operating in terms of local initiatives (such as the Drugs Court, Garda Diversion Projects, PWS Projects, Prison treatment programmes, etc) and there are the beginnings of national protocols for co-operation. Difficulties identified in achieving co-operation include: the absence of a judicial agency, the need to consider different agency drivers, the recognition of common goals and the difficulty translating local into national actions.

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Gareth Brady	Matt Talbot Community Trust
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Gemma Donnelly	Extern
Pat Doyle	BOND Project
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Patricia Flynn	Oberstown Girl's School
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