

Centre for Social and Educational Research

Conference proceedings

Dublin Institute of Technology

Year 2007

Young people and crime: research, policy
and practice

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Centre for Social
and Educational
Research

Young People and Crime:

Research, Policy and Practice



Hogan Stand, Croke Park Stadium

Conference Proceedings

Edited by Kevin Lalor, Fergus Ryan, Mairéad Seymour, Claire Hamilton



Published by the Centre for Social and Educational Research
Dublin Institute of Technology
23 Mountjoy Square
Dublin 1

Tel: 353 1 402 7609
e-mail: cser@dit.ie
Website: www.cser.ie

ISBN: 1 900 454 24 6

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Edited by Kevin Lalor, Fergus Ryan, Mairéad Seymour, Claire Hamilton

Funded by the Department of Education and Science through the Technological
Sector Research Strand III

Printed by Planographic

These proceedings are available electronically at www.cser.ie

Acknowledgements

We are grateful to the following for their tremendous energy and enthusiasm in organising this conference: Siobhán Bradley, Claire Flower, Dr. Karen Lysaght and Dr. Lorna Ryan. Thanks also to Amanda Moynihan for her help in compiling these proceedings.

Acknowledgement is due to copyright holders for their kind permission to include the following material:

Paula Mayock, 'Scripting' risk: Young people and the construction of drug journeys, previously published in *Drugs: Education, Prevention and Policy*, 12, 5, October 2005: 349–368.

Karen Sugrue, Why prison fails, previously published in Mary P. Corcoran and Michel Peillon (Eds) (2006) *Uncertain Ireland – A Sociological Chronicle, 2003–2004*, Dublin: IPA.

Sarah Anderson and Gay Graham, The custodial remand system for juveniles in Ireland: The empirical evidence, previously published in *Administration*, 54, 1, 2006: 50–71.

Claire Hamilton and Mairéad Seymour, ASBOs and Behaviour Orders: Institutionalized intolerance of youth? in *Youth Studies Ireland*, 1, 1, 2006: 61–76.

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Introduction

The first national conference on ‘Young People and Crime: Research, Policy and Practice’, hosted by the Centre for Social and Educational Research, Dublin Institute of Technology, was a two-day event held in September 2005 that brought together researchers, academics, policy-makers and Non Governmental Organisations to address some of the most pertinent contemporary issues within the general arena of youth crime in Ireland.

The three core conference themes were:

- Criminological Perspectives on the Children Act 2001
- Youth and Risk
- Restorative Justice

As well as providing a forum through which discussion and potential collaboration could be built across the three sectors, it was also envisaged that the conference would provide an opportunity for those engaged in criminological research in Ireland to present to their peers and build academic collaboration within the discipline.

These proceedings are not a comprehensive record of all contributions to the Conference. In some instances contributions were not scripted; also, some papers are not available for publication in Proceedings format as they are awaiting publication elsewhere. For a full list of all presentations, please refer to the Conference Programme in Appendix one. That said, these Proceedings represent a significant record of the conference and are an important ‘gathering together’ of papers on various aspects of juvenile justice. We would like to thank all the contributors, and are particularly grateful to editors and publishers who have given permission for work to be re-produced here.

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Chapter 1

‘Scripting’ risk

Young people and the construction of drug journeys

Paula Mayock

The concept of risk, and its centrality to social life, is much discussed in the theoretical literature of late modernity. This paper examines young people’s drug use and their drug transitions within a framework of risk drawing on findings from a longitudinal ethnographic study of drug use among young people in a Dublin inner-city community. Fifty-seven young people aged between 15 and 19 years, including non-users, recreational, and problematic drug users, were recruited into the study in 1998. Contact was re-established with 42 of the study’s participants in 2001. Individual interviews and focus group discussions, supported by prolonged participation within the study site, were the primary methods of data collection. Drawing on the young people’s situated accounts of their drug-taking events, routines, and practices across time, the findings highlight the complex social negotiations involved in the construction of drug journeys. Analyses of change in drug-use behaviour over the study period demonstrate that drug transitions unfold alongside dynamic and changing perceptions of safety and risk. Responses to ‘risk’ within youth drug scenes were contextually shaped, open to situational revision over time, and, in many instances, drug-taking was habitual, not calculated. Put differently, young people ‘script’ risk as they gain experience in the world. The type of calculus involved in the making of drug journeys is fluid and relational, socially contingent rather than static, and subject, at times, to constrained agency linked to social and economic marginalization.

It is argued that models of risk that rely on individualistic and rationalistic assumptions struggle to accommodate the fluidity and contradiction that characterizes much drug use. Implications for strategies and initiatives aimed at reducing drug-related harm are discussed.

Introduction

Risk is a central discourse among those that surround young people in general, and young drug users in particular. The very mention of the words heroin, cocaine, or ecstasy immediately conjure up images of danger, and drugs are rarely discussed, whether in the media, the living room, or by experts, without allusions to ‘at risk’ individuals, risk behaviours, and ‘risky’ choices. The concept of risk and its derivatives, most prominently the technology of risk factor research, occupies a central position within drugs discourse, providing a framework for the identification of drug ‘problems’ and at risk populations, the mapping of causal factors, and the identification of predictors of drugs ‘misuse’. Risk, as Douglas (1990: 3) puts it, has come to mean danger and ‘high risk means a lot of danger’.

More broadly, the concept of risk has been used in the domain of social theory to identify, define, and organize analyses of ‘post’ and ‘late’ modern industrialized societies (Beck 1992; Douglas 1992; Giddens 1991). It is claimed that we live in a ‘risk society’ (Beck 1992) and recent literature has portrayed risk as a dominant feature of contemporary life. For both Beck (1992) and Giddens (1991), one of the major

consequences of modernization is a trend towards individualization, so that more aspects of everyday life are considered subject to human agency. The process of individualization, Beck writes, means that the 'standard biography becomes a chosen biography' (1997: 96). In a similar way, Giddens talks about the 'reflexive project of the self', the idea that, in a postmodern society, it is more up to the individual to shape their own identity and to make decisions. From this perspective, people are involved in the 'ever-present exercise' (Giddens 1991: 114) of risk assessment in which risks are weighed up and managed at an individual level. All of this suggests a repositioning of self in relation to risk, since individualization increasingly places responsibility on the individual for taking risks and for making risk-related decisions. In a critical sense, it signifies a shift in the way in which we conceptualize risk since people of all ages are increasingly positioned as choosing, self-governing agents (Nettleton 1997; Petersen 1996). This highlights a moral dimension to risk assessment, as well as ways in which the perpetrators of risk can be held accountable for their behaviour: those who act responsibly avoid risk, whereas those who behave irresponsibly are themselves to blame for the risks they take (Douglas 1990, 1992). What implications do these ideas have for our understanding of, and response to, illicit drug use among the young? It is useful to consider this question in light of the rise to prominence of notions of choice and decision-making within the youth drugs literature.

The 1990s brought about significant shifts in the youth drugs landscape throughout Europe. Against a backdrop of increased prevalence rates for drug experimentation and use, the emerging picture signalled a quite dramatic upward trend in drug use among teenagers and youth adults (Calafat et al. 1999; European Monitoring Centre for Drugs and Drug Addiction 2002, 2003). While, at the turn of the century, drug use itself could not claim to have become the true 'norm', it had clearly moved from its former exceptional status (South 1999). A key characteristic of this more widespread pattern of illicit drug consumption relates to women's participation in youth drug scenes and their high rates of drug use (Henderson 1999; Hibell et al. 1997, 2000; Measham 2002). Moreover, today's young drug users come from a wide range of socio-economic backgrounds and a large majority are either employed full-time or in higher education (Kohn 1997; Mayock 2001; McElrath and McEvoy 1999; Measham et al. 2001). In several countries, including Ireland, drug use, traditionally associated with poor places and poor people, has come to be recognized as a more mainstream activity. Correspondingly, the traditional axes of class and gender, which to a considerable extent delineated past drug-use configurations and trends, are thought to have less analytic hold in a world where drug use is neither a strictly marginal nor a predominantly male activity.

The rise to prominence of illicit drug use within contemporary 'going out' scenes has probably been best demonstrated in the longitudinal study by Parker et al. (1998) conducted in the North-West of England. This research found that young people's drug-use preferences altered as they gained experience and learned more about the effects, benefits, and risks of individual drugs. Placing the high rate of drug consumption uncovered in their research in the context of broader societal changes rendering risk an ever-present feature of contemporary social life (Beck 1992), Parker et al. (1998: 28) draw attention to a decision-making process in relation to drug use, stressing the cost/benefit assessments that inform young people's drug decisions. Correspondingly, the study highlights an array of factors (pleasure, friends and partner response, family, health risks, and bad drug experiences) that influence young people's drug choices and the manner in which they assess the benefits and risks of using drugs. This sociological approach emphasizes the situated rationality of risk behaviour.

Accordingly, what is considered a cost, a benefit, or a risk is not static, nor is it necessarily shared among individuals: it is situated instead within different social contexts of belief and behaviour. Beyond emphasizing drug-use situations as important determinants of drug use, Parker et al. place young people's 'reasoned choices' about drugs (Williams and Parker 2001: 411) in the context of contemporary adolescent/young adult lifestyles where consumption is central, the move to independence is postponed, and traditional adult 'responsibilities' (marriage, a family, and parenting) are delayed. Living in a risk society demands that young people make rational decisions about consumption and, in relation to drugs, many do this using 'a cost-benefit equation' (Parker et al. 1998: 133).¹

Parker et al. (1998) is one of a number of studies that have drawn attention to active decision-making on the part of young people in relation to the use and non-use of illicit drugs (Boys et al. 2000; Coffield and Gofton 1994; Measham et al. 2001), signalling a positive move away from notions of personal inadequacy and passivity. In particular, it marks a rejection of deterministic and pathological explanations for drug consumption among the young in favour of explanations that give the goal orientated, rational, and everyday aspects of drug-taking activity a central place. Nonetheless, it is easy to see how talk about the role of choice in drug-taking, however well intentioned, can inadvertently dovetail into moral arguments about the need for greater individual responsibility as a means of solving the drugs 'problem'. Paradoxically then, the emphasis on rational decision-making, guided in the main by cost/benefit analysis, can serve to reinforce the notion of drug users as 'other', seeing them not simply as outside the social order, but as outsiders who refuse to conform to the advice of experts. Cost-benefit approaches have been criticized for treating individuals as free agents in terms of their response to risk (Denscombe 1993) and for viewing behaviour as a characteristic of the individual rather than as varying between social relationships (Friedman et al. 1999). They have also been criticized for their lack of attention to the habitual nature of much risk-taking (Bloor 1995; Bloor et al. 1992; Hart and Boulton 1995; Rhodes 1995, 1997) and for failing to pay attention to how 'risk environments' (Rhodes 2002) and people's embeddedness within particular social, cultural and economic contexts influence their drug use (Moore 2004).

This paper examines young people's drug use and their drug transitions within a framework of risk. Of particular interest are young people's perceptions of various salient aspects of drug-related risk, the subjective logic that guides and sustains their perspectives on risk boundaries, and how this may alter and/or become redundant over time. To this end, the 'scripts' metaphor is used as an analytic tool to examine ways in which they produce and rationalize their drug 'stories'. Scripts are conceptually useful for getting at how various patterns and styles of drug use and non-use are accomplished over time, while leaving room for individual actors to change, innovate, revise, and edit their drug scripts at every level, in light of their social environments, encounters, and emerging experiences. The notion of scripting is used here on the assumption that individuals actively learn, employ, and innovate scripts for their own drug-use behaviour while, at the same time, acknowledging that there are circumstances, both social and personal, that militate against the generation of safer scripts. The analysis presented in later sections demonstrates that cost/benefit analysis is only one dimension, and frequently a marginal component, of young people's drug-related decisions. Highlighting the complexity of the risk practices and behaviours surrounding young people's drug journeys, it exposes the limits of individualism and, in particular, its failure to capture the context-dependent nature of risk decisions and the complex social negotiations and constraints that characterize much drug-taking.

Methods

The data for this analysis are drawn from a longitudinal ethnographic study of drug use in an inner-city Dublin locality where drug problems are concentrated. The research sought detailed knowledge and understanding of young people's exposure to illicit drugs, and of their use and non-use of a range of substances (including alcohol and tobacco) across time, within their natural setting, that is, the community where they live. Ethnographic fieldwork was conducted in two adjacent neighbourhoods, which lie within three kilometres of Dublin's city centre. The areas selected for study are part of a broader geographical area that suffers from several 'joined up' problems of social exclusion (MacDonald and Marsh 2001), including long-term concentrated poverty, high unemployment rates, poor housing, and low educational attainment. Both are well known, locally and nationally, for their high-profile drugs problem and are nested in a postal district estimated to host the highest number of male opiate users in the State (Comiskey 1998). Like other communities in the Greater Dublin area identified as hosting a disproportionate number of problem drug users, the clustering of drug problems in the locality has a 20-year history and can be traced to Ireland's 1980s heroin epidemic (Dean et al. 1984; Dean et al. 1985).

Fieldwork was initiated during the latter months of 1997, during which time attention focused on gathering various sources of local knowledge, including information about types of drug-using groups and the locations where young people 'hung out'. At a conceptual level, these early months of engagement within the study site permitted the identification of sources of key theoretical contrasts, thus enabling the study of variability along dimensions such as age, gender, youth venues, drug-use status, and risk behaviour. The formal recruitment process, initiated during the early months of 1998, was essentially a social one, involving negotiation and renegotiation throughout the entire course of fieldwork. It involved gaining entrance to youth venues and street-based settings, moving through networks of friends, and, above all else, the ability to respond to new lessons and changing circumstances in the field. Recruitment relied to a considerable extent, particularly during the early months, on 'snowball' sampling (Biernacki and Waldorf 1981). However, as time progressed, the use of targeted sampling (Watters and Biernacki 1989) helped to circumvent the risk of bias arising from the exclusive use of snowball or chain referral techniques. Fifty-seven young people (24 young men and 33 young women), ranging in age between 15 and 19 years, were recruited into the study over a 10-month phase of intense fieldwork during 1998. On returning to the field in 2001, contact was re-established with 42 of the study's participants (16 young men and 26 young women). During both the initial and follow-up phases of fieldwork, individual in-depth interviews, supported by prolonged participation with young people within various neighbourhood settings and youth venues, were the primary data collection methods. Six focus group discussions, with a total of 24 participants, were also conducted during Phase I of the study.² Finally, during Phase II fieldwork, a number of the study's young people participated in a small-scale photography project designed to capture key characteristics of the social landscape. This exercise facilitated the re-establishment of trust and rapport and helped to generate dialogue about continuity and change in community life since the time of initiating the study.

Existing descriptions of drug-involved youth in high risk localities tend to be fragmented, considering only single subgroups (usually heroin users) of this diverse population (cf. Parker et al. 1988; Pearson et al. 1986), and ignoring the overlap and

interaction of drug users and non-users within these risk environments. Correspondingly, the sociological significance of the drug-use transitions of young people who live in high-risk environments remains underdeveloped (MacDonald and Marsh 2002). This study aimed to tap into a diverse range of drug-related experiences, thereby creating the space to examine how marginal contexts impact differentially on young people's drug biographies. The initial sample comprised young people who were categorized as 'abstainers' (n=18), 'drug takers' (n=21), or 'problem drug takers' (n=18) at the point of recruitment in 1998.³ Abstainers were non-users of illicit drugs at the time of their initial interview; drug takers were users of one or more illicit substance but they did not consider their drug consumption to be problematic; finally, problem drug takers were primarily smokers and/or intravenous users of heroin who self-identified as addicted and/or reported social, health-related, financial, and/or psychological problems arising from their drug consumption. Throughout the study, categorization was based on young people's views and perceptions of their drug-use status at the time of interview. In other words, classification hinged on 'the categories of distinctions that actors recognize and respond to' (Wax 1967: 329); it emerged through a process of self-nomination and was based on young people's perceptions of the risks, benefits, and consequences of their drug use. This approach precluded the imposition of 'outsider' judgement and created the scope to examine the logic underpinning young people's risk positions as they moved in to, and out of, drug use at various levels.

Drug-use patterns and transitions

There was enormous diversity, both within and between the three categories of research participants in terms of the type, level, and frequency of their drug consumption. Moreover, drug journeys subsequent to initiation (which occurred at 13.3 years and 12.4 years for the study's drug takers and problem drug takers, respectively) were complex, variable, and diverse. Abstainers, as stated earlier, were non-users of illicit substances at Phase I. However, one-third of the follow-up sample had moved to drug use by the time of their Phase II interview. The majority of the study's drug takers (including those abstainers who made the transition to drug use) shared a perspective that accepted 'soft' drug use but rejected heroin and, to a lesser extent, cocaine. Nonetheless, the drug consumption styles of these social/recreational users varied greatly, with some reporting more regular and sustained patterns of use. In general, drug takers recounted an extensive repertoire of drug experiences; many were daily cannabis smokers and, by Phase II of the study, the vast majority had sampled at least five drugs, including cannabis, amphetamines, ecstasy, LSD, and/or inhalants. Additionally, by the time of conducting follow-up interviews, a large number had incorporated cocaine into their drug repertoires, suggesting a marked shift in previously defined boundaries of 'acceptable' drug use, which had tended to exclude cocaine. Polydrug use was the norm for this group and a large number reported a phase of regular stimulant drug use, dominated by ecstasy and amphetamines. At the time of conducting follow-up interviews, three of the study's Phase I drug takers self-nominated as problem drug takers, with all three reporting the transition to heroin use and simultaneously reporting social, financial, and health difficulties arising from their drug consumption. Finally, the study's problem drug takers initiated drug use early and they quickly became immersed in street-based drug scenes. Their heroin 'career' was characterized by 'chasing' (i.e. smoking heroin), followed by the transition, in almost all cases, to intravenous drug use. By the time of conducting Phase II fieldwork, all had sought treatment. However, the majority continued to struggle with the recovery process, reporting several episodes of relapse and periods on and off heroin following their early attempts to address their drug-related problems.

Across the sample, levels of drug involvement ranged from non-use to occasional or moderate drug use through to problematic levels of drug involvement, highlighting the diversity of drug use and non-use within this high-risk locality. Co-existing within the same disadvantaged neighbourhood were young people who adhered strongly to an ethos of abstinence, while across the street, next door, or even in the same household was a like-aged counterpart or sibling who had become fully absorbed into problematic drug use. Furthermore, the drug transitions uncovered over the study period were extraordinarily complex; they did not convey a simple, straightforward pathway and, instead, suggested a multiplicity of changing statuses over time. Young people moved between different drugs and levels of use intensity; some extended their drug repertoires while others stepped back, at least for a period, from more regular consumption. Nonetheless, an upward rather than a downward trajectory emerged as the most likely drug pathway during the early to middle and middle to late teenage years. While there were some signs of a 'settling down' or 'maturing out' among both drug takers and problem drug takers by the time of conducting Phase II interviews, many more had extended the range and scope of their drug experience. Furthermore, few of the study's social/recreational drug users had plans to quit illegal drug use, certainly in the short or medium term.

Risking risk

Risk-taking by young people is often conceptualized as involving danger, loss of control, 'trouble', and probable harm; it carries strong negative connotations and is rarely publicly discussed in terms of pleasurable or positive rewards. Moreover, within the research literature, pleasure remains a relatively neglected dimension of risk-taking among the young (France 2000; Rhodes et al. 2003) and of the drug use phenomenon generally (Mugford and O'Malley 1991).⁴ However, traditional readings of risk-taking as dangerous and undesirable are challenged to a large extent by young people's accounts of the benefits of risk. Their 'vocabularies of motive' for drug use (Weinstein 1980) provide critical insight, not simply into the appeal of drug consumption; they also tell us a great deal about how young people relate to risk.

Social aspects of drug use dominated practically all narrations of drug-using events and, for a large number of the study's drug users, drug consumption and pleasure were inseparable. A discourse of self-indulgence underpinned many accounts of positive drug experiences and, in many depictions of drug-using events, young people presented themselves as motivated by the pleasures of the moment. More than this, practically all recognized that drug use involved taking risks: to consume drugs necessitated exposing oneself to risk and this dimension of risk-taking was an intrinsic part of the psychoactive 'hit'. Joan, a recent ecstasy initiate at the time of her follow-up interview, expressed this idiosyncratic relationship between drug use and risk succinctly:

Oh, don't get me wrong, I think ecstasy is really dangerous myself, you know what I mean? But sometimes it's the risk that gets you.

(Joan, 18 years)

Placing oneself in danger by using drugs could, as acknowledged by Joan, lead to risk, but risk also provided an intoxicating sense of pleasurable excitement. For a large number, drug consumption was accepted as incorporating danger, often in association with the unknown. Indeed, to a considerable extent, young people's

accounts of the benefits of drug use shift the focus away from fear to the spontaneous, meaningful, and often impulsive character of youthful experience. While not all of the study's drug users championed drug-taking for the sake or benefit of risk, the majority openly acknowledged that using drugs involved potential danger: 'there's nothing safe in any of them except for hash ... [but] I am prepared to take risks' (Linda, 20.5 years). The study's drug takers (including those abstainers who made the transition to drug use) simultaneously emphasized the social/recreational nature of their drug-taking, drawing attention to the normality rather than the deviancy of their activities, and stressing the situationally appropriate nature of socializing on drugs. These 'competent' and 'responsible' drug users rehearsed accounts that helped them to neutralize anxiety, maintain moral worth, and keep their reputations intact. To this end, they narrated important distinctions between recreational and compulsive drug use, portraying the two groups as opposite ends of the risk spectrum, symbolizing different lifestyle choices and everyday needs, as Laura explained.

[So do you think there's a big difference between people who use drugs recreationally and people who use heroin?]

Huge difference, yeah, totally different. These people are still working. The person on heroin is not, that person wouldn't be. Two totally different situations. Both of them could die or the one on ecstasy could take one and die as well, but totally different. One is takin' it for a laugh and going out and the other is takin' it because she needs to take it. She's an addict.

(Laura, 21 years)

Young people like Laura invariably stressed other valued life projects, including school, college, a job, or a romantic partner, that they prioritized over the fleeting rewards of drug use. Put differently, they claimed to integrate drug-taking positively and constructively into their lives and to move easily between the drugs world and the world of work and other responsibilities.

In their talk about drugs, others introduced aspirations linked to 'heroic' risk-taking (Featherstone 1995; Mitchell et al. 2001). For these young people, participation in local drug scenes conferred social and personal rewards linked to displays of experience, and opened up opportunities for status achievement. These accounts were particularly common among young men and women who became heavily immersed in street-based drug scenes, where they experienced strong exposure to hard-drug use and to dealing and scoring activity.

I'm streetwise. I know what's going on out there and you have to learn how to survive. That's what it's about really. You're nothing unless you have that.

(Brian, 18 years)

A smaller number of young people portrayed drugs as having therapeutic value in a variety of contexts and situations. Drugs offered a kind of 'cocoon-comfort', opening up a world that provided emotional well-being and calm. Far from being thought of as risky, drug consumption provided 'warm immunity from danger' (Feldman 1968: 136). Regular, heavy or 'problematic' drug users, who frequently reported reduced anxiety and intense psychological relief as leading incentives for use, more commonly reported these vocabularies of motive.

Just a very mellow buzz, you're very relaxed and it makes me feel really good. It's like a heavy tiredness and very mellow. It takes you away, especially if you're upset. You don't have to think about a thing.

This orientation to drug use, emphasizing psychological release from anxiety, stress, or depression, represents a marked departure from the temporary 'breaks' typically celebrated by the study's social/recreational drug users. For those young people who sought respite from difficult situations and emotions, drugs provided an escape route in the true sense.

Although the term risk is used in late modern society primarily as a synonym for danger and 'bad' outcomes (Beck 1992; Douglas 1992; Giddens 1991), the stories told by the study's young drug users suggest a counter discourse, in which risk-taking is positively embraced in association with pleasure and gain. This discourse is one that apparently 'rejects the ideal of the disembodied rational actor for an ideal of the self' (Lupton 1999: 149). In keeping with this orientation, an important part of young people's risk epistemologies was an interpretation of risk-taking as part of 'living', both in the everyday and the spectacular sense. In many respects, young people appeared to actively pick and choose in a seemingly individualistic manner from the (limited) pleasure landscapes available to them. In this context, it seems vital to bear in mind that drug consumption, and even risky use, may be about anything but a preoccupation with balancing benefit and risk; rather it is about such diverse concerns as social expression and 'style', experimentation, group membership, status achievement, or 'escape attempts'.

Scripting risk

Young people's accounts of their drug transitions over the study period invariably referenced changes in individual or collective risk positions. There are multiple examples of this orientation to drug consumption but, for the purposes of this paper, it is useful to focus on three broad types of drug transitions: the transition to 'new' drugs; the transition to 'dangerous' drugs or risky routes of administration and, finally, what is referred to here as 'imagined' futures in relation to drug use.

The transition to new drugs

Young people's accounts point strongly to an array of conditions, situations, and experiences that prompted change in their drug-use practices, preferences, and choices. In attempting to explore this terrain, and demonstrate the shifts and nuances that characterize the risk perceptions of young people, the role of context cannot be over-emphasized. More than this, much of the narrative material depicting the incorporation of new drugs highlights the ordinary, rather than the extraordinary, nature of these transitions. Young people rarely described the incorporation of new drugs or drug-taking practices without referring to use settings, and associated circumstances and individuals. Put differently, drug-taking was scripted within familiar social settings, where changes in behaviour often emerged spontaneously. In keeping with this, a large number of young people explained their drug transitions casually, portraying them as largely unexceptional events. Denise, who cited fear as a major deterrent to ecstasy use during her first interview at the age of 15, explained how her sense of apprehension diminished as she became exposed to more positive renditions of the ecstasy 'buzz'.

I used to be afraid to take E. I was afraid I would die. And then I tried a few of them. [What made you lose that fear?] I don't know. Everybody was just sayin' that it was a great buzz so I tried it. They [friends] seemed to be alright, it wasn't doing anything bad to them. I only tried half of one the first time. It was great!

(Denise, 18 years)

For the majority who extended their drug repertoires, prior sensitivities to danger and potential harm subsided and were replaced by feelings of relative invulnerability. These shifts transpired, often gradually, through immersion in drug scenes, usually in interaction with experienced colleagues or mentors. In this way, new definitions of 'normal' risk (Hunt 1995) were introduced and learned casually through participation.⁵ This process, involving the 're-vision' or re-drafting of previously constructed risk boundaries, is explicit in Sandra's account of ecstasy initiation.

I used to hear stories about them (E) and I was very afraid to take them so, ah, people were saying, 'Just try it, it's not like the way ya hear it', and all. And I said, 'Ah, no'. And then one night when we were going to a party I says, 'Just give me a half one and I'll see what it's like'. And I got a great buzz out of a half a one and then I took the other half and got an even better buzz.

(Sandra, 18 years)

Whether in a club, pub, or 'hanging out' at outdoor locations, the presence and teachings of more experienced drug users opened up new ways of framing risk, creating new possibilities for the construction of drug journeys. In many cases, previously established risk frames altered in response to new experiences. As young people neared their late teenage years, going out occupied a central role, as did their interest in seeking out new experiences, friends, and romantic partners. A large number began to explore new social settings outside of their home neighbourhoods and there was a sense in which abstainers, in particular, realized that drug consumption was not confined to bad neighbourhoods, such as the area where they lived. Laura (a Phase I abstainer) described how her exposure to mainstream drug scenes led her to modify her previous anti-drug stance, paving the way for her first ecstasy hit.

[You told me in your last interview that you were afraid to take E ...]

Yeah. I always felt that if I took E I would die. I always just thought that because I was always the unlucky one growing up. 'It would be just like what would happen to me if I took one, I would be the one', that is the way I thought about it. Always afraid of actually just swallowing E, I had a real fear against it. I suppose I was so anti-drugs in that kind of way as well. It would have been going against everything I thought about.

[And how do you think that changed or in what way did it change?]

That night in Greenwood [adjacent neighbourhood], well I wasn't going through a good time with me fella [boyfriend] and I just thought if I do this everything will be better and we will get on better and blah, blah, blah. So I just did it, I did half an E and his mates were saying, 'You won't die, of course you won't die, you eejit', and all this shite. So I did it and I didn't feel anything so I took another half and the two of them came up together and it was great. At first a bit weird, but then great. [Did that experience help you to lose your fear?] Yeah, it did big time, about all drugs. I didn't know what to expect. The way I used to think about it was, 'If I take E and then if I realize that I'm freaking out or something or get paranoid and start thinking things are happening to me', what would I do? But certainly when I took it, that didn't happen.

(Laura, 21 years)

Social interaction within drug scenes led to positions being confirmed, adapted, and, in some cases, discovered or expressed for the first time (McGill 1989). Put differently, behaviours once deemed risky became routinized or habitualized (Bloor

1995; Rhodes 1995). Irrespective of individual levels of drug involvement, a large number of the study's young people described this process of risk socialization (Hunt 1995) as they described their drug journeys. Perceptions of acceptable risk-taking extended in response to new social experiences and, in many accounts, drugs previously deemed dangerous moved gradually to a position of greater acceptance, enabling individuals to push out the boundaries of risk beyond previously constructed limits of acceptability. To a considerable extent, the study's regular drug users gradually developed an orientation towards drug-taking that normalized risk. Within a range of social settings, drug use and drug intoxication fell into the realm of the expected and, while aware of the potential for harm, many young drug users habitually assumed the role of the risk actor. This style of risk-taking emerged strongly from the accounts of weekend stimulant users.

E is a hard drug because it's a killer. Yeah, it is a dangerous drug, I do it and I'm not saying that it's not. There's fact there that it is, you know, what it does to your body. It's a dangerous drug. But you don't think about it when you're out there. Only the next day. I do think about it when I see it in the paper or something. But you don't think about it until you see it in the paper. My friend collapsed in the shower and his dad found him. That was the next day. Stuff like that and you think about it. You go off it for a few months maybe and then you go back on. You're out one night, you don't think about it.

(James, 21 years)

According to James, the 'facts' about ecstasy risks have little bearing on the reality 'out there' within drug scenes, where participants frequently take drugs simply 'without thinking'. Many who engaged in drug use as part of social rituals and routines appeared, at times, to temporarily sideline risk considerations in favour of the intoxicating pleasures of the moment. This style of drug use bears some resemblance to that recently described as 'consumerist' and 'hedonistic' by a number of researchers, but with one important distinction: they do not proffer a 'rational', 'calculative', cost/benefit orientation to drug-related decision-making (Boys et al. 2000; Breeze et al. 2001; Coffield and Gofton 1994; Parker et al. 1998). Experienced drug users, in particular, described numerous situations in which they consumed drugs routinely, without appraisal.⁶ This is not altogether surprising in view of the rituals and routines that characterize many drug-use contexts. When risk is in the background it assumes a lesser degree of relevance and becomes a taken-for-granted aspect of everyday life (Cox and McKellar 1999). In these situations, calculation can become 'superfluous' (Shiner and Newburn 1996: 24). This orientation to drug use appears, at first glance, to counter the legitimizing claims made by many of the study's social/recreational drug users regarding the considered and controlled nature of their drug-taking. Alternatively, and more accurately, however, such habitualized drug-taking is indicative of the risk culture inherent within many drug scenes: drug-taking not only endorses risk-taking, it necessitates a willingness to risk. Furthermore, this kind of habitual drug-taking almost always incorporated systems of behaviour and response aimed at regulating potential danger. For example, the majority of the study's dance drug users described routine strategies aimed at reducing potential harm. In relation to ecstasy consumption, these included 'sipping' (but not consuming too much) water, staggering the intake of ecstasy over the course of a night out, and restricting use to the company of trusted friends. It was possible, in other words, to 'risk risk' and to simultaneously endeavour to reduce harm. James, for example, whose earlier account highlighted the habitual nature of much drug-taking, equally proffered a desire to reduce the risk of harm.

You need to know what you're doing, to have experience of E. You need to drink water. If you're in a bar and you have a pint, get a glass of water as well. That's

just a thing you have knocked into your head. Water, drink a few sups and then you'll be grand.

(James, 21 years)

Even when engaging in drug use habitually, young people did not simply rely on some kind of cosmic protection; instead, they drew on ideas and practices that supported safer drug use. Some, for example, engaged in 'preventive telling', passing on practical advice to novice users and 'watching out' for first-time experimenters. In this sense, the process of risk socialization introduced and reinforced elements of safety as well as risk, as expressed by James: 'That's just a thing you have knocked into your head'.

The transition to dangerous drugs or risky routes of administration

As stated earlier, the vast majority of the study's social/recreational drug users portrayed heroin as a risk boundary that they would not cross. Abstainers and drug takers invariably imparted a picture of heroin users as sick and unwell. Indeed, much of the dialogue about heroin use and risk played a role equivalent to 'taboo' and 'sin' (Douglas 1990, 1992), highlighting a moral dimension to many narratives of unacceptable risk. Injecting drug use was perceived as real 'junkie' behaviour; more than this, it signified a denigration of 'self': non-heroin users consistently depicted heroin-involved youth as 'dirty' and 'diseased'. This attention to the outer appearance of the body was central to how non-heroin users formulated and conceptualized the risks associated with heroin. It is important, therefore, to briefly examine the accounts of those young people who did cross over into this no-go risk domain.

Practically all of the study's problem drug takers were early risk-takers who initiated tobacco, alcohol, and cannabis use during their early or pre-teen years and quickly built an extensive repertoire of drug experiences. Furthermore, their early immersion in street scenes exposed them to a wide range of mood-altering substances and supported perspectives, activities, and behaviours that prized excess over moderation. Simultaneously, many who articulated the allure of heroin scenes described an almost invigorating interpretation of drug consumption as a way of achieving self-confidence, status, and even respect. It was within these highly esteemed contexts that young people pushed out the boundaries of risk.

[Did you realize what you were getting yourself into?]

I wasn't worried about that at all. I thought it was just, I didn't think I'd have a problem with it, ya know. Where we hung around there was a couple that were on it [heroin], but I (pause) ... they [friends] never seemed to have problems ya know, with it. They were a year or two older and they never had problems so ...

(Gerald, 19 years)

Extending the boundaries of normal risk was relatively easy within contexts where hard-drug use was tolerated. Within these familiar street-based scenes, 'cautionary tales' (Goffman 1963) about the dangers of heroin frequently lost their significance. Gerald attempted to make the ideas of risk and control compatible and, like many others, believed in his ability to monitor and control his heroin intake during the experimental stages of use. Such claims about control were effective in marginalizing risk, as the following narrative suggests.

Everyone says, 'I won't get strung out, I know when to stop', everyone says that. Fucking hell, 'Ah now I wouldn't get strung out 'cos I'm not like that'. But we

always get strung out. When I started smoking [heroin] like I was saying, 'I can control this', but you can in your bollix.
(Sabrina, 18 years)

Within the social settings where these young people hung out, informal controls and prior anti-heroin sentiments were either neutralized or defeated. Indeed, many of the study's young heroin users appeared to drift into heroin use amidst a gradual erosion of soft/hard drug distinctions. Moreover, as heroin careers progressed, young people found themselves negotiating increasingly challenging and precarious choices. The stories told by young people about their progressive heroin involvement were sometimes dramatic and many lacked a clear chronology. However, most of the narratives reveal an unfolding sequence of events, albeit different for each individual, that gradually 'pushed' young people towards increased risk. The drug career of several of the study's young people had, at the time of making the transition to intravenous drug use, shifted towards scoring heroin to prevent getting sick (i.e. experiencing withdrawal symptoms). For a large number, the transition to intravenous drug use arose out of a need to feel normal under mounting financial pressure.

[Can you tell me about the first time you injected?]

I was up on the landings and had no money and there were people there that didn't smoke gear [i.e., they were injectors] and offered me 2ml in a barrel, so I took it. Stuck for the gear, no money, nothing. At that stage I didn't care. I just wanted the drug anyway I could. You don't think about all the things that can happen. People that are dying sick that bad, they wouldn't even think of AIDS, they would just do it, end of story.

(Edel, 18 years)

Like many others, Edel did not see herself as a victim of circumstance and depicted herself as the lead actor in the matter of her heroin use: 'It's my own fault at the end of the day, me own choice. I said I'd never inject and I did'. However, her 'decision' to inject is sorely in need of contextualization. Young heroin users typically claimed a high degree of autonomy and rejected social determinants as an explanation for their drug use. While remaining respectful of such assertions and, indeed, recognizing that agency is intimately associated with risk, most of the narratives simultaneously point in the opposite direction to the importance of social context and constrained choice in shaping drug-use practices and behaviour. Accounts like Edel's illustrate the manner in which the structures and processes within heavy end drug scenes operate to isolate and push young people towards risk. The majority of the study's young heroin users found themselves (suddenly and unexpectedly, in many cases) struggling with a drugs' lifestyle without access to scripts that might enable them to regulate or minimize risk. Indeed, their circumstances, both social and personal, militated against the generation of safer scripts. Within these contexts, the boundaries between safe and destructive action became increasingly blurred and many only identified risk in hindsight:

I did take a lot of risks. Sometimes, to be honest with ya, I can't believe some of the things I done. At the time, ya don't realize, ya don't care.

(Leonda, 23 years)

Unlike the study's recreational and 'controlled' drug users, the settings they frequented did not necessarily support or encourage safer use practices, due in no small part to the pressures and constraints that epitomize heavy end drug scenes.

'Imagined' drug futures

We have seen from the presentation of earlier accounts that young people defined different types of drug-taking as more or less risky and/or acceptable. Consistent with other research on drug use among the young (Agar and Reisinger 2000; McElrath and McEvoy 1999; Parker and Egginton 2002; Parker et al. 1998), the findings presented demonstrate that young people acquired their drugs' knowledge from friends and acquaintances and from personal and collective drug experiences. In this sense, young drug users constructed an alternative discourse of risk founded on their everyday experiences, in the process drawing on 'grounded' knowledge that matched the cultural framing of drug use within which they operated. Furthermore, a reflexive awareness was evident in many comments concerning how risk is understood and perceived in different ways for different groups. In other words, young people communicated an awareness of the subjective nature of risk.

It's different for everyone. In this area now, we'd nothing. We had nothing and there was drugs everywhere. So we made these decisions [i.e. we took drugs].
For other people, I don't know? All depends what situation you're in.
(Lorraine, 19 years)

Lorraine's comments suggest a recognition that 'risk is the product of a way of seeing rather than an objective fact' (Lupton and Tolloch 2002: 324). Correspondingly, young people saw risk perceptions as dynamic, changing for themselves and for others over time and even from day to day. This approach to drug use, incorporating flexibility and a corresponding need for scope for manoeuvre, was especially apparent among those young people who used drugs but did not consider their drug use to be problematic. It is not so surprising, then, that when it came to expressing future drug intentions, several articulated a reluctance to commit to a resolute set of 'standards' or positions. In the following account, Joan drew heavily on past experiences as she anticipated the range of drug-taking options out there and the possibility of trying cocaine, a drug she had not yet used. Underpinning this narrative is a reflexive awareness of the contingency of the future; accordingly and strategically, perhaps, she assumed an ambivalent stance.

[So you wouldn't have any interest in doing coke?]

No.

[You wouldn't?]

No, but saying that, I said that about E in the last interview, I know that, that I wouldn't take E. Now after I done E like, I am not going to doubt the fact that I am never going to try coke, you know. Like maybe I will and maybe I won't, you know like? But I know for a fact that I wouldn't, I wouldn't get addicted, you know what I mean.

[So what drugs do you think you might take in the future?]

Maybe speed, maybe coke? Probably E. I can't say I know because I don't know. I said I wouldn't take E and I done it so, you know what I mean ... I could maybe try speed or coke.

(Joan, 18 years)

Contingency was accepted by many young people as part of their risk worlds and embraced rather than feared in many cases. This kind of flexibility is arguably required when navigating a more uncertain, rapidly changing world where risk-taking

may be a functional necessity (Furlong and Cartmel 1997; Parker et al. 1998). Contingency, a characteristic of contemporary modernity (Lash 1993), sits oddly, however, with the notion of compulsive self-monitoring and rational planning of one's daily life activities, including drug consumption. It is perhaps unsurprising then that, as social actors, many of the study's young people presented a messier and more complex picture of rationality and reflexivity than that presented in theoretical accounts by Beck (1992) and Giddens (1991). The construction of drug biographies was indeed a 'reflexive project' (Giddens 1991: 32), but not one driven exclusively by a rational, calculative approach to risk. For the study's young people, reflexivity was not solely cognitive, but rather aesthetic, incorporating self-interpretation and interpretation of their social worlds (Lash and Urry 1994). In keeping with this, and assuming 'a self which is at the same time a being-in-the world' (Lash and Urry 1994: 6), the drawing and re-drawing of risk boundaries was a practical and existential accomplishment. It is precisely this type of complex social – rather than rational – calculation that influenced young people's everyday understanding and experience of drug-related risk.

Conclusion

Drug journeys, it appears, are intimately associated with risk. The experiential benefits of drug use expressed by the study's young people, sometimes quite dramatically, provide considerable insight into how the meaning of drug consumption is mobilized. Young people do not spontaneously embrace an ideology of drug use. Rather, through everyday interaction, they learn to appreciate, enjoy, endorse, and/or later reject some or all drug use, as part of their 'unfolding lives' (Fox 1998). This paper has focused on young people's drug stories, including their perspectives, reflections and intentions, as a way of elucidating the flow of experience underpinning their drug journeys. As evidenced in the data presented, different people hold different views and beliefs, not simply about the meaning of risk but, additionally, about the consequences of taking risks. In short, risk is particularly open to social definition and construction (Douglas 1992). Moreover, risk as a social construct is subject to change, magnification, dramatization, and modification.

As young people's stories suggest, drug-related risk was anticipated, ignored, avoided, or rejected from specific, experiential positions, but rarely on the basis of 'expert' warnings about the dangers of illicit substances. Young people drew upon lay discourses and reasoning, a process of 'private reflexivity' (Wynne 1996) located firmly within the realms of their ongoing social and personal experience. Put differently, young people, including drug users and non-users, 'script' risk as they gain experience in the world (Mayock 2004); they learn by doing, and script elaborations are precisely what such learning is about. Correspondingly, they alter, modify, and innovate scripts to accommodate new drugs, novel use settings, and emergent events, as well as changing perceptions of safety and harm. These essentially communicative scripts are played out in social interaction; they are prone to modification and may be subsequently overturned in response to new or emerging life circumstances and events.

Risk, it appears, is a dynamic mode of perception intimately linked to individual subjectivity in a world of uncertainty. While there were elements of a 'rational purposeful strand' (Breeze et al. 2001: 53) in the making and re-making of drug decisions, responses to risk did not hinge on rational, probability-based thinking. Contrary then to the findings of some recent research highlighting a cost/benefit calculative orientation to drug use on the part of young people (Boys et al. 2000; Breeze et al. 2001; Coffield and Gofton 1994; Parker et al. 1998), the dominant narrative or

script emerging from this study suggests a more complex dynamic. Decision-making in the domain of drug use emerged as 'a socially interactive enterprise' (Rhodes 1997: 211) and, in many instances, drug-taking was habitual, not calculated (Bloor 1995). Moreover, a 'hedonistic attitude' can override caution (Shewan et al. 2000: 450) and the flow and pace of experience within drug scenes may not permit, let alone accommodate, 'reasoned' choice-making. Much of the narrative material suggests that responses to risk were hermeneutic, organized around patterns of symbolic and subjective meanings, and strongly embedded in young people's social experiences. Drug use, therefore, cannot be simply characterized as the rational pursuit of the benefit of risk. Moreover, reasoned choice seems an especially poor explanation for the use of a dangerous drug (Hunt 2001), and one that is highly stigmatized.

Several accounts uncovered significant structural barriers to safe drug use and those young people who became seriously enmeshed in heroin lifestyles found themselves navigating situations and settings within which their personal safety was seriously compromised. It also appears that the discourse of harm minimization widely subscribed to did not always prepare young people for the contingencies of drug-taking. At the same time, the widespread tendency was for young people to claim ownership of, and responsibility for, risk. Such assertions are not altogether surprising, however, in view of the moralizing discourses surrounding modern-day consumption practices and behaviour (Lupton 1993, 1995), which increasingly place the onus on people, as consumers, to make informed, rational choices.

While the 1990s' theoretical perspective on young people's drug use is both original and admirable, and enormously important in terms of its rejection of pathological explanations for drug consumption, there is a danger that it overstates the role of cost/benefit rationality in decision-making about drugs. In order to appreciate and respond to risk experiences in late modernity we must be alert to the individualistic manner in which young people may perceive and experience risk and, at the same time, recognize the continuing importance of the social and structural processes that act to push young people towards risk (Green et al. 2000). It seems important, in this context, to remind ourselves that agency is something that is 'done', but how people go about 'doing drugs' is what is important. Young people may calculate and apply rational thinking to their drug and/or other risk-related decisions. Equally, however, activities engaged in for the benefit of risk may themselves become routine, and inevitably take place according to certain boundaries, norms, assumptions, or scripts.

Like other constructs we use to describe social phenomena, risk acts as a lens and can sharpen, or alternatively obscure, our understanding of such phenomena. The concept of risk and the way it operates has implications for how we think about drugs, about our and others' use of substances, and about the nature, form, and ideology of interventions designed to forestall or delay entry into all or specific types of drug use. Risk discourses both delimit and make possible what can be said and done about the drug-use phenomenon since they serve to organize the way in which we conceive of and deal with the 'danger' posed by drug-taking, both at the level of the individual and of society at large.

This paper has demonstrated the limits of individualism in accounting for how young people arrive at drug decisions, both at specific 'moments' and over time. Nonetheless, the public response to risk has become individualized (Douglas 1992). This is reflected, for example, in the dominant focus of prevention and harm reduction strategies and interventions in Western industrialized countries, which are directed, in

the main, toward individual risk behaviour change (Rhodes 2002). The major strategies centre on providing information and advice to drug users on how to minimize risk; they encourage drug users to take responsibility for harm and assume, to a considerable extent, that they are able to manage risk. Indeed, today's drug users appear to be viewed as more enterprising, prudent, and self-managing subjects (O'Malley 1999). This individualization of risk reduction fails, however, to capture the complex and nuanced nature of much risk-related behaviour. It also neglects the situational pressures and constraints on 'safe' drug use and fails to take account of the social, cultural, and economic contexts that structure much risky drug use (Moore 2004). The risk behaviours and practices typically targeted through harm reduction strategies are, in other words, detached from the immediate situation of action.

Belief in the rational calculability of drug-related risk, and in the practical ability of young drug users to self-govern the risks to which they may be potentially exposed, is always in danger of foundering upon its own inherent limits. In keeping with developments in other European countries and in Australia, harm reduction policies were introduced in Ireland in response to the 1980s' public health crisis associated with HIV/AIDS. The introduction of these policies signalled 'a new style of risk construction in terms of the health implications of drug use' (Butler 2002: 176). Twenty years on, Ireland can boast many new innovations, and harm reduction initiatives have expanded dramatically, particularly since 1995 (Mayock 2003). Nonetheless, mounting evidence of continued borrowing and lending of injecting paraphernalia, particularly among younger injecting drug users (Mullen and Barry 1999; Smyth et al. 1999), coupled with growing concern over hepatitis C transmission rates (Allwright et al. 1999; Long et al. 2001), all point to significant challenges and failures within current harm reduction practice. Facilitating behaviour change and encouraging safer drug scripts requires more than individually targeted messages and interventions. If the objective is to bring about change in the social etiquette of drug use in order to prevent or minimize harm, this is unlikely to be realized through 'hypersanitary' messages (Bourgois 1998: 2334) that do not accord with the experience of much drug-taking, much less the social and economic imperatives of risky drug use. While direct information and advice about safe drug use will always be an important component of harm reduction practice, this needs to be supported by greater attention to the settings and contexts that spawn risk. Put differently, rather than viewing risk (and opportunities to reduce harm) as located in and with the individual, we need to focus on the risk environments (Rhodes 2002) that create vulnerability to risky drug-use practices. In relation to young people who live in socially excluded 'zones' where drug problems traditionally cluster, there is an urgent need to recognize diversity among young drug users and the consequent need for varied and innovative strategies and responses. Clearly, not all young people who live in socially disadvantaged communities will immerse themselves in 'heavy end' drug scenes and the majority will, if anything, remain committed to boundaries that reject hard-drug use. Nonetheless, a minority may embark upon hard-drug careers and find themselves operating within marginal social scenes where the boundaries separating safety and risk become increasingly blurred. This paper has highlighted the environments in which young people move as crucial determinants of how risk is scripted. It follows that responsibility for harm lies not solely with the individuals who are charged with negotiating these environments, but also with the social, economic, and political structures that create susceptibility and, in some cases, exceptional vulnerability to drug-related harm.

Acknowledgements

I want to thank Dr Shane Butler, Social Studies Department, Trinity College, for the guidance he provided throughout the conduct of this research and for his comments on earlier drafts of this paper. I also wish to acknowledge the research funding received from the Addiction Research Centre, Trinity College, Dublin, the Irish Research Council for the Humanities and Social Sciences, and the Trinity Foundation, Trinity College, Dublin.

Notes

1 Parker et al. (1998: 150) do not claim that cost/benefit analysis is the only component of drug decisions. For example, they state that 'whilst rational decision making usually guides, it many not dominate'. The authors also caution against the use of the cost/benefit equation as a 'mechanical explanation' (Parker et al. 1998: 148). They do, however, advance cost/benefit analysis as a key conceptual tool for understanding young people's drug journeys.

2 All of the study's focus group participants were also interviewed individually. Due to practical problems of access (related to the fragmentation of peer groups and changes in young people's 'hanging out' routines), it was not possible to arrange focus groups during Phase II fieldwork.

3 The follow-up sample of 42 young people included 12 abstainers, 15 drug takers, and 15 problem drug takers.

4 A number of recent studies have, however, drawn attention to the centrality of pleasure to drug consumption (Henderson 1993, 1997; Measham et al. 2001; Parker et al. 1998; Williams and Parker 2000).

5 'Normal risk', according to Hunt (1995: 442), 'is a dynamic category which is continually negotiated', largely in interaction with others. In the case of Hunt's (1995) deep-sea divers, the process of risk socialization involved learning, making distinctions between 'normal' and 'excessive' risk, and developing accounts and techniques that help to neutralize anxiety. Becker's (1963) account of the complex learning process involved in becoming a marijuana user has many similarities. According to Becker, the novice first learns to inhale and, at a later stage, learns to appreciate the effects of the drug. This shift from being a naïve user to becoming an experienced user strongly emphasizes a process of socialization associated with the adaptation of behaviour and a subsequent acquired ability to enjoy the drug experience.

6 Ethnographic observations confirm this orientation towards some drugs. For example, when young people congregated at outdoor locations, they frequently shared a joint or rubbed speed on their gums as they chatted and engaged in routine socialization. These drug-taking activities proceeded casually and without any apparent concern for drug-related risk.

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Chapter 2

Why prison fails

Karen Sugrue

The last number of years has seen the Irish government adopting an increasingly punitive rhetoric in relation to crime. The introduction of Anti-Social Behaviour Orders (ASBOs), privatization of prisons, and mandatory sentencing, to name but a few, have been called for. The Fianna Fail/PD coalition government came to power in 1997 and again in 2002 on a strong law and order platform. They have drawn a line in the sand and have taken a very severe stance on criminality. First Minister O'Donoghue and now Minister McDowell have both taken their election promises to heart and implemented a series of harsher and more punitive policies – legislation that is all aimed at regulating behaviour that is deemed 'anti-social' or problematic. In 2003 and 2004 these promises come to fruition with more prison places, more Gardaí, more Garda powers and more prisoners than at any other time in the history of the State.

The Irish government's consistent answer to the issue of crime has been prison: building them, enlarging them, privatizing them, staffing them. Instead of being an option of last resort, as recommended in the Whitaker Report in 1985, prison is the first port of call for our government in its attempts to deal with crime in Ireland. It is clear that those in power view prison as a fitting punishment – with regular calls being made for longer sentences and harsher regimes. However, there is very little debate about what the prison service hopes to achieve. Is it rehabilitation? Deterrence? Retribution? And there is no debate whatsoever on whether or not prison does actually constitute a punishment. Do those incarcerated in our prisons view it as a punishment? This paper examines the idea that they do not and that it is for this reason that the punitive rhetoric and legislation of the last few years will inevitably fail.

The prison class

The majority of Irish prisoners come from what I term the 'prison class'. The prison class is the under-class, the most disadvantaged and the most excluded in our society. It is this segment of society that scores highest on all the criminogenic indicators and exhibits the highest social welfare dependence, the greatest amount of drug addiction and alcoholism, the lowest educational attainment, the highest teenage pregnancies and births outside marriage and the highest number of children per family. It is characterized by high unemployment, early school leaving, low IQ, poor diet, poor housing, family breakdown, and so on. From this minority segment of the population comes the prison class; the community that has a seriously disproportional number of its members in prison or as ex-convicts.

Bacik and O'Connell's (1998) study of records of the Dublin District Court indicates that living in an economically deprived area is a strong risk factor for court appearance. They found that 73.3 per cent of District Court defendants are from the most economically deprived areas and also that a person from the most deprived areas was 49 per cent more likely to be incarcerated than a person from the least deprived areas. Other studies (see O'Mahony 1997, 1998, 2000; Probation and Welfare Service 1999) have also shown that members of the prison class get fewer opportunities to avail of alternative sanctions (i.e. Juvenile Liaison Officer scheme) than do individuals from higher strata; that they get longer sentences and once 'inside' encounter more penalties

than others, spending more time in padded isolation cells (or ‘the pad’ as it is known to inmates).

The picture of Liam Keane giving the ‘two fingers’ to the watching media when the murder case against him collapsed in 2003, because key witnesses could no longer ‘remember’ what happened, has become iconic. This defiant gesture seems to embody the attitude of the prison class. Keane’s two fingers were not just aimed at the media, but at the system itself and society in general. This arrogant defiance caused outrage across the country, and calls for harsher punishments and longer sentences followed.

However, imposing increasingly retributive and repressive sanctions on this population will not be effective in reducing crime. Current crime statistics show this, not only in Ireland, but England and America also. The American example in particular is relevant given their commitment to a ‘three strikes and you’re out’ policy, their reimplementing of the chain-gang, and their use of the death penalty. None of these harsh sanctions has impacted on crime rates, and America currently has the largest prison population in the world. Ireland’s prison numbers also show that the harsh rhetoric and legislation of the last ten years has not led to less crime, but simply to more prisoners. Currently there are more people incarcerated than at any other time in the history of the state, the number now approaching 4,000. In spite of the Whitaker Report in 1985 recommending that a ceiling of 1,500 be put on prison places, today the prison places are more than double that. The harsh legislation that has been brought in since the moral panic years of 1996/1997 is reflected in bail laws, minimum mandatory sentences, extra discretionary powers for the police – to name but a few – and has attracted harsh criticism from international human rights organizations as well as the Council of Europe.

Prison has failed. However, neither the government nor the public is willing or able to face this truth of late modernity. Irish penal policy is based, not on tempered and reasoned argument, but very often on the ‘politics of the last atrocity’. The experience of the Fianna Fail/PD government has shown all Irish politicians that the way into the hearts of the electorate is not liberal debate on appropriate sanctions but harsh rhetoric. It is political suicide in Ireland to suggest more lenient measures for dealing with offenders or putting more money into solving larger social issues such as poverty.

The ‘prison class’ exists in inner city areas, areas of public housing, areas where drug use and long-term unemployment are high, and levels of education, literacy and life expectancy are low. It exists in areas where inter-generational unemployment and criminal activity have always existed, areas in which housing is poor and community facilities even poorer. Of the sample of young men I interviewed in St Patrick’s Juvenile Detention Centre, not one had completed second level education and most had left school before they were 14, some as young as 12. Almost all of the young people interviewed reported that they were not working before they came into prison. When asked how they spent their days ‘outside’, typical responses included:

‘Slob around just drinkin’, smokin’, taking hash...the usual’

‘Go out robbin’, get money, then come back, do whatever with the drugs’

‘Oh just hanging around, hanging around and smoking hash and stealing cars...’

When asked about why they didn't have a job, typical responses included drug addiction; 'wouldn't be bothered' and 'make more money from stealing than working'. Most said that education was not important and they could see no benefit to them in it. They had no plan for the future and did not know what they would like to be doing in five years (although some of them responded that they would probably be 'next door, in the Joy').

Prison-class culture

There exists in Ireland today an alternative culture; a culture that is outside and removed from majority, middle-class culture. This is an adaptive culture which developed as a result of generations of exclusion from and failure in majority culture and as an adaptation to the punitive rhetoric of successive governments and Irish society in general.

It is necessary to view offending behaviour within the context of its occurrence in a realm of different (not oppositional) values and attitudes than those held by members of the majority culture. This alternative culture accommodates behaviour that majority culture does not. As a vast number of its members break the laws of the State and are sent to prison, law breaking and prison records do not hold the same social sanctions in this alternative culture that they do in majority culture. Increasingly harsh sanctions, therefore, simply serve to reinforce the values which constitute this alternative moral community.

This alternative culture also provides a forum in which its members can succeed and attain a high status – something that they could not achieve in majority society. It holds in high esteem characteristics, actions and behaviours, such as hard man-ism, violence and toughness that majority culture would not tolerate and by doing so it allows avenues for status acquisition within its own realms. This is a culture that has adapted to the needs of its members.

To gain any insight into the motivational impulses of Irish offenders, it is necessary to view their behaviours and their words through the understanding that they inhabit a different society. Viewing their actions from the perspective of majority society makes the offenders and their offences appear incomprehensible. In this context throwing them into prisons with harsher and harsher regimes and implementing punitive legislation such as ASBOs does seem to be a fitting response.

Crime is a symptom of adaptation to, rather than a rejection of, majority society. The deprived community, excluded and disenfranchised from majority society, closes ranks, creates its own mores and values – which tolerate a much greater degree of criminality – and develops its own sanctions. This has, I believe, occurred over a period of generations. In this adaptive community, normative standards are different to those of the majority culture.

The extent to which outsiders react with hostility toward the subculture becomes a strong additional motivator for the members to look to one another for affirmation. In the Irish context, there is a universal dislike and distrust of the Garda Síochána among the prison class. This very often leads to violent clashes and many inmates of St Patrick's told stories of torture and abuse suffered at the hands of the Gardaí:

'I got a beating ... two black eyes and you know a vice-grips? I got vice-grips on me tongue...'

‘...when he was hitting us he kept saying “keep your head down” ... I have pictures and reports from Oberstown to prove it.’

It would appear, from the interviews with the inmates of St Patrick’s, that clashes are an expected part of any interaction with the Gardaí and the more daring the young people are in their interaction, the more assured they are of being beaten by the Gardaí, and the greater the respect among the group afterwards. This type of Garda behaviour toward young offenders has been under-researched; however, McCullagh and Lorenz (1985) did encounter some similar stories and the CPT (Committee for the Prevention of Torture and Cruel and Inhumane Treatment of People in Custody. Council of Europe) has reported evidence of such behaviour on each of its three visits to Ireland. A sergeant in the National Juvenile Liaison Office, on being asked about such occurrences, responded: ‘I suppose it does happen from time to time, some members of the force, maybe with the best of intentions’ (interview with Sergeant, National Juvenile Liaison Office, June 2001).

Cohen (1955) has argued that it is possible that the ‘in-group’, in this case the prison class, may act in ways designed to incite anger and hostility from the out-group (majority culture) and the ensuing reaction be taken as evidence of their enmity and thus justify the in-groups lifestyle and feelings of animosity. An example of this can be seen in the Gallenstown Halloween Riots in the mid 1990s and in the culture of joy-riding that has emerged across the country, with joy riders engaging the Gardaí in high-speed chases and doing daredevil stunts to impress their peers.

For its part, the ‘out’ group – or majority culture – demonizes the ‘prison class’, creating an ‘Other’. The Otherness of the prison class lies in its different cultural mores and in the inability of the majority society to understand them. In Ireland this has resulted in members of the prison class being vilified by the media which often dehumanize them and thus increase their Otherness by using language such as ‘thugs’, ‘animals’, and so on. This classification of the prison class as dangerous only strengthens prison-class mores and values as an adaptive strategy to this social isolation and vilification.

An important element of this adaptive culture is the divergent value system which develops. Although the adaptive culture has different norms and mores, it still contains its own moral code to which all members are expected to adhere. When these rules are broken, the individual suffers remorse and derision from other members of the prison class. An example of this is the way in which sexual offenders and inmates who have harmed older people or children often have to be held in solitary confinement to protect them from other prisoners.

Techniques of neutralization

Sykes and Matza (1957) proposed that delinquents do feel bound by majority social mores but develop what the theorists termed ‘subterranean values’. The delinquents learn techniques that enable them to neutralize majority values and attitudes. ‘These techniques act as defence mechanisms that release the delinquent from the constraints associated with moral order’. The values they are bound to are not those of majority society, but those of their minority, prison-class culture. Prison-class mores are not in opposition to majority values, they are simply different in a number of important ways – allowing for behaviour and characteristics that are necessary to support the lifestyles engaged in.

These 'techniques of neutralisation' come across very strongly in interviews with the inmates of St Patrick's. For example, assaulting a Garda does not 'count', because Gardaí are not perceived as people. Two of the interviewees had injured Gardaí by driving their stolen car into the squad car at high speed. When I asked them how they felt about this, they responded:

'Don't care about no guard.'
-'Do you ever think about the Garda that you hit?'
'Wha?'
-'Repeat question. Long pause.'
'No.'

While the random assault of an innocent person would not be acceptable, Gardaí are not seen as innocent people. They are not seen as people at all, they have been completely dehumanized in the eyes of the prison class who referred to them most often as 'the filth'. In fact, it appeared to be seen as a matter of some pride to have inflicted injury on a Garda. Injuring a Garda guarantees a severe beating for the offender. One interviewee told me, with great pride in his voice, of his younger brother who had recently bitten off the finger of a female Garda.

Stealing from a shop is not considered a terrible act either because: 'I didn't really cause them any harm or anything like you know – they expect people to rob their places that's why they have their stuff insured' and '...we never really affected them that much, we never robbed 'em that much like'; also, 'The shop guys, they're not going to miss a couple of whatever I take you know. His kids will never go hungry.'

Stealing from a house is acceptable as long as certain rules are adhered to. The television and video must be left, the place should not be thrashed and you should not urinate or defecate in the house: 'I'd only go in for a few pounds and some drink, that's all I'd go in for; I wouldn't go in to take their telly or their video coz I'd think of kids wanting to watch...'

Personal boundaries and a clear idea of what constitutes right and wrong, good and evil are evident in this alternative moral order:

'...It's a different story now than going in like armed robbery you know...'

'I wouldn't destroy ... I know fellas who wreck the place – destroy it – there's fellas I know and they've pissed, they've shitted. There's something wrong with them, they're not the full picnic like ... like if I break in I'd break a window, just to get in but ... I'd be thinking like I'm going through people's stuff and they knowing that I know what they have ... Jesus that's an awful thing.'

'Its like this – I've never robbed on anyone in me own area – NEVER – I'd never take a neighbour's ... anything belonging to a neighbour or anything like that.'

'I wouldn't take telly's and videos and things like that ... I'd look for money and jewellery ... but I wouldn't take telly's or video's ... coz that's the...the lowest... you think to yourself I'm not that bad if I'm leaving their videos and their tellys ... I'm not that bad.'

Some inmates had however crossed the boundary and broken the alternative moral codes. The first example of this came from an inmate who is a heroin addict. From his descriptions, he considered himself a clear step above the stereotypical heroin

addict and in this way justified his actions and lifestyle to himself. However, on this occasion his actions caused him to see himself in the same light as the street addicts upon whom he had previously looked down. He tried to steal a woman's mobile phone. When she resisted, he bit her.

'I'd like to apologise, I'm sorry for what I did...the woman...I don't blame her, she thinks I'm a scumbag an' all tha'. I don't blame her. I hope when I get out I'll be able to apologise.'

If the inmate is able to apologise, then in his own mind he will no longer be on the level of the 'scumbags', because 'they' would never think to apologise, he will have re-elevated himself, in his own eyes, back to being a decent person – one who steals a mobile phone (which is acceptable) – but does not bite the owner (which is unacceptable). Another inmate broke into his next-door neighbour's house and ransacked it. This was made all the more unacceptable because the neighbours were elderly.

The majority of the young people I spoke to in 'St Pat's' (as it is known to the inmates) generally adhere to the alternative moral codes of their adoptive 'prison-class' culture. Their crimes, while shocking and unthinkable to members of the majority culture, are not a source of concern or guilt to these young people. They are sorry that they were caught and are waiting to get out so that they can slot back into the lifestyle they led before they were incarcerated. They do not see the harm in what they do.

However, for the few who broke these alternative moral codes of behaviour, there is remorse. While they are sorry and would like to make amends, there is also the element that their actions have made them view themselves and their lifestyle in an unfavourable light. They are scorned and ostracized by other members of the prison class. It has caused them to put themselves in the same category as other people whom they heretofore considered 'scumbags' and 'low-lives'. Their feelings of guilt and remorse, while genuine, are not entirely altruistic and their attempts at atonement are possibly more for their own peace of mind than for the victims.

Bricolage

Barthes (1970) notes that objects do not have fixed meanings and that cultural meanings derive from social use. Objects can be taken from one setting and put in another with entirely different meanings. An example of this is the current trend of 'chavs' wearing Burberry. Burberry used to be a symbol of wealth, style and affluence, but it has now been recontextualized by the 'chavs'; Burberry has now come to connote an entirely different cultural meanings. Another example is the wearing of hooded tops, which has taken on a whole new set of cultural meanings. Because young men began to wear 'hoodies' with the hood up to cover the face while committing crimes, hoodies and the young men who wear them have acquired negative associations. In the UK this has progressed to the extent that ASBOs have been placed on young people, prohibiting them from wearing this type of clothing, and in Ireland calls are now being made to ban the sale of this item of clothing.

Drawing on Levi-Strauss, subcultural theorists have called this 'bricolage' and noted that it undermines conventional meanings, because it challenges the symbolic universe. Willis (1978) takes this further, noting that the reordering of objects is not random, but made sense of through its fit with the group's focal concerns, forming a symbolic fit between values and lifestyle, which he terms a 'homology'. This homology

is apparent in the prison-class culture I am describing in the manner of the meanings that derived from a prison sentence. The mainstream meanings attached to a prison sentence have been unpacked and remade to form the 'symbolic fit between values and lifestyle'. The social censure that a prison sentence triggers in majority society would be impossible to maintain in a culture in which the majority of people have either been in prison themselves or have a close family member in prison. Prison has been remade as a rite of passage, a symbol of status and toughness and of other characteristics that are lauded and rewarded in this adaptive culture. McCorkle and Korn (1954) theorized that there exists in prison a 'social system' which is 'supportive and protective' to those inmates who are most criminally acculturated and, conversely, 'most threatening and disruptive to those whose loyalties and personal identifications are still with the non-criminal world'. The prison psychologist of Limerick Prison explained that he will always be on call if a 'well-off prisoner' is coming in.

Most of the young people I spoke to reported that they did not find prison difficult:

'I don't think it's punishment at all ... I think its grand here. All they do in here is keep you going until you get out the next time.'

Some commented that it gave them a break from their hectic lives on the outside. Others noted how much they learn while inside:

'...I'm not coming here again ... when you're in prison there'll always be lads who know more than you...you know your own mistakes so you won't make them again and you meet people who show you how to do stuff and not make other mistakes like ... prison is like school, you learn more inside you know ... next time anyone hears about me I'll be a millionaire.'

The vast majority simply commented that the only really bad part was the food and what they yearned for was 'fries and chips, pizza and all that proper stuff'.

The Irish prison class has developed its own set of meanings around the lifestyles it pursues. In this context prison and encounters with the police and the judicial system serve no purpose except to reinforce exclusion from majority society and the status-acquiring meanings assigned to these events. Of the 30 young people I interviewed almost all already had friends in jail when they came in themselves, and the vast majority had family members who had spent time in prison also.

Why does prison fail? It fails because it does not rehabilitate and it does not punish: it simply contains, changing nothing and releasing the prisoners back into a lifestyle and society that created them, their belief system, with their cultural ties reinforced. It fails because of the meanings that the prison class has assigned it. It is not a source of shame or social ostracism. On the contrary, it is almost a rite of passage from boyhood to manhood and the norms associated with acceptable masculinity among the prison class are those which quite often lead to incarceration. Toughness, violence and hard man-ism are all characteristics which allow the young man to attain a certain status among his peers. For these young people there are very often no other avenues for status acquisition, and in a terrain bereft of any other realistic alternatives, the lifestyle is very attractive.

'In the mornin', what would I do? Call for me friends ... messin' about ... go off robbin' cars or houses down the country, something like that ... mostly

bored the whole time so we'd go out robbin'. Just liked robbin' ... liked the buzz, just a buzz ...'

'We used to go out in the morning around the car parks, you know with people goin' around town an all ... leave their fuckin' stuff in the cars an' all, break into the cars, take a few fuckin' wallets – whatever. Then we'd get money, go out, get twisted and we'd start breaking up the town and get arrested ... typical day ... we'd be off our heads, even if we weren't stoned or drunk, we'd be off our heads ... barred from every amusements, I'm even barred from me own estate – I robbed someone's dog for the laugh. Anything for a bit of a buzz.'

Prison fails because the policy-makers look at crime through the lens of middle-class values, and condemn these young people and their lifestyles. It fails because majority society sees prison as a punishment. But for these young men, a prison sentence holds no fear – it is merely an extension of the lives they live on the 'outside' – and does not constitute a penalty.

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Chapter 3

The custodial remand system for juveniles in Ireland

The empirical evidence

Sarah Anderson and Gay Graham

Introduction

The recently enacted Children Act 2001 signifies a new approach to young offenders that openly embraces the welfare ideology, and, by replacing the Children Act 1908, aims to address many of the criticisms of a justice system that has been in place for almost a century.

However, there have been growing concerns that the needs and rights of some young people within the current juvenile justice system are not being met, and that there are serious problems in the provision and availability of services.

Ireland already detains a significant number of young people in secure facilities. Given that there are fundamental concerns regarding the deprivation of liberty, the rights and freedoms which this restricts and the potential consequences of incarceration on both the young people themselves and society in general, such moves need to be carefully considered.

It is imperative that any proposed changes in the justice system are based on a solid understanding of the current situation and the difficulties encountered within it.

This paper documents the present system of custodial remands for children under 16 years in Ireland. The research includes the entire population of children remanded into custody during the summer of 2000. A flow chart model illustrates these young people's experiences, and the paper highlights issues such as the number of non-offending children who are in custody (21%); the cycle of repeated remands and court appearances (up to 22 repeats); excessive periods of time spent in secure detention (up to 351 days); and the use of remand facilities for those awaiting a suitable residential placement (57%). It provides an important baseline from which to assess the impact of legislative reform in this area.

Background profile

Table 3.1 illustrates the background profile of the young people on remand during the time period studied, and demonstrates that they had experienced numerous negative and traumatic events in their lives. High levels of family breakdown, abuse, homelessness, substance misuse and educational failure had already identified them to various welfare and justice agencies as children in need. A history of failed foster and residential placements was prevalent, as well as contact with justice agencies whose aim is to divert them away from criminal activity. These findings are in line with other studies demonstrating known risk factors in the development of criminal and anti-social behaviour in young people.

Table 3.1 Background profile of children on remand

Family	<i>Welfare and justice contact</i>
Parental separation (40%) Domestic violence (40%) Parental substance use Family members in trouble with the law, especially fathers (19%) and siblings (21%) Lived in areas characterized by other social disadvantage indicators No significant adult role model (28%)	Residential care (51%) Foster care (23%) Juvenile liaison scheme (36%) Probation (57%) Remand (49%) Detention (21%) Psychological assessment (64%) Psychiatric assessment (63%)
<i>School</i>	<i>Individual</i>
Behaviour problems (57%) Truancy (57%) Suspension (49%) Expulsion (31%) 5 years behind chronological age in reading and number ability Learning disability (44%)	Ratio of 4:1 males to females Physical abuse (38%) Sexual abuse (23%) Self harm (20%) Attempted suicide (16%) Substance use: smoked (73%), drank alcohol (83%), used solvents (33%) cannabis (56%) and ecstasy or speed (22%)

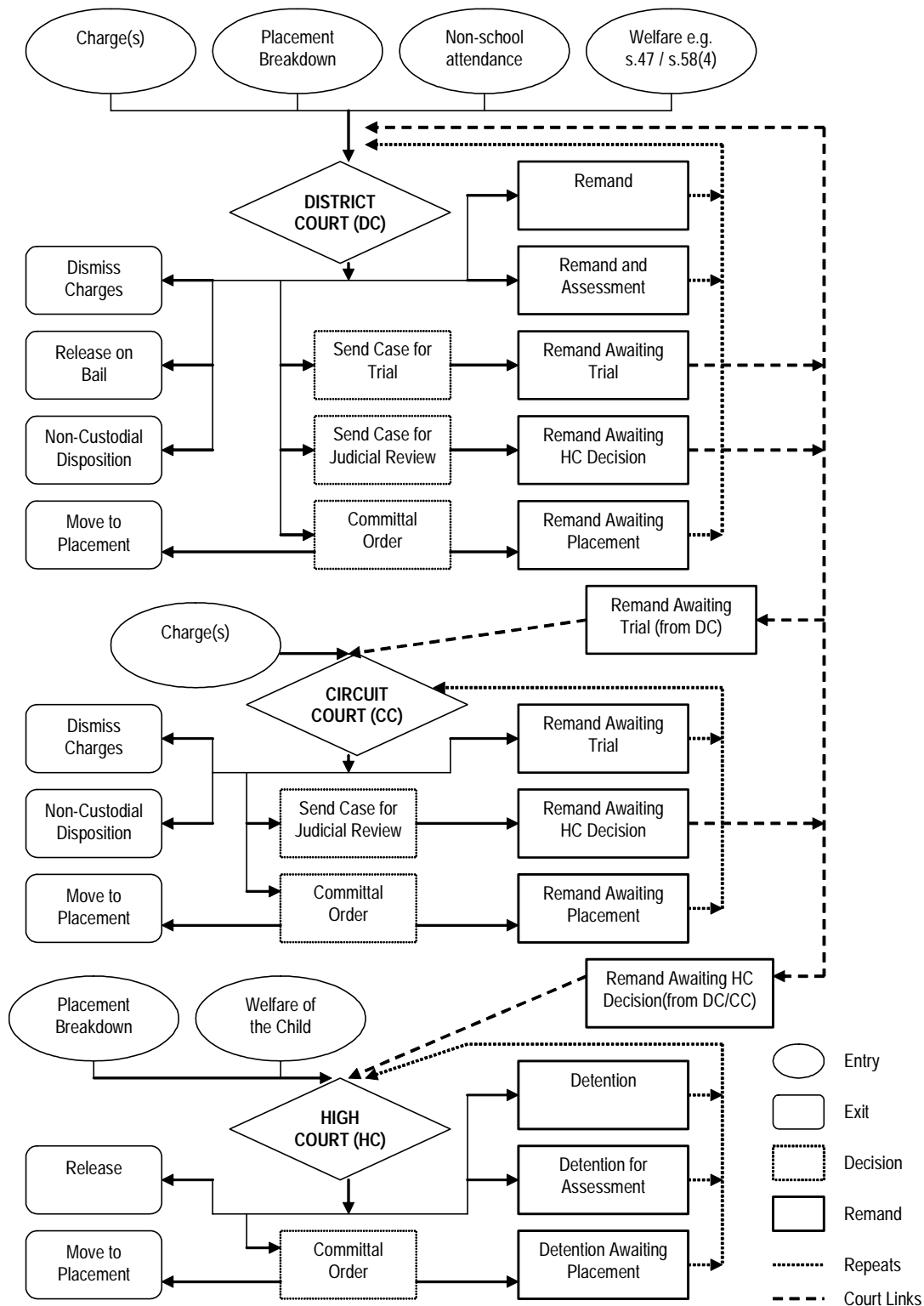
Numbers of children in custodial remand

There were a total of 117 cases of custodial remand, which represented 68 individuals, some of whom were present during two or more weeks of study. Each of the 117 cases were treated as separate individuals, as their circumstances relating to the period of remand often changed across the different weeks. For instance the same individual may have been on a District Court order detained for remand and assessment during week one, but by week three (3 months later) s/he may have been the subject of a High Court order awaiting placement in a residential unit.

Of the 117 cases, 98 (83.8%) were male and 19 (16.2%) were female. The total population ranged in age from 11.4 years to 17.1 years, with a mean age of 14.8 years. The vast majority of the population, a total of 72 (61.5%) were aged between 14 and 16 years of age. Around one fifth (25 or 21.4%) were under 14 years of age and the remaining 20 (17.1%) were over 16 years old. This is particularly notable given that all the units in this study are certified for those under 16 years of age.

There was a significant difference between males and females in terms of age (Pearsons $r = 0.472$, $p < 0.001$, one-tailed). All 19 females were aged 14 or over, 11 of whom (57.9%) were aged 16 or 17 years. By comparison, the male population was somewhat younger than the females since 25 (25.5%) of males were under 14 years of age, a further 64 (65.3%) were between 14 and 16 years, and only 9 (9.2%) were over 16 years old.

Figure 3.1. Flowchart of the remand system



The remand system

The remand system in Ireland is a highly complex and complicated process with a number of changing variables for each individual case. In order to illustrate the intricacies of this system, a flowchart model was created. As this model developed it was apparent that not only does it provide a clearer and more easily obtainable insight

into the system, it also illustrated the specific difficulties that many of the young people encountered. The flowchart model is illustrated in Figure 3.1 above and each aspect of it will be explained in turn, under the headings Entry, Exit, Remand, and Repeats.

Entry

The oval boxes on the model indicate an entry into the remand system, at either District Court, Circuit Court or High Court level. The most likely introduction to the formal court system for most young people is with an appearance at one of the 248 District Court venues in the country. Appearance in court could be the result of the child committing an offence or could be for welfare-related reasons such as non-school attendance (under the School Attendance Act, 1926) or for out-of-control behaviour (under section 58(4) of the Children Act, 1908). A small number of children would enter directly into Circuit Court hearings, primarily as a result of the serious nature of their offence. Finally, some children enter the system through High Court hearings. This mainly applies to children and young people who are already on a High Court detention order for welfare related reasons, and whose residential placement breaks down. It must be noted that a child who is detained in one of the four units by an order of the High Court is not actually 'on remand' but they were included in this study because they were detained in remand units, and often presented with very similar circumstances. In addition, some of these children were the subject of simultaneous remand orders by either the District or Circuit Courts.

Reason for court appearance

The court warrant issued for the detention for each child indicated the reason for the child's appearance in court. Table 3.2 illustrates the findings for this.

Table 3.2 Reason for court appearance

	Male		Female		Total	
	N	%	N	%	N	%
Charge(s)	59	60.3	10	52.6	69	59.0
Non-school attendance	6	6.1	0	--	6	5.1
Out of control (s.47 and s.58(4))	2	2.0	0	--	2	1.8
High Court (welfare of the child)	4	4.1	5	26.3	9	7.7
Placement breakdown	7	7.1	1	5.3	8	6.8
Charge(s) and placement breakdown*	20	20.4	3	15.8	23	19.7
Total	98	100	19	100	117	100

Note: * the majority of these cases are where the charges relate either to assaults on staff or damage to the residential unit where the children were residing

As Table 3.2 shows, the majority of young people appeared in court as a result of their offending behaviour (69 or 59.0%). A further 17 (14.6%) appeared in court as a result of concerns for their welfare, whether in the District Court or the High Court. It is notable that a total of 31 cases, which represented over a quarter of the sample (26.5%), appeared in court as a result of the breakdown of their residential placement.

Types of offences

Where the young people had been charged with an offence, the details of the offence were recorded and coded. The number of offences that each individual had been charged with ranged from 1 through to 52 in total and the children committed a total of 431 offences between them. Table 3.3 shows the breakdown in types of offences committed and how these compare to Garda statistics for the same year.

Table 3.3 Breakdown of offences

	Total offences		Compared to Garda statistics (2000)
	N	%	%
Motor vehicle offences	122	28.4	8.5
Larceny offences	101	23.4	21.2
Property offences	60	13.9	12.9
Offences against the person	51	11.8	7.9
Public order offences	16	3.7	6.8
Court offences	65	15.1	0.4
Other	16	3.7	42.3
Total	431	100	100

Roughly a quarter of the total offences committed were motor vehicle offences, which include unlawful taking, carriage, and interference of motor vehicles, and a similar number were larceny offences which include larceny, handling stolen property and trespass with intent. Court offences, which were roughly 15 per cent of the total include failure to appear in court and breach of bail conditions. Property offences generally concerned minor damage to property, however a number of young people were also charged with arson (fire-setting). Offences against the person accounted for almost 12 per cent of the total and included assault, assault of Garda, as well as a small number of sexual offences against the person. Finally, public order offences included breach of the peace and intoxication in a public place. There were no significant overall differences between males and females in the types of offences committed, though the majority of motor vehicle offences were committed by males. Table 3.3 also compares the major types of offences committed by the young people with the total offences committed in Ireland by juveniles in 2000. Larceny and criminal damage (damage to property) are roughly the same proportion of the total offences whereas the young people on remand had committed many more motor vehicle and court offences.

Exit

Once a child has appeared in court there are a number of options available to the judge in order to deal with the case. The rounded rectangle boxes to the left of the flowchart model in Figure 3.1 represent an exit from the remand system. An exit from the system through this channel can occur if the judge dismisses the charge(s), releases the child on bail to appear in court at a later date, or sanctions the child with a non-custodial disposition such as a fine, probation order or community service order. In addition, if the judge recommends that the child be committed to the care of the State, for example in a residential children's home, special school or detention unit, and providing there is a place available for the child, this would also constitute an exit from the remand system.

Remand

The bold rectangular boxes to the right of the model represent a period of remand into custody (or detention in the case of a High Court order). Table 3.4 illustrates which of the courts had ordered the detention of the 117 young people.

Table 3.4 Court that ordered the detention

	Male		Female		Total	
	N	%	N	%	N	%
District Court	57	58.2	10	52.6	67	57.3
Circuit Court	1	1.0	0	--	1	0.9
High Court	18	18.4	6	31.6	24	20.5
District Court and High Court*	15	15.3	3	15.8	18	15.4
District Court and Circuit Court	1	1.0	0	--	1	0.9
High Court and Circuit Court	2	2.0	0	--	2	1.7
District, Circuit and High Court	4	4.1	0	--	4	3.4
Total	98	100	19	100	117	100

Note: * includes cases where child is subject of hearings in the High Court but may not have a warrant from that court on file

Over half the population (67 or 57.3%) of young people were the subject of District Court orders only, a further 24 (20.5%) were subjects of High Court orders only, and 18 (15.4%) were detained by both District Court and High Court orders. The remaining 8 fell into the following categories: Circuit Court orders only (1), Circuit Court and District Court orders (1) Circuit Court and High Court orders (2) and orders from all three courts (4).

Thus, of the 117 young people being detained, 48 (41.0%) were the subject of High Court orders, with or without charges being heard in another court.

There are a number of reasons why a court would choose to order the remand or detention of a young person. Table 3.5 illustrates the reason why the various courts ordered the remand and detention of the 117 young people in the study.

Table 3.5 Purpose of detention

	Male		Female		Total	
	N	%	N	%	N	%
Remand	7	7.1	4	21.3	11	9.4
Remand and assessment*	23	23.5	5	26.1	28	24.0
Remand awaiting placement	36	36.7	4	21.3	40	34.2
Remand awaiting trial	4	4.1	0	--	4	3.4
Remand awaiting High Court Decision	2	2.0	0	--	2	1.7
Detention	3	3.1	0	--	3	2.6
Detention and assessment*	1	1.0	1	5.2	2	1.7
Detention awaiting placement	22	22.5	5	26.1	27	23.1
Total	98	100	19	100	117	100

Note: * includes those cases where the young person is detained awaiting probation/social reports.

Remand (detention)

Sections 94 to 97 of the Children Act 1908 deals with places of detention and procedures for the bail and custody of juvenile offenders. Where a judge postpones the hearing of the case, and the child is not released on bail, the child can be remanded to custody until the date of the next court hearing. In the study there were 11 cases of remand ordered by the District Court, represented by the 'remand' box on the model, and 3 cases of detention by order of a High Court, the 'detention' box. These 14 cases of straightforward remand or detention, represent only 12% of the total population.

Remand (detention) and assessment

Should the judge require more information on the child's circumstances in order to make an informed decision on the case s/he can remand the child into custody whilst waiting for social or probation reports to be completed. If a more detailed insight is required the child can be remanded to one of the remand and assessment units, usually for a period of three weeks, in order that a full assessment report be completed.

There were 28 cases of remand for assessment or reports ordered by the District Courts, as illustrated by the 'Remand and assessment' box in Figure 3.1, and two cases of detention for assessment or reports by the High Court ('Detention and assessment' box). These 30 cases represented just over one quarter (25.7%) of the total population.

Remand awaiting trial

Sometimes the offence may be too serious to be dealt with in the District Court and thus becomes the jurisdiction of the Circuit Court. In such circumstances the District Court judge may send the case forward to the Circuit Court and has the option of remanding the child in custody until such time as his/her case is heard in the Circuit Court, noted by the 'Remand awaiting trial' box in the District Court section of the model. There were two such cases in this study. In a further two cases the young people had entered directly into Circuit Court hearings, and were remanded awaiting a trial date, represented by the 'Remand awaiting trial' box at the Circuit Court level in the model.

Those children on remand whilst awaiting trial represent a very small percentage (3.4%) of the sample, and this supports the research evidence that only a very small number of young people commit serious offences.

Remand awaiting placement

Section 63 of The Children Act (1908) allowed for the committal to custody of a child awaiting placement in a certified school to any place which they might be committed on remand, i.e. a certified place of detention. Given the lack of secure therapeutic detention places for young offenders it was inevitable that a number of children were likely to be detained under these circumstances.

Indeed, the study found that a total of 67 children and young people, representing 57.3% of the total population on remand were being detained whilst waiting for a suitable placement elsewhere. The majority of these were waiting for a high support unit or an alternative residential placement following a placement breakdown. Of these 67, 40 were detained by order from the District Court, the 'Remand awaiting placement' box in the model, and 27 were detained by orders from the High Court, the 'Detention awaiting placement' box.

Remand awaiting High Court decision

Finally, in relation to this study, there were some children whose cases had been sent to the High Court for judicial review. Typically this was after a significant period of time on remand 'awaiting placement' and the child's solicitor had brought up the right of the child to have suitable placements available that would meet his/her needs. In this case, the District Court judge can dismiss any charges the child has if the case is deemed to be a matter of the child's welfare rather than his/her offending behaviour. The child's case is then taken up solely by the High Court. Alternatively, the District Court judge can uphold the charges and continuously remand the child into custody until a High Court decision has been made. There were two children in the study who were the subject of such orders, as represented by the 'Remand awaiting High Court decision' box in Figure 3.1.

Length of time on remand

Table 3.6 shows the average length of time spent in secure custody for each of the different types of remand/detention. The total number of days in detention for all individuals ranged from 2 days to 106 consecutive days, with an average of 30.8 days. This is out of a total of 99 cases as in 18 cases the length of time on detention was unclear. This was where the child was being detained by order of the High Court but the specific warrant was either not on file or did not specify a date for a future hearing.

Table 3.6 Average length of time on remand

Type of remand/detention	No. of cases	Min. no. of days	Max. no. of days	Average no. of days
Remand (DC)	11	2	33	13.5
Detention (HC)	3	14	36	25.7
Remand and assessment (DC)	28	14	42	21.9
Detention and assessment (HC)	2	22	46	34.0
Remand awaiting trial (DC)	2	14	28	21.0
Remand awaiting trial (CC)	2	30	33	31.5
Remand awaiting placement (DC)	40 (39)	7	106	37.8
Detention awaiting placement (HC)	27 (10)	14	101	50.5
Remand awaiting HC decision (DC)	2	28	31	29.5

As Table 3.6 illustrates, the average number of days on remand or detention varies substantially depending on the reason why the young person is detained. The shortest average stay of 13.5 days is for those on District Court orders on straightforward remand. This is increased to 25.7 days average if the order is from a High Court. Where the young people are remanded for assessment, the average number of days is 21.9 which would be expected given that both the assessment units require three weeks to compile a full assessment on each child. In comparison, it is those children who have been detained whilst awaiting a placement who spend the longest periods of time on remand, with an average of 37.5 days for those on District Court orders, and 50.5 days for those on High Court orders.

Repeats

The dotted lines on the flowchart (Figure 3.1) represent repeat remands of the young person at each of the three court levels. This is where the child appears in court following a period of remand and is subsequently detained for a further period of remand.

During the data collection phase information relating to periods of remand that ran consecutive to the specific week(s) of the study was also collected for each of the 68 individuals, in order to identify the remand episode.

A remand episode represents the period from first remand or detention into one of the units, to the date of leaving the unit through the exit channel. During this period the young person may have been on a number of consecutive court warrants that meant a continued period of time locked in a secure unit.

Out of the 68 individuals in the study, there were a total of 71¹ remand episodes. Of the 71, 45 (63.4%) had completed their remand episode and 22 (31.0%) had not. The remaining 4 (5.6%) individuals had absconded before their episode was complete and did not return to the unit.

Of the 45 who had completed their episode the minimum total length of stay, adjusted for any overlap on the warrants, was 14 days and the maximum duration was 271 days. For the 22 cases where the episode was not yet to completion, the minimum stay was 2 days and the maximum 323 days. For those whose episode had ended in absconsion the minimum stay was 21 days and the maximum stay was 351 days.

In 10 out of the 71 cases (14.1%) the actual number of court appearances and therefore number of repeat remands was not clear, primarily due to High Court detention orders which were not always kept in or updated in the case file. (However the number of days in custody was obtained from the unit records.) For the remaining 61 cases the minimum number of remands was 1 and the maximum number of repeat remands was 12 for completed episodes, 22 for incomplete episodes and 13 for those whose episode ended in absconsion.

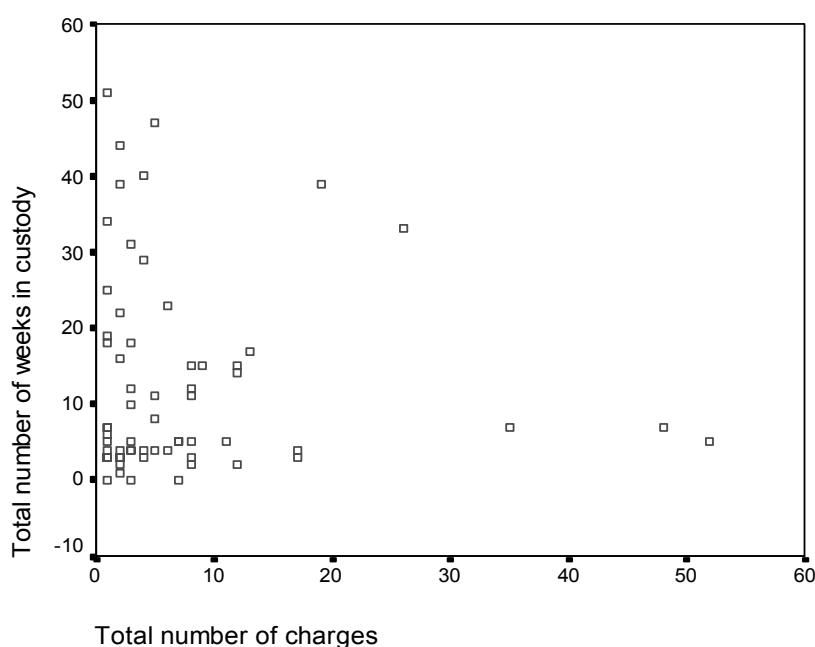
For each of the 71 episodes, the path of the individual through the custodial aspect of the remand system was followed, and illustrated on the flowchart model. This section of the results particularly highlighted the difficulties experienced by the young people waiting for a placement elsewhere, including large numbers of repeat remands and excessive periods of time in secure custody (Anderson 2004).

Given that under the UN Convention on the Rights of the Child, detention on remand should only be used as a last resort and for the minimum possible period of time, it would appear that for these young people their fundamental rights are not being met.

Not only has the research shown that those children who are awaiting a suitable residential placement are likely to spend the longest periods of time in secure custody, it is also significant that this situation is more prevalent for those who have fewer, if any, charges for offending behaviour.

The research shows that there is an inverse relationship between the number of charges a young person has and the length of time they spend on remand. As Figure 3.2 below shows, those with the most number of charges often spend quite short periods of time on remand, compared to those with fewer or no charges who spend longer times on remand.

Figure 3.2 Total number of charges compared with duration of remand



As a result these children and young people become caught up in a cycle of repeated court appearances and subsequent remands in detention, with no idea when a placement will be available for them. It is generally accepted that secure, therapeutic residential placements are required to meet the needs of a small number of children and young people. However, many people have criticized their over-use in circumstances where alternatives to secure provision may be an option. Others have criticized the use of detention as a means of social control, or the practice of detaining children in secure provision that is unsuitable to their needs (Penal Affairs Consortium 1996; Irish Penal Reform Trust 2000; National Youth Federation 1996; Ashton and Moore 1998, Kelly 1992). Thus the practice of remanding children with welfare needs for extensive periods of time in detention units designed for the short-term detention of young offenders is wholly unacceptable. Furthermore, this practice is incompatible with the welfare ideology that Ireland currently claims to adopt. As Asquith notes, children's rights are often insufficiently protected within the welfare model of justice because of the individualized approach and often indeterminate and inconsistent responses of decision-makers (Asquith 1983). The findings from this study would appear to support this view and are an important reminder of the need to implement policies and practices in the juvenile justice system that will ensure such practices become a thing of the past, never to be repeated.

Conclusions and recommendations

The provisions made under the Children Act, 2001 do go some way towards addressing these issues. For instance, Section 144 of the Children Act 2001 addresses the practice of remand awaiting placement and states that the detention order be deferred, and the director of the Children Detention School shall apply to the court to make the order once a place becomes available. Section 143 of the Act states that a detention order should not be made unless it is the only suitable way of dealing with the child, and that a place is available for him or her. When a junior remand centre is part of a Children Detention School, the Act states that 'children remanded in custody to the centre shall, as far as practicable and where it is in the interests of the child, be kept separate from and not allowed to associate with children in respect of whom a period of detention has been imposed.' The current practice of remanding non-offending children for assessment purposes is addressed under the Children Act 2001, where Section 88(13) states that 'the court shall not remand a child in custody ... if the only reason for doing so is that the child is in need of care or protection'.

Depriving children of their liberty is not something that should be done lightly under any circumstances, and careful consideration of the current system of remand in Ireland is urgently required. Priority should be given to the sections of the Children Act 2001 that ensure that children are detained only as a measure of last resort, for the minimum necessary period of time and limited to a small number of cases.

The practice of remand for assessment purposes is quite unnecessary in many cases. Funding should be made available to develop community-based assessment facilities at a national level. In addition to keeping many children out of the remand system, this practice would also result in an increased availability of remand beds for those children whose actions warrant a custodial remand. The Forum for Youth Homelessness recently noted that, 'It was suggested ... that a greater availability of remand places, even for a short period, would give social workers a better opportunity to contact young people's families, provide a better response to the needs of the young

people and be of assistance to the courts' (Forum on Youth Homelessness, 2000: 46). The use of remand and detention facilities within the juvenile justice system for the purposes of addressing a social problem such as youth homelessness is totally unjustified and unacceptable.

Community-based sanctions for young offenders should continue to be a priority. Results from this study showed that for 18 per cent of the young people on remand, this had been their first contact with the formal juvenile justice system, and not all of the children had had the experience of community-based interventions beforehand, only 36 per cent had been on the Garda juvenile liaison scheme, and only 57 per cent had been on probation.

Alternative arrangements need to be put in place for those children on remand who require a residential placement. Children are being detained in units designed for short-term detention for excessively long periods of time, in some cases almost a year, and this practice is totally unacceptable. The grounds for establishing the need for residential placement may need to be revised and more effort made to return children to the family home wherever possible. This will necessitate the provision of extra resources to provide community and family based supports as an alternative for these children.

Note

1 Three individuals had two episodes each, i.e. they had been released from one episode and then returned to court at a later date and entered a new episode. They were also present during at least one week of the study in each episode.

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Chapter 4

Young people at the interface of welfare and criminal justice

An examination of Special Care Units in Ireland

Nicola Carr

Introduction

The subject under review in this paper is the interface between the criminal justice system for young people in Special Care Units in Ireland. It describes a study conducted in 2004 as part of a Diploma in Child Protection and Welfare at Trinity College and from the perspective of a Court Officer in the Special Residential Services Board. The study forms only part of the paper. The main section of this paper explores the meanings attached to young people in the justice or the welfare system, and to pose the question 'Does it make sense to have these two divergent systems?' It begins by looking at the evolution of special care in Ireland, and proceeds to outline the study and the questions that arose from the findings.

Background

The Irish child care system has changed radically over the past 30 years, with an overall reduction in the number of young people in residential care. Today there are approximately 70 young people (under 16) in Children Detention Schools and less than 20 young people in Special Care Units on any given day. Special Care Units account for approximately 1 per cent of residential provision in the Health Service Executive (HSE). They are secure facilities for children and are a relatively new child care provision. There are currently two operational units with a total capacity for 23 young people. There is a further unit, Coovagh House, which is not currently operational but which will accommodate 5 more young people when opened.

How did special care come about?

From the mid 1990s onwards, there was a recognition that the needs of some young people could not be met in the existing child care system as illustrated by the High Court cases of those years, taken on behalf of young people whose needs were not being met within the existing provisions. The result of many of these cases was that children who had not committed offences were ordered to be detained in the Detention Schools, or indeed in St Patrick's and Mountjoy Prison. This meant that young people with acute care needs were being dealt with in the justice system because the welfare system did not have the adequate capacity to meet their needs.

As a consequence of this, Special Care Units were built to provide a specialist facility for young people who presented as a serious risk to themselves. Currently a child can only be detained in a Special Care Unit on foot of a High Court Order – however, this is due to change when the relevant part of the Children Act is implemented (Parts 2 and 3 came into effect on 23 September 2004 but are not operational). Many parts of the Children Act remain unimplemented; indeed, recent legislative changes to the Act are indicative that the Act will never be fully implemented in its present form.

Nonetheless there is already a clear delineation of services between children who can be detained for criminal offences via the justice system and those who can be detained for their 'own care and protection' via the welfare system. The question is how does one delineate between which children go where – whether a child is more appropriately placed in a secure 'welfare' facility, or a secure justice facility?

Welfare and justice

For some the answer will be clear cut.

- A young person appears before the court on serious charges, the court remands them into custody in a Children Detention School or prison.
- Another young person may be suicidal, engaging in seriously self-injurious behaviours and the Health Service Executive seeks to have the child placed in a Special Care Unit.

These are relatively clear examples for people to understand. One young person has transgressed the law, committing a serious offence; the other young person has not, yet requires secure containment for their own protection. The difficulty is that there are many cases where the situation is not so clear cut and the determination of whether a child belongs in a welfare or a justice facility is harder to decide.

The sort of situation may be a young person who appears in court for the theft of a bicycle, who is remanded to a Children Detention School because the court is informed by his parents that he is at serious risk in the community. Another example is where a child is in a Special Care Unit, placed there for their own welfare and who then seriously damages the Unit and is charged and appears before the court for these offences. In both of these examples it is argued that the welfare/justice divide is less clearly resolved. So what is meant when referring to welfare and justice, and does it make sense to separate our secure child care services along these lines?

The study

The study conducted sought to look at this issue by looking specifically at the question: 'If young people are placed in special care because of concerns regarding their welfare, how does it come about that they are charged with offences committed in these units, which may eventually lead to them moving from the "welfare" to the "justice" system?'

In order to explore this question two key questions were explored: (a) How is special care understood by those working in the system? (b) And how do practitioners distinguish between children in the welfare and justice systems?

Methodology

A qualitative method was used to explore the process and rationale through which decisions are made in a special care setting to prosecute a young person via the criminal justice system. Key stakeholders' views regarding their understanding of special care provision and how they differentiated between it and Children Detention Schools were explored. Figures were sought on the number of young people in these units who were charged with offences in these placements and who subsequently entered into the criminal justice system. This issue was looked at specifically because it raises issues

about the delineation between welfare and justice and also our understanding of young people, the ways they behave and the reasons for that behaviour. The data was obtained from the records of the Special Residential Services Board and those held by the Special Care Units themselves. Permission was sought to look at the data and no young person is identified.

Findings

The study looked at the two operational units and found that a total of six young people had been charged with criminal offences committed in their special care placement. Of these six young people two were female and two were from a Traveller background.

In addition to the young people who had been charged in the Special Care Units, it was also found that, out of the total number of young people who had been in the largest Special Care Unit, almost a third of these young people subsequently spent some time in a secure facility in the criminal justice system.

This may have been as a result of

- the commission of offences in special care
- the commission of offences subsequent to their time in special care
- offences which had been on file prior to the special care placement and had not yet been processed
- orders of the High Court placing them in a Children Detention School for their own protection.

Whatever the reasons, it is significant that at the time of the study and in the limited period of time that Special Care Units have been operational, one third of the children in the largest Special Care Unit subsequently spent some time in secure facilities in the criminal justice system.

To place this in context, it is important to bear in mind that for many children in care, residential care is not the cause of the young people's difficulties. Young people in secure care are not a homogenous group and there are a range of issues that these young people present with. This raises questions as to the outcomes for young people who experience secure care: What leads to young people entering into secure care? What happens in secure care? And what are the longer term outcomes for these children?

Discussion: welfare or justice?

Authors who have written on secure care identify that there are inherent difficulties in how secure care is defined. Harris and Timms (1993) examine the concept of security – and raise the question: 'Who is secure from whom?' These authors identify the inherent ambiguities in the concept of secure care and the difficulties in its definition. One of the problems is that 'Secure accommodation is both incarceration and an alternative to incarceration' (Harris and Timms 1993: 4). Harris and Timms continue:

In secure accommodation the penal and the therapeutic, the controlling and the caring converge, and the resulting ambiguity is central to the system's logic. Secure accommodation is the point at which the protection of children and the protection of others against those same children merge into a single carceral disposal.

Thus, secure care appeals to the liberal ideologist and the law and order lobby, or as Kelly (1992) identifies, it has the following unresolved abstractions which constitute its ideology:

- care versus control
- rehabilitation versus deterrence
- welfare versus justice

One of the mechanisms through which the State intervenes in the lives of children who become candidates for secure care is through the courts – it is in the courts that the ambiguity and ideological clashes are played out. King and Piper contend that:

There is one theoretical paradigm, which appears to have been universally accepted by lawyers and legal commentators as being common to those children's issues coming before the courts. This paradigm sees policies and decisions in such cases as subject to two opposing ideologies, welfare and justice.

(1995: 4)

These authors argue that the clash of ideologies is most evident in the criminal courts:

Justice and welfare have therefore become concepts with a dual function. They are used to explain the complexity and confusion of court decision-making in the main areas concerning children: juvenile justice, child protection and matrimonial disputes. They also serve as ideological rallying points in those campaigns which seek to promote one or the other as the preferred way of dealing with children's issues in the courts, or alternatively, they combine to serve as the ideal of 'welfare going with justice', the firmness of the law with humane care and understanding, to be pursued by legal policy and decision makers.

(King and Piper 1995: 6)

Some authors then go further to argue that the notions of 'welfare and justice' in their 'pure' forms have never been realized and are not realizable (King and Piper 1995). When failures do occur in the compromise solutions, the half-way houses of ideology, this is never attributed to the inadequacy of the unrealizable concepts but to more tangible things such as a lack of resources, a breakdown in communication between professionals, and so on.

This leads back to the examples given of young people who do not easily fit into a particular system, and the study raises several further questions:

- 1 Are children in special care more likely to enter the criminal justice system?
- 2 And if so, then why?
- 3 Are they more at risk of becoming involved in offending behaviour?
- 4 Are there less protective factors for these young people than other young people in the general population?
- 5 Are these young people more likely to come to the attention of services and therefore be more quickly routed through systems?
- 6 Or does the justice system kick in when welfare runs out?

Ultimately, it leads to the view that there is an argument for structuring services on the basis of the needs of those presenting rather than on the basis of the system which delivers them to the door. In other words, not children who are viewed as either 'welfare' or 'justice' but as children in need of an intervention. There is therefore an

argument to stop hiding behind the language of welfare and justice and start talking about secure services.

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Chapter 5

Dublin Children Court

A pilot research project

Sinéad McPhilips

Introduction

The report on which this paper is based¹ was commissioned by the Irish Association for the Study of Delinquency (IASD) and was funded by the Department of Justice, Equality and Law Reform. It was based on a sample of 50 young people with cases completed in the Dublin Children Court in Smithfield between January and October 2004. A total of 751 young people had cases completed in the Court during that period, so it was a small sample and not necessarily representative of all young people appearing before the court.

The terms of reference for the report were to examine the family background, education, prior history and details of court proceedings for a sample of young people appearing in the Children Court.

The data sources used were:

- The paper files in the Dublin Children Court in Smithfield: Court files include charge sheets and reports from other agencies submitted to the Court, including probation reports.
- An Garda Síochána provided access to the Garda National Juvenile Office database in relation to the young people in the sample.
- Further information on young people sentenced to detention was provided by the Special Residential Services Board, detention schools and St Patrick's Institution.

Principal results for 50 young people

Of the 50 young people 36 were convicted on at least some of the charges against them. Half of these (18) were sentenced to detention at the conclusion of their court proceedings. The other 18 young people convicted on charges received non-custodial sanctions, including Probation Bonds (9); suspended sentence (3); Community Service Order (2); fine (2); and Peace Bond (2).

Four young people were sent forward for trial from the Children Court to the Circuit Court on all of their charges. Ten young people were not convicted on any charges – charges were struck out, withdrawn or dismissed.

Charges in 2004 court cases

The 50 young people (42 male and eight female) had a total of 551 charges against them. Nineteen had less than five charges; 13 had between five and nine charges; and 18 young people had ten or more charges.

Theft and robbery offences accounted for 27 per cent of the 551 charges, followed by public order offences (23%), traffic offences (18%), criminal damage (10%), assault (7%), breach of bail (7%) and drugs offences (5%). A young person with 10 or more offences would typically have charges in a whole range of categories.

Many young people accumulated several additional offences while on bail on their original charges.

Delays in the courts system

Some young people experienced significant delays in the courts system. For example, ten young people made their first court appearance more than six months after the date of the offence. Eleven young people had their cases concluded more than one year after their first court appearance, and in two of these cases, more than two years.

Previous referrals to the Garda National Juvenile Office

Forty eight of the 50 young people had been referred to the Garda National Juvenile Office in respect of offences which occurred prior to the charges in their 2004 court cases. Forty four of the 48 had received at least one formal or informal caution. However, 42 of the 48 had also been prosecuted in respect of previous offences.

Most of the young people first came into contact with An Garda Síochána at an early age. Twenty of them first had offences referred to the National Juvenile Office between the ages of 7 and 11. Another 24 were first referred between the ages of 12 and 14. Only four were first referred between the ages of 15 and 17.

Family background

Information on family structure and background was available for 38 of the 50 young people in the study.

The living arrangements for these 38 young people were: 16 were living with both parents; ten were living with their mother only; five were living with other relatives; five were in HSE care; and two were out of home.

These 38 young people had experienced a variety of problems in their family backgrounds, including:

- the absence of at least one parent for significant periods of time in 26 cases (due to issues including parental separation, death of a parent, being taken into care, parent in prison)
- family members with a criminal record (14)
- large family size (17)
- housing problems (11)
- parental substance misuse (8)
- self-harm indicators (7)
- indicators of physical (2) or sexual (2) abuse.

Eighteen young people were reported as being negatively influenced by an anti-social peer group.

Alcohol and drug misuse

Of the 50 young people in the study, 30 were reported as having misused drugs or alcohol, or were charged with alcohol or drug offences.

Education

Information on mainstream education was available for 34 young people. Twenty eight of the 34 had left school before the minimum legal age of 16: nine did not complete primary school; three did not transfer to post-primary; and 16 left school in the junior cycle of post-primary. One young person was still attending mainstream school, in the junior cycle, in 2004.

Five young people had completed their Junior Certificate, but all had left school before doing the Leaving Certificate. In addition, 13 of the young people in the study were formally assessed as having literacy problems.

These findings confirm that educational disadvantage is a significant problem for many of these young people.

Young people sentenced to detention

Eighteen young people in the study were sentenced to detention: nine who were under 16 were sentenced to detention schools, while nine who were 16 or over were sentenced to St Patrick's Institution.

The young people under 16 received longer sentences because of the nature of committal orders to detention schools. Seven of the nine young people sentenced to detention schools received two-year sentences. By contrast, only two of the nine young people sentenced to St Patrick's received sentences of more than one year.

Most of the young people sentenced to detention came from difficult family backgrounds and had experienced educational disadvantage. All were recorded as having misused drugs or alcohol, or were charged with drug or alcohol offences.

Eleven of the 18 had previously been committed to detention: eight had served previous sentences; two had been committed to detention schools on foot of a High Court order; and one had been committed for non-attendance at school.

Conclusions

This study is based on a small sample, but it does provide concrete evidence of issues with which people working in the sector will be familiar. Three pertinent issues highlighted were that

- many young people came from a difficult family background and had suffered educational disadvantage

- almost all of the young people had their first contact with An Garda Síochána at an early age
- some young people spent long periods in the Courts system for a variety of reasons before there was any outcome to their case.

This study shows that valuable information is available and is being recorded by the agencies involved in the system. Further research could draw together more of this information, and could usefully inform public policy-making and resource allocation. IASD are currently extending this project to a much larger sample, on a nationwide basis.

Note

1 McPhilips, S. (2005) Dublin Children Court: a pilot research project, Irish Association for the Study of Delinquency, available online at <http://www.iasd.ie/reports/Dublin%20Children%20Court.PDF>.

Chapter 6

Youth, marginalization and joy-riding

Michael Rush, Paula Brudell and Aogán Mulcahy

Introduction

Public concern about joy-riding and car crime is hugely variable. In communities throughout Ireland, the regular, almost nightly occurrence of young people burning ‘robbed cars’ in front of appreciative audiences goes, in the absence of a fatality, unreported. Once a fatality occurs the young people involved are portrayed as hyenas and pariahs amidst public uproar. Shortly afterwards, the media attention dies down and the joy-riding and car-burning returns with customary regularity as a nightly occurrence played out before local spectators.

This paper considers the causes and consequences of joy-riding in Priorswood, an area in which joy-riding has been prominent for a number of years. Priorswood is considered a relatively new residential area within the greater Coolock area on the Northside of Dublin, with a high concentration of municipal housing within its mixed economy of housing. After persistent problems with joy-riding in the area, the Priorswood Task-Force on Joy-riding was established in 1998 to address these issues at a local level. While the Task Force can claim a significant degree of success in reducing the level of joy-riding in the area, joy-riding has remained a regular occurrence in the Priorswood area, and the area continues to be characterized as a joy-riding ‘hot spot’ (Rush et al. 2006).

Against this background, we consider the role that joy-riding plays as an expression of and key contributor to youth culture in the area. We focus on the views and experiences of young people, drawing on interviews we conducted with 26 young people in the area, ranging from 11 to 23 years of age, and including joy-riders and non-joy-riders.

The legal and historical context of joy-riding

The term ‘joy-riding’ is usually used to refer to the practice of stealing cars and driving them at high speeds or in other dangerous ways. In reality, joy-riding is a more complex issue than this, involving aspects of youth culture, petty crime, structural marginalization, and the symbolic and material significance of the car in modern society. While joy-riding has a high profile in public debate, with the exception of work by Farrington (2001), Ó Cadhla (2001) and others, there have been relatively few dedicated Irish studies of it. Joy-riding has been the subject of several research projects in Northern Ireland (Kilpatrick 1994; McCullough et al. 1990), and while many similarities are evident in terms of the socio-economic background of joy-riders in both jurisdictions, the specific conditions surrounding joy-riding in Northern Ireland also suggest that direct comparisons between North and South are likely to be limited in scope (O’Connell 2006).

Much debate about joy-riding in Ireland was conducted in the media, although this has been sporadic in nature. For example, Ó Cadhla (2001) and McVerry (1985) argue that during the early 1980s when concern about joy-riding ran high, Fort Mitchell Prison (Spike Island) reopened in 1985 specifically for joy-riders following ‘a moral

panic in the media'. Similarly in April 2002 following the death of two Gardaí who were killed when a stolen car crashed into them at high speed, joy-riding received considerable media attention. As McVerry (2003: 88) observed, the problems of joy-riding tend to be 'ignored as long as they are largely confined to those deprived areas. It is only when the consequences of those problems, which the local community have to live with day after day, affects the wider community that shock and horror are expressed and action is taken.'

While joy-riding is generally considered a modern phenomenon, references to it extend back to the early 1900s (O'Connell 2006). The first usage of the term 'joy-riding' in its criminal sense appears to derive from the USA in 1909. Its use is recorded in the UK in 1912 (Partridge, cited in Groombridge 1998) and it is mentioned in the London Metropolitan Police Commissioner's report in 1919. Section 28 of the UK Road Traffic Act 1930 created the offence of 'taking and driving away', and this was amended to 'taking without consent' under the Theft Act 1968. There was a 'toughening up' of legislation following riots in 1991 that witnessed 'spectacular displays of joy-riding' in two particular estates in Oxford (Blackbird Leys) and Tyneside (Meadowell) (Campbell 1993). By this stage, a 1992 Home Office campaign depicting joy-riders as hyenas identified them as alienated outsiders, and 'the epitome of dangerous delinquency' (Groombridge 1998: ch. 2, p. 25). In Ireland also there is no specific offence of 'joy-riding' in law. Individuals suspected of being involved in joy-riding may instead be charged with a variety of offences under various Road Traffic Acts. Section 112 of the Road Traffic Act 1961 outlines the offence which Gardaí refer to as 'Unauthorized taking'.

The nature of joy-riding

A number of themes emerge from the research literature on joy-riding. First, most crime prevention measures directed towards joy-riding have specifically focused on the issue of cars. Situational measures have focused on limiting opportunities for car-crime, including 'target-hardening' through the introduction of more secure locking mechanisms (Light et al. 1992). Social crime prevention mechanisms focus more on the broader context of offending, and tend to address issues of motivation rather than opportunity. For instance, in relation to joy-riding, the archetypal social crime prevention measure is the 'motor project' (Groombridge 1998) which tries to enhance joy-riders' mechanical skills and orient them towards legitimate car activities.

Second, disadvantage is persistently associated with joy-riding, and the activity is often considered the sole preserve of male working-class youths. In the case of Britain, Campbell (1993) points out that all of the neighbourhoods that 'combusted' in the early 1990s were decimated by the socio-economic policies of Thatcherism. The spectacular joy-riding displays in Oxford in 1991 took place in a community (Blackbird Leys) that had seen within a single generation the eradication of a major tradition of employment, political alignment, income and identity for working-class men. In Ireland, McVerry highlighted the common background of joy-riders from 'identifiable, deprived housing estates, with inadequate facilities and services'. His conclusion is stark: 'these are young people who live for the present because they see no future.... Those involved in joy-riding feel that they, and their communities, have been abandoned' (McVerry 2003: 85-86).

Third, gender is a further prominent aspect of joy-riding. Simply put, most joy-riding is undertaken by young men, and accordingly 'masculinity issues' have been

proposed as one means of accounting for 'the preponderance of male car crime of all kinds' (Corbett 2003: 11). Certainly, most depictions of masculinity valorize risk, while femininity is associated with being risk-averse. This position has been criticized by feminists and others who argue that the whole discourse on risk is 'essentially gendered' and that women are also and everyday 'confronting and negotiating different types of risk' which will never be recognized as such because ideas about what constitutes risk are filtered through a male lens (Hayward 2004: 164). If that is the case, then it raises the question of why males are drawn to the particular kinds of risk associated with joy-riding.

Finally, in recent years, a body of literature has emerged within criminology that focuses on crime as a 'cultural' activity. This 'cultural criminology' perspective highlights the values, motivations and expectations associated with engaging in crime, and the cultural benefits that accrue to those involved – in terms of satisfaction, fun, excitement, status, and the relief of boredom. This perspective involves a shift away from any notion of the joy-rider/delinquent/criminal as somehow distinct or pathological, to a focus on factors which make crime normal or pleasurable, and which highlight the 'risk-taking' and performative dimension of criminal and/or dangerous activities.

Several authors have highlighted the role that risk plays in this process, specifically through the voluntary risk-taking characterized as 'edgework' (such as through dangerous and extreme sports and occupations carrying high levels of threat). In contrast to the wealthy, who have numerous exotic and expensive opportunities to pursue licit risk-laden activities, the 'poor' and the 'socially excluded' will neither be able to purchase such opportunities nor escape their social environment to do so. People in economically deprived communities seeking 'risk, hedonism and excitement' will choose 'alternative outlets' and must usually use a space known to and accessible to them. In this manner, 'the rundown estate or ghetto neighbourhood' becomes a 'performance zone' – a paradoxical space representing at once the powerlessness of that community but also the site on which its members seeks to transcend that powerlessness through 'displays of risk, excitement, masculinity and even carnivalesque pleasure' (Hayward 2004: 165). The concept of 'carnival' employed here functions as an opportunity to challenge, subvert or overturn dominant social mores (Presdee 2000: 38–39). In this context, joy-riding – described by Spencer (1992) as 'a collective 'solution' for the boredom felt by young men' (in Groombridge 1998: ch. 2, p. 4) – can be judged to display elements of classic carnival where the staging of joy-riding displays in public streets involves temporarily taking control of the public domain. In that respect, joy-riding must be understood primarily as a particularly expressive rather than functional activity.

Ó Cadhla, in one of the few Irish studies to focus on the perspectives of joy-riders, also argued the intentionally provocative nature of joy-riding highlights one of its distinctive features: far from being hidden, the behaviour is 'done openly and conspicuously. It appears purposefully designed to attract and then defy the police' (2001: 90–1). What may have begun as ritual becomes resistance at the moment of police intervention. All in all, Ó Cadhla suggests that joy-riders are choosing 'competitiveness over submission, visibility over invisibility, evocativeness over silence' (2001: 92).

The context of joy-riding in Priorswood

In terms of the specific context of joy-riding in Priorswood, the nature of a young person's involvement in joy-riding can be analysed in terms of a continuum of joy-riding activity. At one end of the continuum there is passive involvement which begins with the everyday occurrences of exposure to 'burnt out cars' and 'flashing cars within the neighbourhood'. For many children this progresses to becoming an audience member and 'keeping sketch' or 'watching out' for Gardaí. At the other end of the continuum, active involvement results in leaving the neighbourhood altogether to steal a car for the specific purpose of returning later to 'rally the car' or 'flash the car' at designated 'flashing points' in the local area. Active involvement generally begins locally by an individual getting into a 'robbed car' while it is being 'rallied' or 'flashed' by others, usually older boys. Youth and community workers are faced not only with the challenge of responding to needs of individual children but with the broader and more complex challenge of ensuring that groups of boys do not progress to the next and more serious level of involvement in joy-riding – leaving the neighbourhood specifically to steal cars for joy-riding or 'flashing'.

Task-Force members draw a very strong distinction between joy-riding and 'boy racing'. The Gardaí also commonly refer to 'lunatic driving' by young adult males which has become a nationwide problem from Donegal to Waterford. 'Lunatic driving' takes place on the open road by young adult males holding all the required documentation for legal driving and presents society and the Gardaí with a less confined and ultimately more widespread and socially threatening challenge than joy-riding. 'Boy racing' is a separate phenomenon where young males invest significant amounts of money and time into reconditioning second-hand cars. Boy racing shares some of the social aspects of joy-riding, albeit through conspicuous consumption rather than performance. The organization of an agreed boundary between audience and joy-riders at designated 'flashing points' makes joy-riding a more communally experienced phenomenon than either 'lunatic driving' or 'boy-racing', and evidently a less fatal one than 'lunatic driving'.

The statutory agencies involved in the Task Force point to the diminishing scale of the problem and Garda members note a dramatic decrease in joy-riding activity and estimate that today only 20 boys are involved locally. This is largely attributed to greater coordination in dealing with burnt-out cars, and physical changes to the local environment (including taller kerbs and similar measures). Task-force members note that the most appropriate response to joy-riding is located in the provision of education and family support programmes that build community capacity and improve 'life chances'. They strongly suggest that intensive work with families would yield only positive outcomes which is posed as a very positive alternative to any shift towards a more punitive approach adopted in relation to so-called 'problem families'. In that regard, they suggest that they have been less successful in tackling the social dimensions of joy-riding, specifically the role it plays in relation to youth culture in the area. We now turn to this issue.

Young people's experiences and perspectives

While joy-riding is often portrayed in one-dimensional terms as the simple activity of dangerous driving, our interviews with young people and the vocabulary they use suggest that the actual activity is nuanced in several key respects. 'Flashing' is the term most commonly used to refer to joy-riding activity, and, as we discuss below, the term is especially revealing of the 'public' and 'performative' dimensions of joy-riding. Flashing comprises rallying, pulling 'handbrakers', doing 360s, wheel spins –

‘everything that they do in rally cars’. Rallying is also used to refer to the type of driving that takes place on a track or off-road, driving over ramps, doing wheel spins, and other ‘flashing’ activities.

Research into joy-riding is also, by definition, research into the nature of young people’s lives in areas where joy-riding occurs. For most of the interviewees, their early teenage years were ‘brutal, nothing to do, standing around the road all day, you have to make your own fun ... nothing at all to do, bored out of your head, the only thing we had was the club [run by the Priorswood Youth Project]’. Some boys noted that once they emerged from their early teenage years, the place was ‘a bleeding dump’ that held nothing for them. The attitude to their lives in the area is summed up by the older joy-riders:

There’s nothing for us to do, it’s boring, there’s nothing to do besides football – you can’t have a horse, a bike, you can’t have anything at all. Everyone in the Corporation, they just want you to sit in your gaff all day doing nothing, What do you think we do when we walk out of here? All you can do is drink, take drugs and joy-ride and that’s bleedin’ it. If you have a horse they take it off you, if you have a bike they take it off you – there’s nothing to do, we can’t get jobs.

Involvement and non-involvement

In terms of the factors associated with young people’s involvement in joy-riding it is important to note four points. First, in a community which some young people felt has become synonymous with joy-riding many young people have no involvement in joy-riding whatsoever: As one girl noted: ‘We’re all different.... We don’t all joy-ride. We don’t all take drugs and sit on the streets and drink. We are good people.... We do want futures. We don’t just want to sit around doing nothing.’

Second, of those who do become involved in joy-riding, however, this can occur at a very young age. Their involvement dated from the age of 11 and 12 when they had ridden in cars driven by their older brother or their ‘older brother’s mate’. At the age of 12, one respondent ‘now’ described himself as a good driver. Others testify to the very young age of joy-riders:

Kids around this area and they’re only about 12, 13 and they’re robbing cars and some of them actually driving around can barely even look over the steering wheel. I seen it one time in the Darndale Park and your man came down and smashed straight into the wall. He could have killed himself, he couldn’t even drive the car.

Third, joy-riding is a heavily gendered activity, and, in terms of the driving of cars, is almost exclusively confined to males. Some female interviewees claimed they had occasionally seen girls both drive and ‘go off robbing’. However, for the most part it was agreed that girls’ involvement is generally confined to the role of audience. One of the older boys when asked about the involvement of girls highlighted the passive nature of female involvement ‘you just pick them up somewhere along the line – you just bring them off somewhere by yourself’. The suggestion was that ‘flashing’ and ‘rallying’ were exclusively male group activities.

Fourth, levels of involvement in joy-riding vary greatly, both in terms of the level and the frequency of individuals’ involvement. An interview with a group of older boys who were actively involved in joy-riding revealed a high frequency level and that

joy-riding took place 'all day, you'd go out at eight o'clock in the morning'. While others had never been involved and neither had their friends. One interviewee explained that instead of joy-riding, his teenage years had been spent 'at the end of the road' with 'nothing at all to do'.

Despite the controversy associated with the term 'joy', it is clear from our research that pleasure and exhilaration are key elements in choosing to joy-ride. The immediate pleasures associated with joy-riding stand in stark contrast to the ongoing boredom that most young people spoke of. In some quarters, involvement in joy-riding carries a high status, although this is highly dependent on peer group values. The issue of status is itself linked to the skill associated with joy-riding. Driving in this manner is understood to be a highly skilled activity and joy-riding encompasses features that require additional skills, such as 'not bouncing off paths' when undertaking dangerous manoeuvres. There is however a widespread recognition of the dangers associated with joy-riding. Ultimately, however, the dangers associated with joy-riding are submerged beneath a ritualistic emphasis on public expressions of defiance: 'Do you know when someone dies and they are a joy-rider, you rob a car and you flash it at their funeral, a fast car, a fast car.'

Location and the social context of joy-riding

The choice of location is, of course, complex and it seems clear that joy-riders return repeatedly to the same sites to stage their driving displays: 'there'd be certain roads where it'd be better, where they can pick up speed and do handbrake turns, where there'd be a lot of room for them'. Rallying takes place in the fields. Here an older joy-rider describes a 'flashing spot':

We have our own little road at the back where no houses are and the cars get rallied up and down there, and the kids are up – well the people who are watching are up there, they are up on a mad bank they are well away, the birds are well away, they're not in any danger – its only the people who are in the cars that are in danger. That's only in Darndale, there's one road that there are no houses say and there's just like a lane where we can rally the cars – and whoever is not in the car can stand up in the field and watches it. Then there's the schemes where the houses are, that's wherever up the road. It's a flashing spot.

While joy-riding may take place at all times of the day, it appears to be chiefly a night-time activity. Two calendar dates are selected as occasions for particularly intensive joy-riding activity – Halloween and New Years Night. Some judge Halloween to be the single biggest joy-riding occasion in the year, as a festive occasion when many young people are out 'trick or treating' and joy-riders 'let it rip'. One young person recalled when a robbed car formed the centrepiece of the Halloween bonfire.

Estimates of audience size range from 50 to 100, the majority of whom are young. The role of the audience is a significant dimension to joy-riding, and the excitement of joy-riding is generally shared among the young people who gather to watch driving displays:

It's like Leisureland ... they just appear, the word just comes, it just goes around everyone ... and they all come to see it ... 'cause when they see people running, they know there's something going on ... or else you'll know someone who's running and they'll tell you 'there's a robbed car' or 'there's a car' and they tell you where.

Even late at night, some joy-riding displays generate an audience:

Everybody comes out of their houses at 4 in the morning just to watch them.... There's young fellas over on the park road do have their video cameras out ... watching them taking chase... and that's why the people with the video camera say 'go off and get a good car' ... and they bring back 'top of the range' cars and just flash them up and down.

In addition to watching the 'flashing', the audience may also witness confrontations between joy-riders and the police. Sometimes, the audience may become directly involved in that confrontation: 'It's good like, everyone just likes watching, it's good, it gets you excited.... They could all be little gangs over the road drinking ... next of all they hear the car.... And they'd all go around and look at the car and then the Garda come in and they all probably start throwing bricks at the Garda. Mad it is.'

Joy-riders and the criminal justice system

For those actively involved in joy-riding, being apprehended by the police and processed by the criminal justice system is a real possibility. Despite the ultimate possibility of some form of custodial disposition, the very young joy-riders interviewed as part of this research exhibited a rather innocent and ambivalent curiosity about prison. Older boys, however, exhibited a greater awareness of the negative consequences of being convicted. One noted that: 'My brother's [locked up for years] – it won't happen to me.... Nobody wants to be locked up, nobody likes it.'

While most of those we interviewed considered the threat of a custodial sentence a reasonably remote possibility, they had much more definite opinions about the police. Some of this reflected the manner in which the police impinged on joy-riding – either through their presence bringing a joy-riding episode to an end, or else through the further excitement that joy-riders derived from being chased by the police. Here a young joy-rider describes his response to the arrival of the Gardaí.

If I saw the Garda coming up onto the field, I wouldn't stop, I'd just take the chase.... I just go through the gap ... and if they couldn't go up onto the field, we'd just go beside them and laugh at them ... you'd have to just for the laugh ... you just fly off and put the bike somewhere.... and change your top.

Beyond this type of contact, the vast majority of the encounters that the interviewees had with the Gardaí were negative. Much of the criticism these youths made of the police reflected a view that the police were an oppressive entity that impinged on their everyday lives.

For very young joy-riders, joy-riding is not judged to be anti-social: 'not for us, but probably for the aul ones' such as parents and other older residents. The young people interviewed for this report expressed a strong sense of their own vulnerability in a physical environment which was open and permeable to all. They were aware that residents in wealthier areas install gates and intercoms, creating what they called 'lock-ins', but they recognized that this expensive option was not available to them: 'they're all big millionaires' houses, this is a council estate, what do you expect?' They expressed anger at Dublin City Council's perceived inaction over what is 'their property at the end of the day': 'They should be taking their fingers out, doing a bit of work as well, because we're sitting here taking all the grief.'

While joy-riding features prominently in the lives of young people in Priorswood, as drivers and audience, their views on how it might be ended are mixed and hesitant. There is scepticism that a custodial sentence deters potential joy-riders: 'some of them just get a fright and don't do it again, and there again some of them just keep going'. Others believed that the transition to adulthood and its related responsibilities was the factor most likely to end a joy-rider's activities. One person suggested that 'sometimes if they have kids, they can stop for the kids ... but that's very rare'. An older joy-rider also linked desistance from joy-riding with having a family: 'When would you stop joy-riding? When you have kids, when you have a bird and all that.' Such observations portray joy-riders as aspiring to exactly the same future as many of their non-joy-riding peers, evident in the aspirations of one young joy-rider: 'get on with my life, and when I'm 18, buy a car and get a job'. Moreover, the fact that these joy-riders spoke about getting jobs as carpenters, bricklayers, scaffolders and plumbers, also suggests that many of them ultimately viewed themselves as regular and productive members of society, in contrast to their media portrayal to the contrary.

Conclusion

In the Irish context, the general perception of Gardaí and others working in areas in which joy-riding was a routine occurrence in the 1980s and 1990s is that joy-riding does not exist on the same scale as it did in previous decades. Nevertheless, in the course of our research we identified that a concern has emerged in recent years that the nature of joy-riding is changing, in light of the increasing prominence of what is termed 'boy racing', or 'dangerous driving' among young people. Notwithstanding difficulties over terminology, several interviewees suggested that this style of fast, dangerous and status-enhancing driving may supplant joy-riding as a more serious problem in the future.

Ultimately, while joy-riding may be diminished by situational crime prevention measures, it is sustained by social factors, specifically, its role within the youth culture of marginalized boys and young men. However, while joy-riding is a dangerous, costly, and damaging activity, it is also a temporary activity. Joy-riders tend to grow out of this behaviour, and while some undoubtedly go on to engage in other forms of crime, others desist from crime altogether. Joy-riding is, therefore, a habitual activity rather than – as it is often characterized in popular debates – an addictive one. Some of the children we interviewed however were as young as 12 and 13 and were already habitual users of alcohol and marijuana. It is unlikely that as young men they will desist from drinking and smoking and the self-damage they are causing will in all probability outlast their joy-riding years. In this respect the study of joy-riding activity can usefully inform debates in relation to risk, habitual behaviour, and the promotion of social and public health. Further research should therefore address not just the factors associated with people's gradual socialization into joy-riding, but also the conditions associated with their desistance from it, as well as the factors associated with the some individuals' subsequent engagement in other forms of crime.

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Chapter 7

Garda Restorative Justice Programme

Highlights and insights

Kieran O'Dwyer

Introduction

This paper has been prepared with a view to elaborating on what was necessarily a short presentation at the Dublin Institute of Technology/Centre for Social and Educational Research conference. It provides an opportunity to share some personal reflections on the Garda experience with restorative justice,¹ based primarily on an evaluation by the Garda Research Unit of 147 restorative cautions and conferences carried out in the 20 months from 1 May 2002 to 31 December 2003.

It assumes familiarity with the relevant provisions of the Children Act 2001 that provide for these restorative interventions, that is to say restorative cautions under Section 26² and conferences under Sections 29–41.³

It focuses on key results, lessons learned and issues raised in the evaluation. It also highlights potential success and risk factors and finishes with characteristics of an emerging Garda model. The material included has had to be somewhat subjective and, because of its brevity, cannot always do justice to all the nuances and subtleties, especially as regards lessons learned and issues raised. The purpose of the paper is to give insights into the Garda programme and suggest issues for discussion, not give the definitive position on each and every aspect. A more complete picture will be provided in the full report of the evaluation which is in preparation.

Key results

The Garda Research Unit evaluation looked at 147 cases, comprising 134 restorative cautions and 13 Garda conferences.⁴ The research methods included observation of cases, telephone interviews with participants, analysis of Juvenile Liaison Office (JLO) records regarding compliance with agreements, and analysis of Garda crime records regarding re-offending.

A key objective of the evaluation was to observe process standards and identify critical learning points. The research was thus mainly qualitative in nature and action-oriented, with ongoing feedback into evolving Garda policy and practice. It also sought to measure outcomes, including participant satisfaction. The research design, in particular the lack of a control group, means that the findings cannot be regarded as conclusive, but the results are valuable nevertheless.

As regards participant satisfaction,⁵ victims, offenders and offender family members all expressed very high levels of satisfaction. Some 93 per cent of victims and 94 per cent of offenders and their supporters gave scores of 4 or 5 on a scale of 1–5 on this measure, where a score of 5 was equivalent to ‘very satisfied’. Scores for ‘willing to recommend the approach to someone else’ and ‘glad to have taken part’ were equally high.

Completion of agreements was achieved in 89 per cent of cases (n=112). This excludes agreements which consisted only of an apology and a promise not to get into trouble again or where compensation had already been paid (although these are not insignificant achievements and prior compensation was sometimes a result of the early stages of the restorative process). Agreements included measures such as compensation, work for the community or the victim, donations to charity, returning to school, joining a club, undertaking vocational training, avoiding people or places, changing behaviour, getting counselling, and coming home at certain hours. Agreements were not restricted to offenders: parents and other adults often gave undertakings.

One in five children re-offended (19%). It is difficult to interpret this figure, mainly because of uncertainty about the nature of cases selected and the pre-disposition of offenders to re-offend. It might be an excellent result if only the most challenging cases were selected, but modest if less challenging cases were included to any great degree. The cases observed certainly included several offenders who were considered to be 'high risk'. To put the figure in some context, previous research on re-offending by the Garda Research Unit found a conviction rate of 23 per cent for offenders cautioned under the Juvenile Diversion Programme. The figures are not strictly comparable since re-offending in the present evaluation focused on all re-offending recorded on the Garda crime recording system (PULSE) whether it resulted in conviction or not.

Achievement of key process standards was generally high in the opinion of observers. Offender-oriented values included respect and fairness and adequate opportunity to speak, explain their actions and contribute to any agreement. Victim-oriented values included respect, fairness, opportunity to say how the crime affected them and to suggest how the harm might be repaired, and avoidance of any re-victimization.

The victim participation rate was 73 per cent, with direct victim representation in 92 cases and indirect representation in 4 cases. Victims declined an invitation to attend in 36 other cases (23%) and their view was represented by the police. A common experience is that events with direct victim participation are more beneficial for all participants, including victims, but no pressure is put on victims to attend and they are allowed time to reflect before committing themselves. Fifteen cases were so-called victimless crimes, such as drug, alcohol or driving offences. Experience here is that since someone is always affected by such offences, it is possible to have a meaningful restorative event.

Lessons learned

Restorative cautions and conferences can be very similar in practice. Hence the Garda use of the term 'restorative event'. Cautions seem often to be regarded rather dismissively, but on a continuum of restorativeness, cautions and conferences would overlap. Some cautions are very ambitious in terms of process and outcome and some conferences are rather limited. We need to be careful therefore not to be distracted by the labels. The term 'mini-conference' used to describe restorative cautions during the Oireachtas debates on the Children Bill gives a better idea of their nature but may still not do them justice.

The notion of a continuum of restorativeness is useful. All events are restorative to some degree. Even short-duration events with a small number of participants can

achieve important restorative aims. The objective is to increase restorativeness overall and to focus attention where the need is greatest.

The restorative process is important. At the heart of the process is communication and hearing. It is necessary therefore to provide time and space for people to speak, absorb what is being said and respond. The process cannot be formula driven if it is to have maximum impact. Some JLOs initially relied on written notes at the introductory stage but this is best avoided: it is more important to get the overall atmosphere right than to avoid minor deviations from scripted dialogue. The interaction must be primarily between the parties, facilitated by the mediator. The professionals must resist any urge to direct or dominate or rush.

A key strength of the restorative process is its humanizing effect, for want of a better term. The incident is seen not just as a breach of a law but an event that affects individuals, real people, and their inter-relationships. The offender sees the victim as a real person, perhaps not unlike himself or herself, affected by the incident in ways that are sometimes unpredictable. One child, for example, was struck and upset by the fact that the victim of his burglary was pregnant. The victim likewise sees the offender as an individual, with particular circumstances and needs.

Another part of the humanizing effect is the understanding of the circumstances of the incident and of its impact on the victim and others. Offenders generally had not thought through the impact of their offences. They often acted spontaneously or negligently. The story-telling part of the process frequently reveals unexpected or unforeseeable impacts and again reveals the participants as real people. That is partly why it is so important to allow sufficient time for it. It can also help victims along the road to recovery.

Some events are emotionally powerful, others less dramatic. Much depends on the needs and capacity of the participants. A simple event may be sufficient to bring the incident to a formal close to everyone's satisfaction. The simplicity of the event may hide complex interaction at the preparatory stages, although it may also suggest a less challenging case to begin with.

Every case is different. There is no stereotypical offender, victim or supporter. Some participants know each other in advance while others are strangers. Some victims and offenders are of the same age and background. And so on. The dynamics of each event are different as a result. They all have different needs that have to be respected and responded to.

Many events had some unexpected element that helped achieve a satisfactory result or provided a catalyst for unblocking an impasse. Examples include some common experience such as a recent bereavement; offers of a job or other assistance from the victim; recognition that the offender's family is caring and concerned and not defensive of their child's actions; and some unusual aspect of the victim's situation. Mediators need to provide for the opportunity for such elements to surface.

The process begins at the preparation stages. Much restorative work takes place then, sometimes resolving the main issues, in what is tantamount to indirect mediation. There may not be full recognition of the amount of time taken to prepare cases because much of the process is less visible. Case preparation is time consuming but pays dividends later. An advance visit to key participants by both chair and facilitator is

helpful in building rapport and trust and smoother running of the event. Approaching victims requires care, empathy and probably more time than envisaged; the emphasis needs to be on the victim rather than the offender. The involvement of other agencies needs to be established and representatives consulted and invited where appropriate.

Restorative justice under the Children Act is much more than victim–offender mediation because of the need to focus on prevention. There are two main components in the Garda process: repairing the harm and preventing further offending. Both components could be expected in conferences but were evident also in restorative cautions. Offender accountability is a key objective and offenders generally find it difficult to confront those affected by their behaviour and hear first-hand about the impact. In several cases it was necessary for chairpersons to probe offenders' stories, sometimes in a challenging way. It would be easy for the experience to become unduly negative for the offender, despite the express wish to separate the deed from the doer, to criticize the offence not the offender. The focus on accountability is balanced by emphasis and encouragement of the positive achievements and characteristics of offenders.

The restorative events covered a wide variety of offenders. They included very young children (under 12), over-18s (for offences committed as juveniles), large numbers (4–6), groups with mixed ages, children in care, and children with special needs. Particular management issues arise in respect of non-standard events.

Participation needs to be balanced between victims and offenders and their supporters. Account needs to be taken of age, gender, position of authority, personality. The flexibility in the programme as to venue and timing should be availed of to maximize participation of key people, for example both parents. Written notifications helped ensure attendance. Participants' expectations need to be managed carefully.

Experience elsewhere suggests that restorative justice works best when victims are present. This was the general experience in the Garda programme. Where victims declined to participate, alternatives could be used to good effect. They included representation by other family members, Victim Support or Garda members. The views and experiences of absent victims were relayed to the offender.

A restorative event is itself part of a process. The event is likely to have limited long-term success unless backed up by other action, including support for offenders and their families. A strength of the Garda programme is the on-going supervision of the offender. This gives the opportunity for regular contact, but is also time-consuming. Critical also is the availability of services required by the offender such as counselling and training.

Restorative justice is resource-intensive. The evaluated cases took an average 11.8 hours between preparation and running of the restorative event, with a range of 1 to 51 hours. Further resources are required at the follow-up stages. Restorative justice also requires significant skill development. The benefits of training are seen not just in management of restorative meetings but across the board in interactions with people in conflict situations.

Where the restorative event goes ahead and the process is managed competently, it can be argued that there is no such thing as outright failure. Success may be limited but the outcome is always likely to be better than the next best alternative. An angry

victim, for example, who is not persuaded of the offender's remorse and receives no reparation, nevertheless at the very least gets a chance to say things that he/she would not otherwise be able.

Issues

The overall number of restorative events needs to be increased if the restorative justice measures in the Children Act are to have any significant impact. At the moment, restorative justice remains a marginal activity in the Irish juvenile justice system. Garda restorative events currently represent a tiny percentage of potential cases processed under the Juvenile Diversion Programme. There are a number of explanations, not least the need for resources, training and support. Comprehensive training is now routinely provided, including training in mediation and victim awareness. The issues of resourcing and on-going support are being addressed but more would appear to be needed if the strategic opportunity of restorative justice is to be seized. A challenge in increasing numbers is to achieve the increase without sacrificing the quality of the personal experience for participants, in other words to avoid the process becoming too mechanical and too focused on outcomes rather than the interactive process.

Case selection is a key issue for the Garda Síochána. The pursuit of numbers should not become an objective in itself. Restorative justice may be a better way of doing business across the board but there is an imperative to focus the effort where it can be most effective. If the objective is to reduce re-offending, the focus should be on those most at risk of re-offending. The target group is limited in any event to those who receive a formal caution (of the order of 3,000 individuals per annum). Ideally to this would be added cases where the victim expressed a particular interest in meeting the offender even if the risk of re-offending was perceived to be low. Consideration needs to be given to the development of an assessment tool for JLOs to assist case selection.

A focus on more challenging cases could be expected to be reflected in an increase in the number of conferences (as opposed to cautions), in broader participation at events and in more ambitious action plans. Of course a sharper focus on difficult cases is also likely to result in a higher re-offending rate than for restorative events to date. Unfortunately there is currently no benchmark re-offending rate for higher risk cases against which to measure the impact of restorative justice.

A related issue is what happens to offenders who are deemed unsuitable for a Garda restorative intervention. A restorative caution or conference cannot be relied upon to bring about a change in an offender and victims and society need to be protected. The offender must at least show readiness to avail of the opportunity. However, the needs of unsuitable offenders have to be addressed on other ways and the criminal justice system, including the Garda Síochána, needs to be creative in responding. The various measures included in the Children Act, such as community sanction, have obvious potential and it is urgent that they be introduced as speedily as possible.

Points for reflection and review relate to level and nature of participation and the content of action plans. They are related to the case selection issue. The number of participants need not be high if the affair is relatively simple and the main concentration is on repair of harm. On the other hand, a greater number and variety of participants may be required if the needs of the offender are more in focus and are complex. It was clear that families sometimes require encouragement and persuasion to invite members

of their wider family or the community, preferring to keep the matter as closed as possible, even where they themselves indicated that someone absent (e.g. the child's grandparent) could make a difference. Similar considerations apply to the involvement of representatives of other agencies, notably health authorities. As regards action plans, a question arises as to the level of ambition required. Several plans were comprehensive and testing but others involved no future commitments other than a general undertaking not to re-offend. The plans need to be tailored to the circumstances of each case and they offer important opportunities to support the offender. An issue that emerged was the extent to which it was appropriate for Garda members to suggest items for inclusion in the action plan. At the very least it seems acceptable that attention can be drawn to the menu of potential actions included in the Children Act. Ideally, the plan emerges from the parties directly involved and it remains essential that any plan is voluntary, fair and realistic. However, it seems useful and desirable for the professionals to make suggestions in certain circumstances and in fact participants often seek and expect advice. A final issue, not confined to Garda events, is the local availability of services to support young people in their efforts to avoid re-offending. The potential of the Children Act generally will not be realized without access to such services.

Voluntariness is a strong feature of the Garda programme. The principle applies at three key levels – participation, agreeing an action plan and honouring commitments. As regards participation, the norm is that children are cautioned even if they do not wish to meet the victim at the caution or subsequently at a conference. In other words, their participation is entirely voluntary.⁶ Some query the need for participation to be voluntary and argue that it is acceptable to offer a choice of restorative event or prosecution, subject to safeguarding the interests of other participants, notably the victim. The argument is premised on the belief that the offenders can benefit from the process even if reluctant or afraid initially. As regards negotiation of an agreement at the restorative event, voluntariness ensures that the action plan is not perceived as punishment, is realistic, meets the requirements of the offender as well as victim, and increases the likelihood of compliance.

As regards honouring commitments entered into, some argue that compliance should be compulsory and that failure to comply should result in some sanction being imposed, essentially through prosecution. The justification for the current procedure is that the agreement is a moral contract, freely entered into. Furthermore, the decision has already been taken that a caution is the appropriate way of dealing with the offence. Exposure to a prosecution would thus be a kind of double jeopardy. The appropriate reaction may be to reconvene to examine the reasons for the breakdown, although participation will again be voluntary on that occasion. (A conference must anyway reconvene to review progress.) More fundamentally, if the young person does not re-offend, the process has still achieved a valuable result, while if re-offending does take place, there is another opportunity to deal with the offender. It is also relevant that failure to comply generally relates to offender elements (such as curfews, educational or leisure pursuits) rather than victim elements such as reparation.

A related thought is that prosecution should not be a reflex response to further offending. Prosecution may indeed be appropriate but should be a last resort after examination of what went wrong and what might be done differently, e.g. wider family participation, greater support in adhering to commitments. It is important to keep restorative justice principles and objectives in mind, not to lose sight of the bigger picture. The primary goals are repair of harm and prevention of further offending. The

objective is not punishment of offenders but their integration in the community as law-abiding members.

The period between offence and restorative event needs to be considered. Our evaluation found that 60 per cent of restorative events took place within six months of the offence. It is not for me to say if this is a satisfactory standard, but certainly the delay in many cases seemed undesirably long. It is difficult to say what might constitute an ideal or even realistic time lapse between offence and caution. For the offender, a period of reflection and anxiety might be no bad thing. For victims, the lack of a statutory deadline means that they are not pressurized to decide about participation. But after a certain time, the disadvantages of delay begin to outweigh the advantages. With the passage of time, it may become more difficult, for example, to achieve reconciliation between victim and offender, especially if they have been advised to avoid contact pending organization of the restorative event. Both victim and offender and their families deserve a response in a reasonable time and it behoves us to examine causes of delay, eliminate unnecessary system blockages and set standards and targets.

The role of the victim in discussing offender needs is another issue that requires further consideration. Repairing the harm rightly involves the victim but it is open to question whether victims need to or should be involved when the focus shifts to the preventive component. The Garda process does not operate along the lines of the New Zealand family group conference where the family discusses its needs in private. Private time is an option in the Garda programme but, to the limited extent used, is not generally used in this way. Victims may have something to offer in support of the offender but their continued presence may limit the exploration of sensitive family issues.

Two issues highlighted during the debate on the Children Bills are co-ordination between agencies and the suitability of Gardaí as chairpersons/facilitators. The co-ordination issue was sometimes phrased in terms of the need to avoid over-conferencing of families, who could be exposed to family welfare conferences by the Health Service Executive, family conferences by the Probation and Welfare Service and restorative conferences by the Garda Síochána. There is undoubtedly a need for co-ordination, but the issue has scarcely arisen in practice, with no overlapping conferences to date. From the Garda perspective, it is important when considering a restorative event to check about possible health authority involvement and make contact with the relevant personnel. This occurred in a number of Garda cases with considerable effect. In other cases, health personnel were not available to attend events outside normal hours. The Probation and Welfare Service are unlikely to be involved at the Garda stage but it would seem desirable for the Service to contact the Gardaí when a court-ordered family conference is being considered. Some protocol to cover these situations seems desirable.

As regards Gardaí chairing and facilitating restorative events, some originally voiced concerns that Gardaí were an inappropriate choice. A variety of reasons were offered in support of the view, including their association with the investigation and prosecution roles, an expectation that they would find it difficult to adopt the neutral role of mediator and a risk that families who were distrustful of Gardaí would not wish to get involved. However many of the disadvantages experienced in other countries are either not relevant or could be overcome with adequate procedures, training, supervision and support. In Ireland, there are a number of advantages in favour of using JLOs.

Advantages of having JLOs chair or facilitate include:

- experience, reputation and credibility of JLOs with young offenders and their families (they are often perceived as different from other Gardaí; JLOs make a professional choice to work with young people);
- involvement with offenders at their earliest point of contact with the criminal justice system and ability to respond quickly (and early intervention is always desirable);
- the opportunity to work with offenders during the ensuing period of supervision;
- reassurance given by a Garda presence to both victims and offenders about their safety;
- flexibility as regards timing of restorative events (they are available to meet families in evenings or at weekends);
- ease of interaction with Garda colleagues and access to information.

System safeguards include the overall context of the Juvenile Diversion Programme (in particular the principle of voluntary participation and legal protections under the Children Act), the norm that JLOs do not chair their own cases (they call in a colleague to do so), and the extensive training in mediation and victim awareness that JLOs receive before undertaking restorative work.

The original concern may also have been partly based on a slight misconception of the role. Restorative cautioning and conferencing are different from mediation. Mediation skills are invaluable in both but the key distinction in the Garda process is that (i) one party has wronged another and this fact is accepted by all participants and (ii) the dual objectives are to repair the harm and prevent re-offending. The restorative process is not about judgement or blame but it seems legitimate for chairpersons or other Garda participants to make interventions such as probing inconsistencies in offenders' stories or exploring behaviour and attitudes in the interests of repairing harm and preventing re-offending. The issue is one of balance.

Success and risk factors

Success factors include the following non-exhaustive list. They do not guarantee success either singly or together but have greater impact in combination.

- The continuity of action from case preparation through restorative event and follow-up. Some of the more impressive successes have highlighted the importance of the interaction between offender, offender family and JLO; the restorative event may be a means to an end rather than an end in itself.
- The extent to which an event is memorable for the offender. What makes an event memorable varies from offender to offender but may result from the victim's account of the harm caused or some unanticipated factor.
- Careful case screening and preparation, including management of expectations and explanation of the process.
- Close adherence to the restorative process and values, including respect and the opportunity to be heard.
- The humanizing of the offence through story-telling and the opportunity to express emotions.
- Acceptance of responsibility and expression of genuine remorse by the offender.

- Discussion of the offence and harm caused without stigmatizing the offender through blame, shame, labelling, language, etc.
- The voluntary nature of participation with no one feeling forced to accept outcomes.

Risk factors include the following:

- excessive lecturing or challenging of offenders, which will be counter-productive if they feel disrespected, disbelieved or labelled;
- long delays between offence and event, especially if it has caused an apology to be withheld or hindered normal interaction between parties, resulting in entrenchment of unhelpful attitudes and beliefs;
- perceived insincerity of the offender's apology or an unconvincing account of the incident;
- defensiveness of offender family about their child's behaviour;
- unrealistic expectations or uncompromising attitudes on the part of victims;
- a perceived focus on offenders, which may alienate victims and fail to meet their needs.

Emerging Garda model

The contours of a Garda model are not yet clearly defined in all aspects. The picture is constantly evolving and benefiting from on-going reflection and policy refinement. Nevertheless, restorative justice in the Garda Síochána has a number of distinguishing features which might eventually define a unique Garda model.

The context of the Diversion Programme is important, not least because it offers protections to the offender concerning double jeopardy and voluntary participation. These protections derive from the fact that it has been decided that a caution is the appropriate response to the offence and the participation and performance of the offender as regards restorative justice has no bearing on that decision. Other legal protections applying to the Diversion Programme also apply to the restorative justice elements (e.g. confidentiality of proceedings). The Programme also provides the possibility for adequate follow-up action and supervision so that the impact of restorative justice does not depend on a single restorative meeting but is generated and maintained by a series of interventions and supports. The voluntary nature of proceedings has been alluded to above and contrasts with the Hobson's choice between participation in restorative justice and court trial that offenders face under other schemes.

Other distinguishing features include:

- the fact that the programme is carried out by specialist Garda personnel;
- the level of training provided (in restorative justice principles, mediation skills, victim awareness);
- the extent of monitoring and evaluation (not least by the statutory Committee monitoring the effectiveness of the Diversion Programme);
- the flexibility in practical arrangements (as regards venue, time, etc.);
- the availability of different options for intervention (caution/conference);
- the flexibility in legal provisions (e.g. as regards cautions, supervision)

- the dual focus on repair of harm and prevention of re-offending, on the needs of victims as well as offenders;
- the focus on offender accountability.

Concluding comments

I am often asked the question ‘Does restorative justice work?’ As a researcher and based on our evaluation I cannot say conclusively one way or the other. Restorative justice certainly seems a better way of ‘doing justice business’, with very high levels of satisfaction for all parties. Is that enough to justify the resources required to make it more than a fringe activity in juvenile justice (and expand its use in adult justice)? Perhaps it should be. However, if reduced re-offending is the main success criterion, then all we can say, based more on international evidence rather than the Garda evaluation, is that restorative justice appears to have a beneficial but modest impact. Extra resources are needed in the meantime in order to generate sufficient numbers of cases on which to base a more rigorous evaluation. But there already seems to be enough evidence to justify further investment in restorative justice and there is a real danger that if we wait for conclusive evidence about re-offending, a strategic opportunity offered by the Children Act will be lost.

A second point of reflection concerns the Diversion Programme and the State’s response to an offence committed by a young person. The diversion programme is generally accepted as a common-sense, enlightened and successful approach to dealing with juvenile offending. However, it seems to me that, from a research point of view, we do not know enough about how the programme works in practice and what works best. Issues for exploration include offender assessment, offender supervision and support and the response to re-offending by those cautioned. A related interest is the State’s response to offenders who are deemed unsuitable for inclusion in the programme.

When a young person offends, the State agencies need to respond appropriately and proportionately. The Garda Síochána is the first point of contact and assumes responsibility for a preliminary assessment. The assessment needs to be transparent, professional and uniform and the tools and training required to make that assessment need to be provided. The response then needs to be tailored to the individual, and ranges from an informal Garda caution to a more intensive, multi-agency intervention. JLOs need to be able to call on other agencies to assume responsibility for the young person where a Garda response is considered insufficient on its own. The decision about suitability for inclusion in the Diversion Programme offers an opportunity to trigger early action by the most appropriate body. We need to ensure that the system delivers an early, appropriate intervention to all offenders, not just those included in the Diversion Programme.

Notes

- 1 The views expressed in this paper are the personal views of the author and do not necessarily represent Garda policy or the views of the Commissioner.
- 2 Formal cautions to which a victim is invited.

- 3 Conferences which take place after a formal caution and operate along family group conference lines
- 4 Another 177 Garda restorative events were held in 2004, up 50 per cent on the 2003 total. Of the 177 events, 138 were restorative cautions and 39 were Garda conferences.
- 5 The evaluated cases involved 113 victims, 218 offenders and 289 offender supporters. For a variety of reasons, not all could be interviewed. Interviews were completed with 51 victims (45.1%), 64 offenders (29.4%) and 86 offender supporters (29.8%).
- 6 In some cases, an expressed willingness to meet the victim could influence a decision about suitability of the offender for diversion.

Chapter 8

ASBOs and Behaviour Orders

Institutionalized intolerance of youth?

Claire Hamilton and Mairéad Seymour

Introduction

With the passage of the Criminal Justice Act 2006 and the introduction into Irish law of the 'Behaviour Order', first cousin to the 'Anti-Social Behaviour Order' (ASBO) introduced in England and Wales under the Crime and Disorder Act 1998, the well-established Irish art of imitating British legislation has continued. To borrow the phrase of the late John Kelly TD,¹ it is one in a long line of legislative ideas 'taken over here and given a green outfit with silver buttons to make it look native',² with little thought being given to our less severe crime problem and cultural differences. A Behaviour Order is an order made by a court to protect the public from anti-social behaviour. Although it is designated as civil in nature, breach of a Behaviour Order does not invoke the normal contempt of court procedure for breach of a civil order, but in fact constitutes a criminal offence. In Britain, ASBOs may be made with respect to any person aged 10 or over but they have had particular implications for children and young people as they are the most likely recipients (Burney 2002). Recent Home Office statistics have revealed that out of a total of 4,649 ASBOs which have been issued since their introduction in 1999, 2,057 have been applied to children aged 10–17 (Cowan 2005). This may account in large part for the doubling of the number of children in custody in England in the past decade, when statistically their offending has reduced.

This paper provides a socio-legal perspective on the introduction of Behaviour Orders for children aged 12–17 years in this jurisdiction (the legislation makes separate provision for those aged 18 and over). It suggests that the introduction of Behaviour Orders creates a legal mechanism which facilitates the imposition of the majority conception of order within the community on its more marginalized members such as children and young people. The first part of the article argues that order/disorder is defined and imposed in the community by the more powerful elements within it and that what constitutes order/disorder is necessarily variable according to the experiences and perceptions of community members. Having considered the argument that the nature of order in the community is often discriminatory against young people and others who do not readily conform to societal norms, the second part of the article examines the ways in which the law institutionalizes the majority conception of order. Overall, it is argued that the ambiguous social interpretation and legal definition of 'anti-social behaviour' combined with the low evidential standards required in the application process will result in the door being left open to abuse by the 'moral majority' in the community. While not under-playing the impact of anti-social behaviour on the community, the paper argues that Behaviour Orders are unlikely to be the most equitable, effective or just way of responding to anti-social behaviour based on the principles which underpin them and the experience in other jurisdictions. It concludes by proposing that an alternative response that engages with communities in a positive and inclusive manner is a more appropriate way of addressing anti-social behaviour amongst young people.

The social construction of order/disorder

In examining the social construction of order/disorder, four main areas are discussed. The first focuses on the notion of 'community' by highlighting its non-egalitarian nature and the manner in which individuals, particularly young people, come to be defined and constructed as the 'disorderly' or the 'outside' other. Secondly, young people's interaction with their community is examined through the lens of their daily activity in the community, their occupation of public space and its impact on their relationship with other community members. The differing perceptions of young people's behaviour across communities and community types is discussed in the third section thereby highlighting the arbitrary nature by which some young people come to be labelled and responded to as 'anti-social'. The final section focuses on the implications of the way in which order/disorder is defined and imposed, examining the balance between responsibility, accountability and support, and the role of the community and civil society in managing problematic, disorderly and criminal behaviour.

Defining order in the community

Crawford (1998) critically defines 'community' as a complex web of relationships, structures and power relations organized not on egalitarian lines but upon the basis of age, sex, gender, ethnicity and class as well as a range of other identities (Campbell 1993; Crawford 1999b). The conflicting and perhaps more common perception is the view that community is synonymous with common interest: 'a group of people, sharing a common bond or tradition, who support and challenge each other to act powerfully, both individually and collectively, to affirm, defend and advance their values and self-interest' (Miller 2002: 32). This notion of community as homogeneous reflects the communitarian view in which consensus is assumed (Worrall 1997) and moral order is taken for granted 'rather than constructed through nuanced and complex negotiations' (Crawford 1998a: 244). The communitarian perspective argues that communities have obligations to be responsive to their members but equally it demands recognition from those members of their responsibility to the community. It is assumed that homogeneity in the value consensus of the community 'will manifest itself in a sense of mutual responsibility' (Worrall 1997: 46) to community members. It also stresses the 'rights' of the community to require certain standards of behaviour from its members and, ultimately, to exclude members in the interests of the whole community (ibid.: 47). However, as James and James (2001: 215) note, children have few rights and therefore demands to live up to their responsibilities as community members is problematic 'in the absence of any necessary or taken-for-granted commitment by children to the adult value consensus'.

Crawford (1999b: 164–165) asks, 'what is it that constitutes disorder ... [and] whose definition of 'order' should be accorded priority?' In other words, in the hierarchy of power relations in the community whose interests are responded to? The way in which responsiveness to one section of the community (the more powerful group) can lead to the repression of another (the less powerful group) is highlighted by a case in Miami involving a challenge to the police attempts to clear homeless individuals off the streets.³ Following a complaint which emanated from the local business community, the police responded by arresting the homeless for 'quality of life infractions' (Coombs 1998: 1373): sleeping, drinking, urinating in public and littering. The impact is best indicated by police practice that deemed the placing of a piece of cardboard on the ground by the homeless person so as to avoid sleeping on the cold concrete as 'an instance of littering worthy of a custodial arrest' (ibid.: 1374). Brown (1995: 47) describes how young people like adults living in economically deprived areas experience 'all the anxieties induced by deepening inequalities' but unlike adults

they have no one to exclude as they are the excluded group. Young people therefore often exist at the bottom of the scale of power in the community and as a result are more likely to have norms, rules and definitions of order imposed upon them. Assuming that community is homogeneous, in the sense that members hold common beliefs, leads to the justification of exclusion on the basis of the community good or in the interests of the community (Crawford 1999a: 515). Community is viewed as something that must be protected from outside 'others' who threaten it, that is to say those who deviate from what is defined as normal. In this typology, such individuals are viewed not as community members, as brothers, sons, sisters or spouses, but as outsiders against whom the 'community' needs to defend itself (Crawford 1999b: 159). This approach silences 'very real intra-community conflicts' which when not tackled allow 'the policing of, and interventions against, certain individuals and groups of people' (Crawford 1999b: 161) by the more powerful interest groups. It is the type of order maintenance advocated by Wilson and Kelling (1982) whereby individual rights are squandered in lieu of community expectations of order.

Youth, public space and perceptions of disorder

To compound the existing relative absence of power amongst young people identified above, they also experience a disadvantaged position by nature of their 'public lifestyle'. Youths hanging out on the street infringe community expectations of what constitutes appropriate social behaviour (Kelling 1987). Burney (2002: 73) argues that young people hanging about 'have become the universal symbol of disorder and, increasingly, menace'. Even if not engaged in illegal behaviour their activities may be perceived as disrupting the 'order' of the community. Worrall (1997: 138) documents the scenario for young people whereby 'respectable citizens and figures of authority ... are increasingly demanding that they be known about, watched and moved on'. Studies of offending youth in Northern Ireland found that many lived out their daily routine on the public stage of the street corners and public parks of their communities (Ellison 2001; Seymour 2003). In one of the studies, over one-third of offending youth who consumed alcohol said they drank in public places such as parks, the streets and street corners in their own community. It was therefore not difficult to conclude that the location of young people's drinking, as much as the consumption of alcohol itself, had the potential to be perceived as problematic and disorderly by the community (Seymour 2003).

James et al. (1998: 39) argue that 'social space is never a merely neutral location'. This resonates with the argument of Brewer et al. (1997: 136) that young people are associated with most visible crimes and other visible problems in the community, thereby 'raising people's sense that young people are behind most ordinary crime'. Crawford (1999b) suggests that there is an assumption in the community that danger occupies public, not private space. Young people living in poor and sometimes overcrowded housing, expelled from school, youth and community facilities have little choice but to occupy public space. In this sense they are a marginal group and are perceived as dangerous or at least as having the potential to create disorder (Crawford 1999b). It is not so much that the marginal member of society is seen as intimidating but rather it is 'the visible presence of marginal people within prime space that represents a threat to a sense of public order and orderliness' (Wardhaugh 2000: 113).

Constructions of order/disorder: variance across communities

Crime and disorder have an impact on individuals in communities to varying degrees and in different ways (Crawford 1999b; Loader et al. 1998). The level of (in)tolerance is likely to vary depending on a number of factors including one's relationship to the community and one's perception and experience of 'disorder' in the area. Loader et al. (1998) argue that those with a stake in the community, for example a business or family links, are more likely to want to elicit a response to disorder than individuals temporarily living in the area. Similarly, Young (1999: 121–122) highlights attempts to evoke a sense of nostalgia for the secure past as a factor in the demand for a quick fix, all-embracing solution to crime and disorder 'in order to conjure back the secure streets and backyards of childhood memories'. Results from the Northern Ireland Community Crime Survey (O'Mahony et al. 2000) illustrate that wide disparities exist between how respondents in working-class urban communities rate crime and disorder problems in their community compared to middle-class and rural respondents. However, it is also reported that perceptions of anti-social behaviour vary within similar community types and differences exist between Catholic and Protestant urban working-class areas with the former reporting problems such as underage drinking and public drunkenness at a higher rate than their Protestant counterparts (O'Mahony et al. 2000: 22).

Without question the individual and collective previous experience of 'disorder' in the community is likely to impact strongly on the response of a particular community to 'anti-social behaviour'. The concern however is that those young people from socio-economically deprived communities with few resources are more likely to be targeted for interventions like ASBOs or Behaviour Orders, not necessarily because their behaviour is more anti-social than their middle-class counterparts, but simply because the community has insufficient alternatives including youth and family support services to respond to such behaviour. Furthermore, such communities may be more at risk of being identified as anti-social behaviour hot-spots through 'the physical presence of "investigatory" people and technology [who] ensure that it will be found' (Brown 2004: 210; cited in Squires and Stephen 2005b: 193).

The community construction of order/disorder: the implications

Numerous commentators have argued that the problem of disorder has been conceptualized as the problem of disorderly behaviour amongst young people (e.g. Burney 2002). By adopting this discourse of 'disorder' (namely the behaviour of youth) it individualizes the 'problem', limits the scope for effective interventions and places responsibility solely at the level of the individual young person and often the parents and family: 'through the rhetoric of "responsibilisation" (e.g. Flint 2002), society becomes absolved and individuals, already essentialised as "thugs" ... are held solely culpable' (Squires and Stephen 2005b: 187).

However, this is inherently problematic and contradictory given that young people are punished 'as a legitimate response to their wrongdoings against the citizenship of others (i.e. adults)' while at the same time the state is 'simultaneously denying or suppressing the reality that young people themselves are barely accorded citizenship rights' (Brown 1998: 82). Furthermore, Muncie and Hughes (2002: 10) argue that the rhetoric underlying the rationale for ASBOs of poor parenting and out-of-control children ignores consistent research suggesting that young people who offend often have 'complex and systematic patterns of disadvantage which lie beyond any incitement to find work, behave properly or take up the "new opportunities" on offer'. Gray reiterates this argument suggesting that:

In the new culture of control, there is a presumption that reintegration is an individual moral endeavour which will miraculously occur once young offenders have accepted responsibility for their actions ... without any attempt to either combat structural inequalities (Muncie 2002; Pitts 2003) or, at the very least, provide young people with sufficient social support.
(Gray 2005: 947)

The onus on parents to be accountable during the period of the new Irish Behaviour Order without additional assistance and support faces similar criticisms to the existing parental control mechanisms introduced under the Children Act 2001. Parental control mechanisms have been criticized on the basis of failing to acknowledge the social factors related to a child's offending behaviour such as poverty and disadvantage (Shannon 2004), or providing any 'substantial interventions ... to encourage and enable positive parenting' (Quinn 2002: 679). The role and responsibility of the parenting task is central to the process of addressing anti-social behaviour; however, in relation to the execution of ASBOs in England and Wales, Squires and Stephen (2005a) are also critical of the balance between enforcement action for anti-social behaviour and support for the perpetrators and their families.

Criticism of the Behaviour Order as a mechanism of social control for young people does not imply a denial of the seriousness and impact of anti-social behaviour on the community. Indeed, it is well documented (Graham and Bowling 1995; Brown 1998) that young people commit much of the disorder in the community and are often responsible for perpetrating 'those quality of life offences which form the proverbial last straw for people who already have nothing' (Brown 1998: 94). Rather, what is suggested is that the process by which anti-social behaviour is socially defined is often arbitrary and therefore not wholly just. Furthermore, based on what is known about youth offending and related behaviour, Behaviour Orders are unlikely to be the most effective method of either addressing such behaviour or preventing future criminality. They ignore the structural inequalities at the root of much offending as identified above and place young people at greater risk of being drawn into the formal net of social control. Finally, they are more likely to divide rather than empower communities by further disenfranchizing young people and their families and deepening rather than repairing existing social and relational divisions.

Maloney and Holcomb (2001) argue that all citizens should be involved in creating the conditions to promote safety and well-being in the community. Responses to anti-social behaviour need to work towards strengthening the community, not diminishing and dividing it. Goldson (2000: 262) warns against the punitive ethos underpinning much of the discourse on youth crime and argues that 'the problem of youth crime ... does not excuse the contemporary tendency towards simplicity and lazy analysis'. Communities may be far better engaged in the role of identifying prevention strategies and working in partnership with statutory and community agencies to address the issues that underlie much nuisance and 'disorderly' behaviour in the community. The recommendations of the National Crime Council (2003) for a proposed crime prevention strategy in Ireland highlights the need for inter-agency work with young children and their families as well as multi-annual funding for the development and continuation of youth work services. However, such a shift in priority requires both a changed conceptualization of youth in criminal justice discourse from 'criminals deserving of punishment' to 'citizens entitled to justice' (Brown 1998: 82) and a commitment to evidence-based policy-making for young people who come into contact with the law.

Legal dimensions

As noted in the introduction, the aim of this section of the paper is, through close legal analysis of the new legislation on Behaviour Orders, to demonstrate the ease with which they can be mobilized against the more disempowered members of the community such as young people, and the implications of this. It is also proposed to discuss briefly the ways in which the legislation gives expression to the principles of communitarianism as discussed above. It is important to note at the outset, however, that the authoritarianism implicit in the English legislation has been moderated somewhat in the Irish case. Under pressure and in the face of criticism from one of the largest and most broadly based coalitions of protesters ever to respond to a criminal justice issue in Ireland,⁴ the Minister for Justice was forced to revise his original proposals. The new provisions (the Criminal Justice Act 2006 amends the Children Act 2001 to include a new Part 12A) go some way towards ensuring that Behaviour Orders are a measure of last resort, most notably through the introduction of a scheme whereby a child will usually receive a 'Behaviour Warning' and a family conference will be held to discuss the anti-social behaviour before a Behaviour Order is proceeded with⁵. It is disappointing, therefore, that some of the worst features of the English legislation have been retained: the civil standard of proof applies, with the concomitant increased likelihood of the admission of hearsay evidence, and the word 'harassment' continues to appear in the definition of anti-social behaviour. All these features contribute to uncertainty and vagueness in the application of the law and ultimately, its misuse.

The definition of 'anti-social behaviour'

Under s.257A(2) of the new Part 12A of the Children Act 2001 (as inserted by s.159 of the Criminal Justice Act) a child behaves in an anti-social manner if he or she:

causes or, in all the circumstances, is likely to cause to one or more persons who are not of the same household as the child

(a) harassment

(b) significant or persistent alarm, distress, fear or intimidation, or

(c) significant or persistent impairment of their use or enjoyment of their property.

A child is defined under the section as a person between the age of 12 and 17 (inclusive) and not above the age of 14 as originally suggested by the Department of Justice. The revised definition may be compared to the English equivalent which refers to behaviour which 'caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself' and which has been the subject of much criticism for its potentially unlimited ambit. The annotations to the original Government proposals argued that 'the definition is not as broad as the UK equivalent. In particular, the behaviour must have serious consequences for the person or persons affected or the consequences must be persistent and must affect the person's enjoyment of life or property' (Government of Ireland 2005). Yet, this is simply not the case in the legislation as enacted. At Committee Stage of the Bill, the Minister acknowledged that the three grounds on which a Behaviour Order can be obtained are to be read disjunctively or in the alternative.⁶ If 'harassment' represents a ground for a Behaviour Order in its own right, it becomes the lowest common denominator. The thresholds of seriousness in the legislation will therefore be bypassed and the range of behaviour giving rise to liability to a Behaviour Order considerably expanded. Harassment

connotes behaviour which is context dependent and it is defined by reference to the effect or likely effect of behaviour on others. As one guide has commented upon the English definition: '[harassment] does not proscribe certain forms of conduct as harassment per se but enables the victim to determine the parameters of acceptable interaction on an individualistic basis ... primacy is given to the victim's interpretation of events' (Finch 2002: 706).

It remains the case under the Irish legislation that the conduct described may be criminal but it is not limited to criminal behaviour. Some of the behaviour may therefore constitute a civil wrong (most likely nuisance) while other behaviour may not constitute any wrong at all in law. The definition also allows, like the English legislation, for a hypothetical assessment of the effect of the defendant's conduct. The retention of the words 'is likely to cause' in the above definition means that the court may not always be concerned with a situation where the defendant has actually harassed someone or caused serious fear or persistent danger, but may be asked to engage in a risk assessment exercise where no member of the community has in fact been victimized. This shift from the factual to the hypothetical is all the more a cause of concern if this risk assessment is, as contemplated above, entirely context dependent.

In the first part of this paper attention was drawn to the evidence that it is the most powerful members of society who define disorder; that young people are often compelled to live their lives on the public stage of the community (e.g. drinking in public) and that even communities with a similar socio-economic composition may take different views of such public behaviour by young people. Considered together, these factors urge caution in the adoption of legal measures which have the clear potential to institutionalize intolerance towards young people on the behalf of local communities. The provisions of the new Irish legislation with regard to the definition of anti-social behaviour do not go far enough in safeguarding young people and children from abuses by more powerful community members.

Low evidential standards

Difficulties with the protean definition of anti-social behaviour are compounded by the low standards of evidence and proof required under the legislation. The standard of proof required as regards the making of a Behaviour Order is the civil standard of balance of probabilities. Section 257D(1) of the Children Act 2001 (as inserted by s.162 of the Criminal Justice Act) provides that a District Court judge must be 'satisfied' as to the anti-social behaviour and the necessity for an order. Further, s.257D(9) puts the matter beyond doubt: 'the standard of proof in proceedings under this section is that applicable to civil proceedings'. The civil designation of the Behaviour Order scheme was to be expected given that one of the aims of the British ASBO as conceptualized by New Labour was to circumvent the perceived difficulties with a criminal trial. The behaviour in question, even if capable of amounting to a criminal offence, will therefore not have to be proved to a standard of beyond all reasonable doubt and the defendant can be placed under a Behaviour Order even if there is reasonable doubt as to the behaviour in question.

This begs the question whether the proceeding is in reality criminal and whether the civil procedure is being used as a means of subverting the strictures of the criminal law, including fundamental legal values such as the presumption of innocence. In a challenge to the legislation in England in *R v. Crown Court at Manchester, ex parte McCann*⁷ this question has been answered by the House of Lords in the negative, albeit

with the important proviso that a heightened (criminal) standard of proof apply. The House held that ASBO proceedings were civil, not criminal, both for the purposes of domestic law and the law under the European Convention on Human Rights. This conclusion was based on various factors: proceedings were not brought by the Crown Prosecution Service; there was no formal accusation of a breach of the criminal law; ASBOs did not appear on criminal records; and there is no immediate imposition of imprisonment. In this latter regard, the House held that proceedings for breach of an order, though undoubtedly criminal in character, should be considered separately from the initial application. It is questionable, however, whether an Irish court would reach the same conclusion. While a superficial reading of the English legislation supports the Lords' conclusion, it is submitted that many of the above elements, such as the absence of a formal charge and criminal record, focus on form rather than substance and as such should not have influenced the decision of the court. Further, it is at least arguable that the original application for an ASBO cannot be so conveniently separated from its criminal counterpart given that the initial civil procedure defines the outer limits of the behaviour which can constitute a criminal offence. Indeed, it is impossible to defend proceedings for breach without harking back to the terms of the original order. The Lords also appear contradictory in their conclusion that the proceedings are civil in nature and therefore hearsay or second-hand evidence can be adduced (presented in court), yet the 'seriousness of the matters involved' mandate that the criminal standard of proof apply. Overall, the effect of the judgment is to give free reign to New Labour's policy of simply reclassifying criminal proceedings as civil in order to avoid the protections attaching to defendants in criminal proceedings.

In relation to the cognate issue of the admissibility of hearsay evidence, the House of Lords held that hearsay evidence could be adduced in ASBO proceedings. The Irish legislation is silent on this issue and, given that the proceedings are civil in nature, it would appear that hearsay evidence may be admitted to the extent that it is permitted in civil proceedings. In practice the hearsay rule is applied with less vigour in civil rather than criminal matters, however, and the dangers of such evidence should be noted. The adduction of hearsay evidence means that the defendant is denied the right to cross-examine his or her accusers which makes claims very difficult to refute. When a witness's demeanour is not observable during cross-examination, the court is left at a loss as to whether the witness was joking, lying or simply mistaken. In England, applications based solely on hearsay may, and do, succeed with none of the alleged affected persons present or even named (Pema and Heels 2004: 41). Should this practice be adopted in Ireland, the potential for rumour, conjecture and suspicion about young people to become fact will be heightened. A classic example is the public drinking engaged in by young people discussed above. When relayed second hand such behaviour could easily metamorphose into threatening behaviour.

In this relation, it is interesting to note that the justification offered by the House of Lords for admitting hearsay evidence can be viewed as a clear endorsement of the communitarian approach discussed in the first part of this article. In examining the issue, Lord Steyn explained 'My starting point is an initial scepticism of an outcome which would deprive communities of their fundamental rights'. He viewed hearsay evidence as critical if magistrates were to be adequately informed of the scale of anti-social behaviour and the measures of control required. The views of Lord Hutton also reflect a preoccupation with the needs of the community:

I consider that the striking of a fair balance between the demands of the general interest of the community (the community in this case being represented by weak and vulnerable people who claim that they are

the victims of anti-social behaviour which violates their rights) and the requirements of the protection of the defendant's rights requires the scales to come down in favour of the protection of the community and of permitting the use of hearsay evidence in applications for anti-social orders.⁸

As Ramsey notes communitarian concepts such as the positive duty of citizens towards the community and the justification of exclusion on the basis of the rights of the community as a whole pervade the Lords' judgments. He argues:

Notwithstanding their lordships' preferred terminology of balancing rights, the logic of their argument is that the right of the community not to be caused a particular feeling, and therefore the individual's duty not to cause that feeling, is prior to any procedural right of the defendant to cross examine her accusers.

(Ramsey 2004: 924)

Ramsey views this as confirming the underlying conceptual basis of ASBOs, which he contends is largely communitarian and at odds with the traditional criminal law. In support of this argument, he points to what he terms 'the underlying attitudinal component' of the legislative provisions on ASBOs, namely, the context dependent nature of 'harassment, alarm or distress' and also the requirement that the court must decide that an order is necessary. This latter requirement creates an exception where the defendant has demonstrated a change in attitude and therefore allows the court to impose an ASBO on the basis of 'a continuing attitude or disposition of indifference or contempt ... for the feelings of others' (Ramsey 2004: 915). Ramsey's argument runs that, once it is accepted that what the legislation is really concerned with is attitudes rather than simply behaviour, the positive nature of the obligation created by the legislation becomes clear as in order not to offend other people's feelings, one must adopt a caring mental attitude. Ramsay's point is well made, if at times a little stretched (he argues for example, that the defence enshrined in the legislation that the conduct is reasonable enhances rather than curtails judicial discretion), and it would appear that the provisions on ASBOs sit well with the basic tenets of communitarian theory. As discussed above, however, such communitarian views are problematic in relation to children and young people. These members of the community are not accorded the same 'citizenship' rights as adult members of the community nor indeed do they necessarily share in the adult 'value consensus'.

Applicants for Behaviour Orders

The combination of the civil standard of proof and the possible adduction of hearsay evidence means that the court may impose a Behaviour Order on the basis of unproven evidence from a member of the Gardaí (a Superintendent or member of superior ranking) as to what the defendant's neighbours report. This places a great deal of power in the hands of the Gardaí to determine what non-criminal behaviour may form the subject of a Behaviour Order. Further, in relation to behaviour which actually amounts to a crime, a practice may develop whereby the Gardaí use Behaviour Orders as a short cut to a conviction without actually proving the crime. This is the all the more likely to occur if the very high success rate of ASBO applications in England is any indicator of what will happen in this jurisdiction: of the 2,035 ASBO applications notified to the Home Office up to 30 June 2004, only 42 applications were refused, which constitutes a success rate of 98 per cent.⁹

Breadth of the Order: Made to be breached?

Concern about excessive discretion does not end with the definition of 'anti-social behaviour' and the use of hearsay evidence. The terms of Behaviour Orders which are imposed by the judge at the initial hearing are not limited to the initial acts complained of. Section 257D(1) of the Children Act 2001 (as inserted by s.162 of the Criminal Justice Act 2006) states that an order may prohibit a child 'from doing anything specified in the order if the court is satisfied that ... the order is necessary to prevent the child from continuing to behave in that manner'. In the UK, the requirement of 'necessity' has not been interpreted strictly with defendants being banned from entering areas where they live, from meeting named individuals anywhere and from entering public places. While the additional requirement in the section that the judge must be satisfied that the order is reasonable and proportionate may be regarded as a check on the judge's discretion, it is significant that this assessment must be made 'having regard to the effect or likely effect of that behaviour on other persons'. Thus, the standard is not objective but heavily influenced by the victim: as discussed above in relation to harassment, primacy is accorded to the victim's interpretation of events. This reading of the legislation has been affirmed by the Minister for Justice himself at Committee Stage of the Criminal Justice Bill when he observed that 'the court must be satisfied that it is reasonable and proportionate when viewed from the victim's perspective'.¹⁰

The open-ended nature of Behaviour Orders marks a clear departure from previous statutory orders to which they may be compared such as the barring order or the safety order under the Domestic Violence Act 1996. Under the 1996 Act, a person subject to a barring order may be required not to use or threaten to use violence against, molest or put in fear the applicant or a dependant. It is clear that this order is targeting specific wrongs against named individuals in a domestic context. Similarly with common law injunctions which seek to restrain the specific wrong contained in the plaintiff's statement of claim¹¹ (Ireland 2005). Behaviour Orders, in contrast, are not so limited. In the UK, encouraged by the broad scope under the Act and the emphasis on prevention rather than punishment, magistrates have erred on the side of caution and in so doing have made disproportionate orders with conditions so wide ranging as to set the defendant to fail.¹² This is supported by the high rate of breach in the UK which currently stands at 42 per cent, of which just over half received custodial sentences (Cowan 2005). It is to be hoped that, despite the absence of any effective brake on their power, Irish judges will not follow suit.

Behaviour Orders and up-tariffing

The sanction of detention for breach of a Behaviour Order flagrantly breaches the principle of proportionality in sentencing which requires that the penalty be proportionate to the circumstances of the 'offence'. Section 257F(3) of the Children Act 2001 (as inserted by s.164 of the Criminal Justice Act) makes reference to the child having committed a summary offence which is punishable by a maximum fine of €800 or detention for a period of up to 3 months or both. While this period is significantly lower than the English maximum tariff of 5 years, the use of the severest penalty in the land to punish acts of nuisance which are not necessarily criminal in nature nor indeed constitute any wrong in law is disproportionate by any standard. As noted by the Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, in his recent scathing attack on the wave of 'ASBO-mania', in England, 'boozing in public or hanging around street corners, is no doubt unpleasant. It is not clear, however, whether it ought to be elevated to a two stop criminal offence' (Gil-Robles 2005: 37). As mentioned above, this activity is often carried out by young people who have little

choice but to spend time in public. It is clearly an inappropriate response to the behaviour of such young people that instead of improving the local community's resources, they are 'brought to the portal of the criminal justice system' and exposed to a risk of imprisonment (ibid: 39).

The arbitrary nature of ASBOs in England is well demonstrated by the extreme geographical variations in their deployment against 'anti-social' members of the community. In a critique of ASBOs when they were first introduced, Ashworth et al. (1995: 1502) noted that 'given such wide powers, each affected locality is likely to go its own way – with some places making little use of the new powers and others occasionally resorting to drastic interventions'. Their remarks have proved prescient. A recent survey by NAPO has revealed marked disparities in their use between different police force areas leading them to conclude that the ASBO has been abused in some areas (National Association of Probation Officers 2005). For example, an individual is over five times more likely to be the subject of an ASBO in Manchester than in Merseyside, an area which, as one commentator noted, is 'not renowned for its genteel behaviour' (Mason 2005: 129). This may reflect the different levels of tolerance experienced within different communities, even those whose members belong to broadly similar socio-economic groups, and the inherently variable concepts of 'order/disorder'.

Conclusion

It has been the concern of this paper to illustrate that the legal framework which surrounds the Behaviour Order facilitates the institutionalization of intolerance in Ireland, a process well under way in the UK since the introduction of ASBOs. The civil procedure imposes an order on individuals on the basis of a potentially subjective and variable definition of anti-social behaviour which does not have to be formally proved. This order comes with such open-ended conditions that it may rightly be said that 'never before has such a wide range of conduct come within the remit of a single statutory order' (Ireland 2005: 94). Breach of any one of the conditions attached, however, may result in the imposition of imprisonment. The introduction of Behaviour Orders in the Republic of Ireland is another example of reactionary government policy to deal with the 'problem of youth' and constitutes a blunt tool with which to tackle the issues. The National Crime Council (2003) has identified a number of inadequacies in the current service provision for youth including the lack of accessible and affordable facilities in their communities; the need for more intensive outreach work with 'at risk' youth; the lack of State services outside office hours; the need for drug and alcohol treatment and the need for accommodation provision. In light of these shortcomings, a far more effective approach to the problem of anti-social behaviour is likely to be created through a strategic focus on creating better communities by investing in appropriate services and facilities to meet the needs of young people, provide opportunities for positive engagement with them and reduce the risk of further anti-social behaviour.

Notes

1 Teachtaí Dála, a member of the Irish Parliament.

2 John Kelly TD, speaking during the debates on the Criminal Justice (Community Service) Bill 1983: Second Stage, Dáil Debates, vol. 432, 3 May 1983.

- 3 Pottinger v. City of Miami 810 F. Supp. 1551 (S.D.Fla. 1992).
- 4 The Coalition Against Anti-Social Behaviour Orders was a broad based initiative determined to prevent the introduction of behaviour orders as part of the new Criminal Justice Act. From a small core group – which included the Irish Penal Reform Trust, the Children’s Rights Alliance, the National Youth Council of Ireland, the Irish Society for the Prevention of Cruelty to Children and the Irish Council for Civil Liberties – the Coalition eventually grew to include over 50 NGOs, community/voluntary youth organizations, barristers, solicitors and academics from towns and cities across Ireland.
- 5 The legislation appears somewhat confused in this regard in that the child shall be sent to a conference where a Superintendent deems it to be beneficial in preventing further anti-social behaviour by the child. At the conference the child will be expected to enter into a ‘good behaviour contract’ for not longer than six months. However, where this is not deemed appropriate (or where the child will not enter into a good behaviour contract/breaks the contract), the child may be referred to the Garda Diversion Programme where another conference will be held. This is obviously contradictory in that it is difficult to see how a child who is deemed unsuitable for a conference in one context can be deemed suitable for a similar procedure in a different context, and the obvious inference must be that if a child is deemed unsuitable by a Superintendent for a conference, then s/he will apply to the courts for a Behaviour Order in respect of the child.
- 6 Minister for Justice, Equality and Law Reform, Michael McDowell, Criminal Justice Bill 2004: Committee Stage, Dáil Debates, vol. 81, 30 May 2006.
- 7 [2002] UKHL 39.
- 8 [2002] UKHL 39, para 113.
- 9 House of Commons Written Answers Col 1143W, 4 February 2005.
- 10 Minister for Justice, Equality and Law Reform, Michael McDowell, Criminal Justice Bill 2004: Committee Stage, Dáil Debates, vol. 81, 30 May 2006.
- 11 A statement of claim is a document that shows the defendant the case that is being made against him or her which s/he must answer in court.
- 12 One example of such an order in Britain is a prostitute in Manchester who was prohibited from carrying condoms in the same area that her drug clinic was based (the clinic provided them to her as part of its harm-reduction strategy).

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Legislation

Children Act 2001

Crime and Disorder Act (UK) 1998

Criminal Justice Act (2006)

Domestic Violence Act 1996

Chapter 9

Restorative Justice in the community

A partnership approach

Peter Keeley

As Director of the Restorative Justice Services (RJS), I would like to provide a brief overview of how our organisation came into existence. I'll explain who we are, what we do, and how we do it, interspersed with some commentary and insight on our experiences as relative newcomers onto the criminal justice playing field. I will also touch on how we would like to see Restorative Justice ('RJ') move forward in Ireland.

An overview of the service

RJS (formerly Victim / Offender Mediation Service) is a voluntary organization. It is a registered charity and receives funding from the Probation Service - an agency that has been most supportive of our work. RJS provides a number of pre-sentence Restorative Justice programmes to the courts, mainly Victim/Offender Mediation and Offender Reparation. In addition it is occasionally asked to provide Restorative Justice interventions in community settings such as schools, voluntary organizations, and with individuals. For example we recently designed and delivered a small pilot programme based on 'Respect' for a school in the west of Dublin that was experiencing exceptionally high levels of bullying and violence.

Our Board of Directors includes representatives from the community, victim advocates, the Probation Service and An Garda Síochána. We endeavour to work in close co-operation with the Courts.

As practitioners we are guided in our work by a number of core RJ foundational beliefs:

- crime hurts victims and their families
- crime affects the offender, his/her family and the wider community
- the victim's voice needs to be heard
- the offender accepts responsibility and takes opportunity to repair the harm caused

Our history

The organization *formally* came into being in mid 1999, when the then Minister for Justice, Equality and Law Reform, Mr John O'Donoghue TD, announced funding for the establishment of a Victim/Offender Mediation Service.

Prior to that RJS had essentially been a *sub-committee* of a community mediation group. That sub-committee was led by the community sector and included representatives from each of the agencies mentioned above and had been in discussion for a period of 18 months with the Probation Service and the Department of Justice.

Our initial focus was on a *pre-court model*, which we had witnessed in practice in Edinburgh with one of the SACRO ('Safeguarding communities – reducing offending') satellites services. Personal contacts were also used to research practice in

other jurisdictions i.e. the UK, Canada and mainland Europe. We believed that a *pre-court* RJ model was potentially the most beneficial for the victim, offender, the wider community and the Exchequer.

Although a great deal of encouragement was received from the Department of Justice and the Probation Service throughout the negotiations with regard to our core proposal, identifying which RJ model most suited the Irish criminal justice system took up a great deal of consideration and discussion on all sides. There was a necessity for RJS to be pragmatic in the negotiations and a *pre-sentence* model was eventually agreed on in order to facilitate the funding.

Aside from formally ratifying a Board, registering as a limited company, applying for charitable status, and securing decent premises, two significant pieces of work needed urgently to be addressed:

- We had to go out and sell the service directly to the judiciary (there was no legislation nor were there any directives issued from the Department of Justice, Equality and Law Reform to advise the courts that they should support or utilize our service)
- The recruitment and training of people from the community to do the casework (Community involvement is a central tenet of Restorative Justice and we are of the view that the facilitation of contacts with and/or between victims and offenders provides an important and meaningful role for the community.)

With regard to promoting the work of the service to the Judiciary one could say that it was quite a challenging piece of work, and, indeed, continues to be so. As a new developing voluntary agency the members had to go out and promote the service to judges as a positive development for people affected by crime and one that would be of use to the court.

Prior to receiving our funding there had been discussions with the late Judge Sean Delap, He had been very supportive of our plans and was open to running a pilot in Tallaght District Court. Unfortunately Judge Delap retired before the service went 'live'. His successor, Judge James Paul McDonnell, has proven to be most supportive in terms of referrals and being open to looking at different ways to make RJS more meaningful to the work of the court and more accessible to the court users. We now regard the Tallaght Court as a partner, particularly in terms of the development of our Offender Reparation Programme.

At that time we also met a number of other judges who openly expressed interest in our work. Judge Gillian Hussey in Kilmainham District Court was a supporter of the service when she was on the Bench, as was the late Judge Tom Ballagh in Naas District Court. In 1999 we were kindly invited by the then President of the District Court, Judge Peter Smithwick, to address a statutory meeting of the District Court. The prospect was more than a little daunting; even more so when we arrived and realized that the meeting was held in a Courtroom and myself and my colleague (Anna Rynn, Probation Service) would be addressing the distinguished audience from the dock.

Since the service became available to the courts in mid 2000 Victim/Offender mediation cases have been referred to us from over a dozen different courts including the Metropolitan District, Dun Laoire and Bray District Courts to Naas and Kildare.

There have also been referrals from Dublin District Appeals Court and the Circuit Courts in Kildare and Wicklow. More recently there have been a number of referrals from the south west of the country. However, Tallaght District Court continues to be by far the biggest single referrer and it is the *only* Court where the Offender Reparation Programme is available.

This is a modest enough list of courts; a mere drop in the ocean in terms of the overall numbers of courts and judges. If, however, there was legislation to provide for other restorative models and interventions, I believe the courts would be far more receptive to making the most of Restorative Justice. Having said that, the lack of any specific legislation has allowed the service to be very flexible in terms of how we operate the programmes and amending aspects of their focus when and where required.

In the context of encouraging more referrals we currently rely on relationship-building, our good name, using our contacts and networks to make connections with judges and hope that the judges who use the service and find it of value will initiate debate about its merits amongst their colleagues.

As mentioned previously, there were *two* challenges. The second challenge was to identify and train members of the community to carry out the casework. The Board was well versed in the theory but it was imperative that we brought in outside expertise to deliver the appropriate training. Tenders from the UK were invited and, after reviewing tenders from about a half dozen established services, the training contract was awarded and the recruitment process began.

To date there have been four intakes of RJ facilitators (caseworkers), with four people recruited in each of the first two intakes and six in the third. When fully trained they join a panel and are invited to participate in casework as required. The caseworkers come from all walks of life, backgrounds, interests, professions and age demographic. I would say they demonstrate a shared interest and commitment to RJ values, to fair play and equality, and a commitment to social justice. I would also like to add that their contribution over the time the service has been in existence has been extremely significant in the context of development of programmes, practice, training and standards. Our organization owes a huge debt of gratitude to them all.

The fourth and most recent intake (2005) attracted almost 200 applicants. At the end of that process some further 14 facilitators were trained and will go 'live' in 2006. This increase in RJ facilitators is in anticipation of the further development of the service which has been agreed by the Probation Service and the Department of Justice. This development will consolidate the relationship with other courts and make the service more accessible in other parts of the Dublin area.

RJ practice models

With regard to Victim/Offender Mediation, the cases referred to the service tend to be quite serious ones including assaults, incidents of criminal damage, larceny, racism and road rage. Cases include incidents where people were victims of unprovoked violent attacks in public places or in their homes and/or suffering intrusions into the home. Other examples include family and neighbour disagreements which can result in quite serious violent confrontations, long-running feuds or vandalism of public and private property, people stealing from their employers or colleagues.

With regard to the Offender Reparation Programme, referrals include public order offences, minor criminal damage and low level assaults. In addition, they include instances where people might use extremely inappropriate language with members to An Garda Síochána, fail to move on when requested or commit other breaches of the peace.

We have worked with many people who have over-indulged on alcohol, fallen asleep on buses or in taxis, thrown up or urinated in public places or private property. It is perhaps surprising the number of people who think the inside of a chip shop, or the grounds of the a Garda Station, school or church, is a good place to answer the call of nature or to settle down for the night and have a good sleep. Unfortunately this means they usually wake up in a police cell, it invariably means they end up in court.

Both programmes have common features:

Victims

- are encouraged to talk about their experiences
- come up with realistic and achievable ways for the offender to repair the harm
- may address any questions or concerns they have with the offender directly or indirectly through a third party.

Offenders

- are challenged about their behaviour
- through discussion and agreement make reparation to the victim/community
- are encouraged to consider the options and choices they have to live a life free from offending and give a commitment to that end.

An important distinction between the two programmes is that in the Offender Reparation Programme there is an agreement whereby the court will apply the Probation Act and there will be no criminal conviction recorded for that offence if in the view of the Reparation Panel the offender completes the programme successfully.

Offenders participating in Victim/Offender Mediation get no such guarantee as their offences are graver and their victims are clearly identifiable.

Challenges encountered and options to consider

When discussing RJ it is important to make the point that it is not a panacea: it doesn't always work for everyone, it isn't suitable for every offender and not every victim wants it. The important thing is not whether victims and offenders take up the option of RJ but *that the option is made available*.

It would appear that there is a growing interest within the State institutions towards RJ, but if RJ is going to be taken into our criminal justice system in an appropriate and considered way, significant investment will be required in the areas of training, education and provision of services.

If *pre-sentence* RJ models remain the government's preferred option then perhaps appropriate legislation will be required to encourage greater uptake by the courts.

We believe it would be well worth exploring pre-court services similar to those that operate in Scotland.

There is ongoing debate within the Restorative Justice family and interested observers concerning not just the ownership of RJ but as to who should or should not be involved in RJ practice and delivery of services. There are those who say that RJ is the property of the 'community' and that An Garda Síochána, Probation and the courts should not be involved.

Their argument is that RJ should be a stand-alone alternative to the existing process. A leading proponent in the field of Restorative Justice, Jim Considine, (whose work will provide excellent reference material for anyone entering the field) is a firm believer in this separation of RJ from orthodox state criminal justice. I have debated this issue with Jim and we have differing views on the matter.

I believe RJ is about change. It is about effecting positive change in the criminal justice system for people who have been hurt by crime - victims and their families - providing them with an opportunity to ask and receive an apology and reparation, and to have their voice clearly heard. It is about effecting change in the attitudes and perceptions of offenders towards their behaviour and the effect of their behaviour on their victims. It is about effecting positive changes in the way offenders make choices and decisions. It is about effecting change in society's attitudes and perceptions of offenders. It is also focussed on bringing about a more humane criminal justice system, making the system more accountable and accessible to victims and offenders and giving them more say and a greater role.

And *if* RJ is all about the above, surely it can be more effective and have greater impact by operating inside the established justice system; surely the best place to effect change is from within? I believe operating *inside* the formal justice system provides the best opportunity for RJ to demonstrate its worth where it counts and as RJ practitioners/advocates we must have enough confidence in the merits of RJ to operate in the public domain and be fully accountable.

I believe Restorative justice is also about healing, bridge-building and learning. Surely it would be a contradiction in terms if the RJ movement excluded certain sections and sectors of society. For our part (RJS) we welcome and encourage the participation of the established and relevant statutory and voluntary agencies in the restorative justice process, in the context of an agreed partnership approach.

Ivo Aertsen, founding Chairperson of the European Forum for Restorative Justice had this to say on the subject:

One of the attractive features of the Irish (Tallaght) approach is the partnership model. This inter-sector approach makes Restorative Justice not only a participatory and emancipatory tool for those citizens immediately involved, but also for the professional, voluntary and official sectors. By interacting with each other they can all find in Restorative Justice new and realistic ways to deal with crime. In this way the meaning of what 'justice' is developing on an ongoing basis.

(Aertsen 2002: 28)

However, one should not be naïve about the possible dangers of entering into such relationships. There will be a need for ongoing monitoring of standards and there will be need for vigilant gate-keeping; there can be no dilution of the core principles of RJ. We must ensure that RJ is not swallowed up by the criminal justice system and that the courts fully embrace the spirit and principles of RJ when an intervention is requested and initiated.

On a more practical level, in terms of service provision, resources are a key issue. Our service would not exist if funds had not been obtained from the Probation Service or if we did not have the support of An Garda Síochána, victim advocates and members of the Judiciary.

It is also necessary to make the point that in initiating a RJ intervention one must have the complete confidence and trust of the people who are affected by the crime, in particular the victims. Having the established agencies involved in the process as partners goes a long way to easing whatever misgivings victims, offenders and communities might have about participating in and supporting such interventions.

Conclusion

Finally, we took particular interest in two reports published recently – a report published by the Centre for Social and Educational Research (CSER) on homelessness (Seymour and Costello 2005) and the Fourth Annual Inspector of Prisons Report (2005) – both make reference to the need for more community-based sanctions and the need to seek alternatives to prison for certain categories of offender. We concur with those findings and strongly believe that Restorative Justice can provide part of the response required to meet those recommendations. Indeed, I believe there is a growing acceptance among professionals in the criminal justice system and the wider community at large that as a society we need to come up with new and innovative ways of addressing crime and the effects of crime.

For certain categories of crime less time, energy and financial resources should be spent on responding in the traditional retributive way (for example, imprisoning the offender).

Resources should be concentrated on *first* giving the victim a stronger voice in the process and meeting their needs in so far as possible, and secondly on raising the levels of awareness and understanding of the offender of the effects of their behaviour. How it impacts on the victim, the victims family, the wider community, the offender and his / her own family.

Offenders, like victims, are a part of our community. There are those who may not like to think of offenders as part of the mainstream community but they are. A glance through our files will tell you that they come from the blue-collar and white collar skilled and semi skilled professions, they can be public servants, third level students, unskilled manual workers, homemakers and unemployed people. They come from the tree lined avenues of South Dublin and the large housing estates of West Dublin.

They are members of our community. They are neighbours, friends, work colleagues, brother, sister, parent, partner, spouse.

We need to re-evaluate how we treat members of the community when they breach the criminal law. We need to step away from the first-resort fixation with custody and punishment. We may agree that we need and want to use sanctions but let us put a bit more thought into what kind of sanctions and why. Let us think of what can really benefit our communities and victims, not just what can punish our offenders.

We need to work with offenders in ways that will not only address issues of accountability, responsibility and reparation but in ways that will also facilitate their return to the community as equals, as opposed to stigmatizing and marginalizing them further within their communities.

Given that we are constantly being told what a sophisticated, progressive society we are, perhaps it is time to demonstrate this in the way we treat people who are affected by crime.

Thank you.

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Chapter 10

Children's perceptions of crime and a model for engaging young people

Aoife Griffin

Adolescents are a group who are strong, privileged and resilient but they are also a group who are vulnerable as they are growing into adulthood

(Hollin 1988)

Most young people will tell you that they face many challenges: school, family life, relationships etc. But what distinguishes these young people from those who are deemed to be 'at risk'? Young people categorized in this way face a number of additional hurdles: they may find school challenging, their community may be at risk from drug, alcohol or high unemployment and their family may be facing financial difficulty or poverty. These young people often find themselves subject to educational and social disadvantage.

Risk-taking is a way for people to learn about themselves and it can play an important role in shaping one's identity. However, where young people take dangerous risks or live in a dangerous environment, their health and safety may be seriously threatened (McElwee et al. 2002). During the last 20 years, Ireland has undergone several social changes such as increased migration, changes in family structure as well as considerable economic development. However, the thriving economy masks the fact that many young people are becoming alienated from mainstream society. Many of the challenges now facing teenagers are linked to their physical, sexual and emotional development, dealing with relationships and defining who they are and what they want. Research studies, policies and services show that extra support at home, in school and in the communities can successfully help young people. Where there is no extra support young people may drop out of school, get into trouble with the law or pose a risk to themselves (Brown 2003).

Government agencies have a statutory responsibility to provide services to children and young people. However, non-governmental agencies and charities have a vital role to play as well as they are often more accessible to the young people and may not have the same stigma attached to them as governmental agencies. They may also be more acceptable to parents. Any services which exist for the welfare of children should be shaped by the children themselves so that the service will be successful in meeting their needs. It is vital, therefore, that we consult with young people on issues that affect them. This will ensure that the children feel part of the process and it will empower them to take responsibility for change in their own lives. This paper looks at what the research in Ireland tells us about young people's involvement in crime, children's perceptions of crime as outlined to the Irish Society for the Prevention of Cruelty to Children (ISPCC) staff at a Children's Forum, held in April 2005, and an outline of the ISPCC's 4Me service. This service aims to offer a good model for engaging young people who may be involved in criminal activity or at risk of becoming involved in such activity.

Existing research on young people and crime

Research from ‘The Children’s Court: a children’s rights audit’ (Kilkelly 2005)

This piece of quantitative research examined 944 cases before the Children’s Court over a period of 90 days in 2003. The researchers observed the Children’s Court in session in Cork, Limerick, Waterford and Dublin with the aim of finding out whether young people’s rights are fully protected in the Children’s Court. The research highlighted the multitude of difficulties facing young people in Ireland, particularly those finding themselves before the courts. The vast majority of the defendants were male, with 93 per cent of the cases observed involving boys and only 7 per cent involving girls. In total, 67 per cent of the cases heard involved males aged between 16 and 17 years of age.

According to the research, ‘many young people, although not all, showed clear signs of either disadvantage (including educational disadvantage) or outright poverty; in some cases both factors were evident’ (Kilkelly 2005: 19). Added to these factors is the prevalence of mental health issues, behavioural problems and substance abuse, particularly alcohol and drug addiction. The report states that ‘Drunkenness and alcohol misuse appeared to be common occurrences’ in many of the cases before the Children’s Court (Kilkelly 2005: 23). In conclusion, Kilkelly finds that a significant proportion of children and young people before the courts come from disadvantaged backgrounds and have a negative experience of the education system. In addition they are more at risk of getting involved in crime and of experiencing difficulties including substance abuse and behavioural problems. The research by Kilkelly clearly shows that there are young people slipping through the educational system every day. This leads on to the question of what policies and legislation Ireland currently has in place in order to tackle these issues in a child-centred way. The following section outlines how the ISPCC, taking its cue from the National Children’s Strategy, seeks to identify and work with marginalized young people to help them face the difficulties they are experiencing. Social and educational disadvantage are issues that can be successfully tackled through partnership among the relevant statutory and voluntary bodies.

The ISPCC and the children’s perceptions of crime

Consulting with children

The National Children’s Strategy (2000) believes that every child matters. This strategy sets out three national goals with the aim of providing a clear direction to all those concerned with advancing the status and quality of life of children. These goals are as follows:

- 1 Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity.
- 2 Children’s lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services.
- 3 Children will receive quality supports and services to promote all aspects of their development.

The Children’s Strategy reflects Article 12 of the United Nations Convention on the Rights of the Children (1989), which has been ratified by Ireland in 1992. The Article

upholds the right of children to express an opinion and to have that opinion taken into account in matters affecting them. Education is a key component in helping children form and voice opinions and Article 28 of the Convention endorses the right of every child to an education.

The ISPCC, as a children's rights and child protection advocacy agency, integrates a consultation and participation component into all of its services as part of its overall ethos. The ISPCC has been developing children's consultation mechanisms for a number of years and has organized and facilitated many children's consultation events as will be discussed in more detail later. Consultation is central to one of the three priority areas within the ISPCC's strategy, which is referred to as the 'Citizen Child' (ISPCC 2005d) and which requires that the organization builds on children's participation in its work. This means that the ISPCC will aim to ensure that children participate as full citizens in the ISPCC and in our services. The ISPCC will also seek to follow best practice in striving for the full inclusion of children in Irish society. In April 2005 the ISPCC ran a successful Children's Forum in Limerick City, which examined the area of youth justice and crime. A representative from the Department of Justice was present on the day and took part in the various workshops to listen to what the young people had to say.

Children's perceptions of crime

The aim of the event was to ask children and young people for their views on and experiences of crime and juvenile justice. Fifty-four young people attended from primary and secondary schools across the city. Also present on the day were children from a Garda Diversion Project and the Limerick Youth Service. The children and young people came from a variety of backgrounds, including both those who had and those who had not had experience of crime.

The two themes discussed on the day were 'Attitudes to and Experiences of Crime' and 'Law and Youth Justice'. Delegates were asked a number of questions by skilled ISPCC facilitators on each theme and their answers and opinions were recorded through artwork and drama. The findings and recommendations made by the young people give a very clear picture of where children view themselves in the area of youth justice.

The delegates picked out a number of issues, which they felt to be of particular relevance to the theme of young people and crime. They highlighted the lack of amenities for them in their own community. The lack of parental involvement in their children's lives was also an issue that the delegates felt strongly about. The young people felt that it is important that there be a stronger Garda presence in the community. Some delegates said that they had never seen a Garda around where they live. Finally, drug and alcohol use was felt by the delegates to be one of the main contributory factors influencing young people's involvement in crime (ISPCC 2005c).

Recommendations from the participants following the day's discussion and feedback were as follows:

- 1 Increase, and in some cases install, amenities for young people in their communities.

- 2 Tackle ‘head on’ the issue of drug and alcohol misuse amongst young people in particular communities.
- 3 Increase Garda presence on the streets.
- 4 Establish a listening service for young people.
- 5 Meetings should be set up between the victims and perpetrators of crimes.

Kilkelly’s research on the Children’s Court, the aims identified by the National Children’s Strategy and the views of young people themselves, considered together, lead to the conclusion that there is a need for a service to meet the needs of (at risk) young people in a proactive way. Such a service needs to be inventive in its approach to effectively engage young people. Young people need to own such a service, be consulted and be active participants in the process. It is only by taking this approach that the service will meet the needs of the young person in a way in which they feel empowered to make change for themselves (Dinham 2006). The ISPCC’s 4Me service seeks to fill this gap in service provision.

The ISPCC’s 4Me service

An innovative model of engaging these ‘at risk’ youth

Social isolation, changing family structures and our changing population means that more and more children and young people are in danger of becoming alienated from mainstream society. For the purposes of this paper the expression ‘social isolation’ is used in terms of young people who feel socially isolated because of their behaviour, mental health difficulties, involvement in the criminal justice system or other significant events in their lives such as parental separation. It is vital that these children and young people are offered a service which will empower them to make changes in their own lives and to build their psychological resilience. In 2005 the ISPCC’s 4Me service worked with 131 young people who were at risk of social isolation to achieve this (ISPCC 2005b) The 4Me service aims to achieve this by targeting those children who are particularly vulnerable to becoming isolated from mainstream society because of their anti-social behaviour or mental health issues. The following outlines how the 4Me service can work with young people in order to equip them with a range of life skills

The 4Me Service is funded under the ‘Schoolmate’ programme which is part of the Allied Irish Bank’s Better Ireland programme. The programme was established in 2002 and has been subject to an ongoing evaluation process undertaken by the Children’s Research Centre at Trinity College Dublin. There are seven 4Me locations nationwide, namely, Cork, Limerick, Wexford, Castlebar, Dublin, Drogheda, and Wicklow. The focus of the service is the early identification and prevention of drug and alcohol misuse, which impacts on the young person’s engagement with the education system. The 4Me service offers a number of different services to the young people engaging with the service, and young people who take part are engaged in a variety of individual, mentoring and activity-based programmes including group work.

Individual work is a one-to-one professional therapeutic service, which offers support and counselling to young people. The mechanisms through which this individual work is offered include a face-to-face service, telephone counselling and

web-based counselling. The mentoring programme aims to provide young people with a positive alternative to drugs and alcohol. Each young person or 'Mentee' is matched with a 'Mentor' who provides support and encouragement to the young person in taking up activities within their own communities. This supportive relationship assists the young person in increasing their self-esteem and coping strategies. Finally, the group work programme offers group work on a variety of topics including: personal development, life skills and self-esteem, crime and drug prevention and decision-making skills. Overall, the service aims to ensure that young people who are excluded from mainstream society are given the necessary supports to enable them to overcome their difficulties and participate actively and constructively in the main social structures impacting on their lives.

Referrals for the service are accepted from a variety of sources including from young people themselves but also from parents, social workers, Juvenile Liaison Officers, youth workers and anyone working with or with knowledge of a child who is experiencing difficulty. The permission of the child and of the parent are both required before any piece of work can begin. A case study, included to show how the programme can work, is discussed below.

Case study

A young male, aged 17 years was referred to the ISPCC's 4Me service by his parents for drug misuse (he was taking ecstasy, cannabis and alcohol). He had previously refused to work with a psychiatrist and addiction counsellor, therefore the 4Me worker started by doing 10-minute sessions with him building up the time to an hour a week. In total he completed 35 sessions with the worker. He also took part in the Copping On programme as part of the intervention and went on a visit to the Midlands Prison as part of that programme. He stated that he enjoyed the individual work and learned from it. Though he acknowledged that there was a long road ahead of him he did reduce his intake of drugs significantly and re-engaged with a drug addiction counsellor. His needs were therefore partially met, his social skills improved and he had more confidence in himself. While he did find himself before the courts as a result of breaking conditions imposed on him by the Gardaí, the judge did look favourably on the work that the client had engaged in with the ISPCC and the 4Me worker. This case illustrates the importance of engaging not only the young person but also of working with other professionals. In this case 4Me, Juvenile Liaison Officer, the Gardaí, the judiciary, a Voluntary Agency and a Health Service Executive Addiction Counsellor all working together were able to initiate real change for this young person.

Conclusion

Consultation and participation is a process whereby those who feel marginalized and excluded are able to gain in self-confidence, are able to join with others to participate in actions to change their situation and to tackle the problems they face at present. Adolescents need to be supported through life changes and to be part of the process of change. This will empower young people to make change for themselves, which in the long term is more effective in reducing risk and ensuring that young people stay in school.

The ISPCC feel that the 4Me service will go some of the way (as indicated by the above case study) to offering young people an alternative to engaging in crime and will offer them the necessary skills to survive in an adverse environment. Though in its

infancy, the 4Me service is growing and evolving all the time and offers a unique opportunity for young people who wish to engage with it. The ISPCC realize that no service can stand alone in supporting young people involved in the juvenile justice system and therefore the agency aims to work in conjunction with services such as the Copping On programme, the Probation and Welfare offices and the Juvenile Liaison Officers around the country. It is only by offering young people alternatives to engaging in risk-taking behaviour and working in partnership with other services and agencies that we will effect real change for young people in Ireland.

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Chapter 11

Young people and street crime in an inner city Dublin community

An ethnographic approach

Jonathan Ilan

Introduction

This paper reflects on the use of ethnographic methods in the study of youth crime within an inner city Dublin community. The purpose is to demonstrate the utility of ethnographic methods within the context of a study that forms the basis of the author's Ph.D. thesis. To this end, there will be discussion in brief of the methods used, the area and people studied as well as some of the pertinent issues that present upon initial analysis of the data gathered. The relevance and efficacy of ethnography to the study of young offenders in the Irish context shall become clear.

Young people and crime in Ireland: What do we know?

The issue of young people and crime features regularly in public debate in the media and politics, most recently around the introduction of Anti-Social Behaviour Orders under the Criminal Justice Act 2006. A notable aspect of the manner in which such debates occur within the Irish jurisdiction is the absence of empirical criminological research underpinning them (O'Donnell and O'Sullivan 2001: 81). The lack of this type of research in the jurisdiction has resulted in criminology being described as Ireland's 'absentee discipline' (Rolston and Tomlinson 1982). Furthermore, despite various calls (McCullagh 1996: 144; O'Mahony 2000: 10), there has been little published ethnographic work on the subject of young people and crime in the Republic; as a result, we lack a basis from which to understand the issue of crime from the perspective of those young people who engage in it. Ethnography is dedicated to the pursuit of description of the subjective social and cultural realities of research participants. The research upon which this paper is based focuses on a particular group of young offenders and attempts to gain a sense of their day-to-day existence, their biographies, and their interactions with the agents of the state who intervene in their lives.¹ Common sense indicates that there is a powerful link between social disadvantage and criminality and such a conclusion has been borne out through research (O'Mahony 1993; Bacik et al. 1997). An ethnographic approach to youth crime allows us to unravel and explain this link, through the concrete example of a particular community and a group of young people within it.

Research focus: community

An important step in ethnographic research is the selection of a field site. The area of Northstreet² can be characterized as disadvantaged. A local survey indicates that the residents have a low rate of participation in higher education and a high level of dependence on social welfare. The street, occupied by over 1,000 people, is dominated by rows of high-density flat complexes, owned and managed by Dublin City Council. Laundry hangs from the balconies that are used to access individual flats; life is lived in the gaze of the entire community. The cramped living conditions have led to a vibrant street life with young people in particular spending much of their time outside of the family home and in the street. It is a challenging exercise to gain access to the lives and

crime narratives of any group of people. An extended, legitimate presence in the area was therefore required in order to gain any sense of what transpires in relation to its offending. The researcher undertook one year as a full-time volunteer at The Club, a local community-based youth project. This organization provides support and advocacy to young people involved in, or at risk of, offending behaviour. The philosophy of The Club is to penetrate, as far as practicable, in the lives of its services users; involvement with The Club therefore gave the researcher access to a range of relevant participants including young offenders, the general youth population, the community at large, as well as Gardaí, social, youth and community workers.

Research focus: the crew

The young men who are the focus of the study formed the core of a wider youth group that they sometimes refer to as The Crew. The core membership, ranging in age from 14–19 years consists of six to eight young men who attend The Club and live on the Street or its immediate area. They are joined by others from the Street or further afield on a more sporadic basis. The members of the group appeared to display a lack of interest in formal education or structured youth services and most of them have been classified as having some sort of emotional, learning or behavioural difficulty. They are frequently cited by local residents in complaints to the Council and the Gardaí for anti-social behaviour: alcohol and cannabis consumption in public, urination, high noise levels and vandalism. There are particular parts of the flats that they ‘hang around’ on a frequent basis. Furthermore, a local Garda describes them as engaging in the ‘full-time business’ of petty crime, predominantly the theft of bicycles, mopeds and mobile phones. Theft and the informal economy are central to their lives, as they seek to independently provide themselves with food, clothes, cigarettes and cannabis. The Crew would be classified by their youth and social workers as ‘problematic’ to work with, both individually and as a group. They are suspicious of adult interest and understandably reluctant to speak openly around issues of their own criminal activities or indeed any aspect of their lives. The obstacles that this presented could however be overcome through the use of ethnographic methods.

Ethnographic methods in action

Participant observation and in-depth interviewing are the methods by which much of the data for the study was gathered. In order to successfully complete participant observation it was necessary to become ‘immersed’ within the relevant community. This was achieved through nearly a year and a half based within The Club, on excursions with the young people and staff, days spent on Northstreet, on the streets, in the flats and the community centre, accompanying members of The Crew to court hearings and meetings with various care professionals, as well as attending relevant local meetings. Everything seen and heard was recorded with meticulous detail. This process yielded a vast amount of observational data on the activities of the young people, the social structure of the flat community, and interactions with Gardaí and professional workers. Using this method has some significant advantages, as it allows access to data that may not be otherwise attainable, such as observed behaviour, informal conversation, rumour and gossip. It also fosters closeness with research participants and facilitates interviews based on an established and trusting relationship. The body of observational data served to compliment the interview material and also provided a schema by which otherwise unintelligible tales could be contextualized. On the other hand, this kind of research poses key challenges in terms of time commitment

and identity management, particularly in having to remain acceptable to all parties in the research.

Complex realities emerge

The time spent observing, writing notes, interviewing and transcribing yields an intimate account of the area and groups studied. The process of analysing the pages of text is on-going and thus only a brief consideration is offered here. The researcher is presented with a rich and complex picture of flat life and the position of offending behaviour within it; any explanation that will be offered on foot of it must do justice to the level of nuance that is at play. The remainder of this paper will briefly deal with some of these explanatory factors, to offer a glimpse of type of description that an ethnographic consideration of The Crew in the context of their Northstreet community facilitates.

A culture of offending

The historical origins of the Northstreet flats and their inhabitants offer a crucial insight into the manner in which they perceive of and react to criminal behaviour. In the early 1960s the flats were built to rehouse the residents of the notoriously squalid inner city tenements.³ The residents generally speak of their past as defined by extremes of poverty where the basics of survival had to be secured through struggle. Whilst the residents moved into the relative luxury of the flats, the waning of traditional manufacturing industry and dock work in the locality resulted in increasing unemployment. During these times, the practice of ‘ducking and diving’ – making use of all means, legal, quasi-legal and criminal to make ends meet – became a prevalent and acceptable phenomenon. This cultural orientation understandably persisted throughout the years of poverty. Only the arrival of heroin in the late 1970s would challenge the acceptability of engaging in criminality and this was limited to the narcotics trade. Within the flats in contemporary times, many forms of offending behaviour, although not of a particularly serious nature, persist and appear to have a certain degree of acceptability attached to them: manipulation of social welfare, trade in illicit and stolen goods and a culture of violence (predominantly through the language of threat) where fighting is seen as a legitimate form of dispute resolution, in contrast to calling the Gardaí, which is seen as a last resort. In the Dublin of Celtic Tiger Ireland and the regenerated inner city, the economic situation in Northstreet has altered dramatically. The mantle of respectability has become important to many residents who feel that the area’s criminal reputation in the past has hindered their employment and education opportunities. Now, there are widely divergent views expressed by different members of the community when speaking of the level of crime that exists within it today. This prompts us to consider in greater detail the compositional elements of the Northstreet community.

The composition of community

It is a mistake to assume that the residents of the flat complex are homogenous; Northstreet contains a variety of people living in different familial arrangements, from single person households to entire families. Certain families are well established, living in the flats for three generations and have close ties to other residents through marriage and partnership. This group, the dominant kin structure in the flats, offers a high level of financial, emotional or parental support to those within it. The residents of Northstreet greatly value family and tend to be fiercely loyal to those in their kinship network. On

the other hand, other families are seen as merely 'passing through', transient, as they have few ties to the area or are waiting to be re-housed. There is also the presence of 'problem families' who are often relatively recent arrivals or those with little remaining family in the flats. They are frequently single parent families who have particularly high concentrations of addiction issues, untimely deaths, mental health problems and imprisoned family members. These families are a source of moral indignation for the more established community members and the head of household in these families are seen as lacking in their ability to parent. The council, following frequent complaints, has targeted a number of these families for eviction. Some of these families express a dislike for the area and wish to move closer to their own kin. This is one of the divisions that exist within the Northstreet community.

The heroin divide

During the 1980s Northstreet was a central area for the heroin trade in Dublin and this has left deep impressions on the community that continue to persist in contemporary times. A vigorous grass roots anti-drugs movement was established to organize meetings, marches and evictions of those they accused of drug dealing. Certain individuals within the flats were targeted and there are allegations that some within the movement utilized violent tactics. The leaders of this movement earned the Dublin-style moniker of 'vigos' or vigilantes on account of the manner in which they were said to operate. The 'vigo' group denies the widespread use of unprovoked violence. Those in this group tend to have come from outside of the flats and 'married in' whilst many of the people they accused of being 'pushers' were part of the dominant kin structure of the flats. For their part the 'pushers' deny involvement in drug dealing. This is where contested accounts of criminality in the area begin. The 'vigo' group through constant patrols of the area, effectively ended the open trading of heroin in Northstreet, and through their independent action forced the hand of Dublin City Council who moved in and took a more proactive role in estate management. As a consequence of this, a new group would take control of community leadership positions and work in partnership with the Council. These individuals are part of the dominant kin structure and would have familial ties to those 'pushers'. The 'vigos', now the flats' malcontents maintain that high level drug dealing persists within Northstreet and allege that this is the most significant source of offending. On the other hand, the new leadership group insists that the flats are almost entirely 'drug free' and furthermore state that it was never those resident in Northstreet who were particularly active in the sale of heroin. They consider The Crew to be the premier source of offending, and are resolved to take action against them and the problem families, in the interest of the wider tenant community.

The Crew in context

When we consider these facts about the community structure, it becomes clear that the offending of The Crew takes place within a highly complex socio-cultural environment. The Crew are branded a nuisance by the organs of community leadership, yet there is tacit support for their activities by others in the community who purchase stolen goods from them. Certain community workers would go as far as to say that these young men are 'scapegoated' as there exists far more serious offending within the flats which is not acknowledged by those who currently hold leadership positions. The nature of Crew offending is public and conspicuous and challenges both the newly acquired mantle of respectability as well as the quality of life of residents, in a manner that those who offend behind closed doors do not. Moreover, the members of The Crew tend to emanate from 'problem families' and not the dominant kin structure and as such cannot

rely on familial loyalty to ensure that there is a voice to defend them within the community. The young men in fact have very little connection to Northstreet. It is to them a meeting point, rather than a source of identity. They are alienated from much of the community whom they call 'rats' and derive their sense of identity more from affiliation with each other and their offending behaviour. Their gang offers them the solidarity and sense of security that is lacking in all other aspects of their lives.

Conclusion

In light of the dearth of research into youth crime in Ireland, ethnographic study offers another approach to gaining a better understanding of the phenomenon. Participant observation allows the researcher to cut through some of the problems associated with survey or interview-based methods and facilitates the growth of trust with the participants. In offering a description of the social reality of street crime, and this is one of the method's key strengths, it is important to account for the complexities and nuance of lived life, which involves conflicting accounts, contested meanings and polarized perceptions. This is achieved through the researcher gaining orientation within the social world of the participants and chronicling what can be observed about it. By weighing up interview against observation and the testimony of one participant against another we begin to realize that the issue of youth street crime is inordinately complex, with myriad concerns at play. With this understanding in mind questions can be raised about attempts to put in place a mechanism for tackling the phenomenon in the absence of an appreciation of just how complex it really is.

Notes

1 The research design was heavily influenced by seminal ethnographies of disadvantaged communities and crime, particularly those concerned with youth crime. See, for an example of works conducted in the North of Ireland, Jenkins 1983; Bell 1990; Gillespie et al. 1992. For an account of ethnographic works of crime in the USA and UK see Hobbs 2001.

2 The names of all places and people have been changed in order to protect the identity of informants.

3 See Kearns 1994 for a good account of life at the time.

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Chapter 12

The life and times of young people on remand

Recommendations for future policy in Ireland

Sinéad Freeman

The remand population of children and young people continues to rise in Ireland. Despite this growth, little is known about their experiences on remand. This paper focuses on such experiences from the perspective of the young prisoners. It is based on 62 semi-structured interviews conducted with young males and females aged 16 to 21 years on remand in St Patrick's Institution, Cloverhill Remand Prison and the Dóchas Centre, Mountjoy Prison. The paper highlights how young people who have yet to be found guilty are frequently detained for long periods in prison and are exposed to punitive conditions. The findings have important implications for policy in Ireland particularly in light of the principles of the Children Act, 2001 which state that young people should only be detained in custody for the shortest amount of time possible and as a measure of last resort. The paper seeks to make an important contribution to the criminology field by providing a critical analysis of the provisions that regulate custodial remand for young people in Ireland.

Introduction

Did you ever hear that song 'I'm locked up and they won't let me out',
do you know that song? There's a bit in it yeah, where they say when
you're inside people don't give a damn, they forget about you, do you
know what I mean.

(P9, male, age 17, on remand 2 days)

The concept of custodial remand refers to the phenomenon whereby individuals are denied bail and are held in detention pending criminal legal proceedings (Sarre et al. 2003). International legal instruments and other measures (such as United Nations Standard Minimum Rules for the Treatment of Prisoners 1977 and the United Nations Convention on the Rights of the Child 1990) as well as legal textbooks (see Ryan and Magee 1983; Quinn 1993; O'Malley 2000) consistently highlight how remand prisoners are presumed to be innocent until proven guilty and should not be confined in custody as punishment. However, numerous international research studies (Lader et al. 1998; HM Chief Inspector of Prisons 2000; Goldson 2002) have found that the reality of the custodial remand situation is somewhat different from the theoretical perspective. Despite the extra rights attributed to remand prisoners relative to sentenced prisoners,¹ individuals' experiences of remand have reportedly been particularly negative and restrictive (Penal Affairs Consortium 1996; Lader et al. 1998; Hodgkin 2002). These findings give particular cause for concern in light of the extensive use of custodial remand in many countries (SACRO 2002; Raes and Snacken 2004). Ireland is no exception to this trend and Irish prison statistics demonstrate that the number of individuals who pass through prison on remand is almost as high as those committed to sentenced custody (Irish Prison Service 2004, 2005).²

Despite the high numbers of people in the remand population, there is little research concerning the remand situation in Ireland particularly for young people. Thus a dearth of information exists as to who ends up on remand and what conditions are like

for remand prisoners. Such a lack of information has resulted in little analysis regarding the legislative provisions which regulate custodial remand in Ireland. This paper aims to address this gap by providing a synopsis of the custodial remand situation for young people aged 16 to 21 years, who have been widely recognized to be one of the most vulnerable groups of individuals who enter the prison system (Lader et al. 1998; HM Chief Inspector of Prisons 2000; Social Exclusion Unit 2002).

Methodology

Following ethical clearance from the Irish Prison Service Prisoner Based Research Ethics Committee, semi-structured interviews were conducted with 62 young remand prisoners. Fifty-five (89%) were young males and seven (11%) were young females. These figures broadly reflect the composition of the prison population in Ireland where nine out of every ten prisoners are male (Irish Prison Service 2004). Participants were aged between 16 and 21 years, with a mean age of 18 years. Forty-eight of the interviewees were Irish; nine were Irish Travellers; two were African, two were English and one was Romanian. Sixty per cent (37) of participants had prior experience of custodial remand and half (51.6%) had previously spent time in sentenced custody. One-third (20) reported that it was their first time in prison.

The study was based at three of the main remand sites for young adult prisoners in Ireland. St Patrick's Institution is a detention centre and the main centre of remand for 16 and 17 year olds. It also houses sentenced and remand male prisoners up to the age of 21 years. Cloverhill Remand Prison is a purpose-built prison for males aged 17 and over and is the main remand centre for adult males in Ireland. The Dóchas Centre, Mountjoy Prison is one of only two prisons which caters for females aged 17 and over who are either on remand or sentenced in Ireland. All three institutions are operated by the Irish Prison Service.

Findings

Remand duration

There's a fella gone to court now this morning and he's been on remand for ten months, like ten months is a joke you know, you shouldn't be on remand for that long just hanging around.... It'd be better for the prisoner and the victim to get it out of the way you know, to get it done and dusted as quick as they can.

(P53, male, age 20, on remand 60 days)

At the time of interview, the amount of time the young people had spent remanded in prison custody ranged from two to 360 days. Over 60 per cent had been on remand for less than three months, one fifth from three to six months, and approximately another one fifth between seven and 12 months:

A lot of people who came here have gone for ages like but I'm still here. It's difficult cos I'm here a year.

(P41, male, age 19, on remand 360 days)

Of those who had been provided with a trial date (22), half anticipated that they would be detained for a further seven months or more.³ Such expected durations meant that a minimum of one fifth of the total sample would spend six months on remand while one in ten would be remanded in custody for a year or more.⁴ Despite the fact that these individuals had not been found guilty, such periods of detention are equivalent to or

longer than the average prison sentence in Ireland.⁵ This finding gives particular cause for concern given the fact, as the following section highlights, that many of the young people were not even being detained due to the nature of the alleged offence but rather for other alternative reasons.

Reason for custodial remand

There's a mixture of us here. There's people like with serious charges and anyone that breaks their conditions you know, you end up on remand like I am. To be truthful some other people just can't afford the bail. Some poor soul is here a few weeks because he didn't have 100 euro.
(P42, male, age 21, on remand 135 days)

Just over one quarter of the sample were denied bail due to the serious nature of the charge or because they were seen to be at risk of re-offending. Almost half were remanded for either breaking bail conditions or failing to appear in court. This figure is perhaps unsurprising given the lack of services and support provided to young people remanded on bail in Ireland (Kilkelly 2005). Furthermore, young individuals on remand have previously been identified to be one of the most disadvantaged and disconnected group of prisoners (Lader et al. 1998; HM Chief Inspector of Prisons 2000; Social Exclusion Unit 2002). The young people in this study were no exception and were found to have particularly unstructured lifestyles and an array of difficulties which may have hindered the upholding of bail conditions. These included housing problems (one in four had experienced homelessness), mental health difficulties (one in two had received psychiatric assistance), unemployment (two thirds of those available to work were unemployed) and substance abuse problems (three quarters were regular drug-users):

It was difficult to keep curfew, keeping in at 8 o'clock in the evening. It was too hard staying away from the drink, staying away from the hash.
(P32, male, age 19, on remand 90 days)

Such difficulties were reported to have led directly to the detention of almost one quarter of the sample, two of whom had no fixed address, three could not afford to pay their bail, four who were remanded voluntarily⁶ and six who stated that they had been detained on remand to receive/await drug or alcohol treatment:

I've never got a sentence, I've been here a few times on remand cos of the drugs. I suppose it's a kind of little bit good coming in here for a few weeks like to get myself off but in a way it's is not a place I should be ... it's prison at the end of the day I'd prefer to be at home. I want to be getting treatment outside and see my family.
(P60, female, age 20, on remand 17 days)

These findings suggest that many of the young people who end up on remand in Ireland are particularly vulnerable individuals who have entered prison at an especially unstable and difficult time in their lives. This is of grave concern given the negative experiences the young people were found to encounter on remand.

The remand experience

When I first came I thought ah it was beautiful like you know from the outside but then when I walked in it was like ah what? I didn't like it at all.
(P12, male, age 17, on remand 124 days)

A number of factors which negatively impacted on the young people's remand experiences emerged from the data. These included poor environmental conditions, the nature of the remand regime and the distance the prisoners were held from their families and communities. While conditions were found to be adequate for the females in the Dóchas Centre, the young males detained in Cloverhill Prison identified how they experienced a lack of privacy and personal space as they were required to occupy crowded three-person cells:

It's not nice at all. You've no privacy, it's just, you just want to sit there and just think, you know, and there is other people talking and moving around. If it's warm out three in a cell it's very warm.

(P34, male, age 20, on remand 330 days)

The prisoners in St Patrick's Institution, which is responsible for holding the youngest prisoners (who are under the age of eighteen), also described the physical conditions to be particularly poor:

The place is filthy dirty. They need new everything, the place is falling down. The smell out of the place, the toilets do be blocked, it's just rotten.... If anything can be changed ask them to clean this place up.

(P17, male, age 16, on remand 13 days)

Despite various international measures (e.g. UN Convention on the Rights of the Child 1990; Council of Europe 2006 European Prison Rules) requiring that young remand prisoners be kept separate from adults and sentenced prisoners, individuals under the age of 18 were found to be integrated with adults in all three settings. Similarly, remand and sentenced prisoners were mixed in St Patrick's Institution and the Dóchas Centre. With the exception of their daily visitation and prison shop rights, the young people reported that their rights were no better than those who had been committed to prison under sentence. Indeed, despite not being in prison for punishment, it was found that all remand prisoners were locked in their cells for a similar amount of time as sentenced prisoners, 13 hours for females and 18 hours for males:

You don't have that many rights really like, we're locked in all the time. We're the same as any other person really in here. We're supposed to be like innocent until proven guilty but we're all just treated like criminals.

(P1, male, age 16, on remand 7 days)

The majority of young people reported that the few hours they were able to spend out of their cells were characterized by boredom and enforced idleness as few facilities were provided. This was particularly the case for the young males as no workshops were available in St Patrick's Institution, while the school building remained unopened in Cloverhill prison:

There's nothing, no education, there's no facilities, you're just blocked in with four walls, there's nothing to do. I'm just sitting in looking at four walls.

(P18, male, age 18, on remand 25 days)

Such a lack of activity gives cause for concern especially in light of the research evidence which has found that the presence of constructive activity leads to comparatively higher levels of well-being in the custodial environment (Liebling 2004)

and is one of the most effective coping strategies for young people in prison (Liebling 1992; Cope 2003; Mohino et al. 2004).

The young people's negative experiences of the remand prison settings were exacerbated by the fact that many were detained far from their local areas and family home. While all three of the prisons/places of detention are located in the Dublin area, just over half (56.5%) of the participants in this study were from Dublin, with the remaining 27 (43.5%) individuals hailing from counties as far away as Waterford, Limerick, Cork and Donegal. Being detained such a long distance from home created a number of difficulties for the young prisoners, particularly in relation to family contact. Despite their extra visitation rights⁷ one third of the sample did not receive any visits from their family and the young people identified distance as the greatest barrier regarding visitations. Indeed, three quarters of those who did not receive visits came from areas outside Dublin:

I'm too far away from my home. My girlfriend and mam, they can't make it up here like cos it's too far. I will never see my baby. It drives me off my game altogether, it would drive you off the game wouldn't it if you couldn't see your baby?

(P10, male, age 17, on remand 3 days)

Such a lack of contact is of particular concern given that social support has been found to act as an important coping resource during imprisonment (Cohen and Taylor 1972; Toch 1977) and was identified in this study to be one of the few factors which helped prisoners to feel happy on remand.⁸

Being located far from home was also found to create additional burdens for the young people attending court. The prisoners reported that they were forced to endure long journeys handcuffed in cramped vehicles to and from the courts in their local areas on a regular basis:⁹

Going up and down to court is the hardest thing about remand, it wrecks your head. You're handcuffed all the way down and all the way back up and you get barely nothing to eat. It's easier for people who live in Dublin cos it's only like across the road for them.

(P26, male, age 16, on remand 12 days)

Overall, the young people's accounts clearly demonstrate that although they were not detained in prison as punishment, they were exposed to punitive conditions and experiences during their time on remand.

Discussion

I just hope that more is done to help remand prisoners in the future, in years to come. I wouldn't like it to stay like this, you know.

(P34, male, age 20, on remand 330 days)

The findings indicate that, in reality, the current remand situation is not in keeping with Irish and European legislation and prison guidelines¹⁰ which state that detention should only be used as a measure of last resort and for the minimum amount of time possible.

Thus, in order to comply with legal requirements, it is evident that a number of modifications to the current custodial remand system are required, changes that will be referred to here as 'the need to remove' and 'the need to improve'.

'The need to remove'

Given that only one quarter of respondents were detained due to the nature of the alleged offence or risk of offending, the findings suggest that many young people could be prevented from being exposed to the punitive conditions of custodial remand if alternative community based options were in operation. As Lay states:

locked away in the remand population are remandees who may be potential bailees given an expansion of the strategies for managing defendants and accused persons currently denied bail ... prison is not the last resort if the application of all alternatives has not been tested.

(Lay 1991: 129–132)

The need for alternatives has previously been recognized and recommended by the Council of Europe (2003) and, in Ireland, by Kilkelly (2005) who observed that there was a distinct lack of support to help young people desist from offending while on bail. A number of alternative schemes are already in operation in England, Scotland and Australia, while measures are currently being piloted in Latvia. These include a variety of initiatives such as bail hostels, remand foster care and bail supervision schemes. Bail hostels and remand foster care provide individuals with stable accommodation while they are on bail (Lipscombe 2003). Bail Support and Supervision schemes provide young people with the necessary assistance to ensure that they attend court and abide by their bail conditions. They also offer training and help for those who experience difficulties with drugs, housing, education and family relationships (Scottish Executive 2000; Youth Justice Board 2002). These types of services would be particularly appropriate given the range of problems young remand prisoners have been found to experience in Ireland.

Alternative measures have been identified to yield many advantages over custodial remand, as they enable individuals to receive assistance for their difficulties while remaining within or close to their communities (Scottish Executive 2000). Remand alternatives also have the potential to remove individuals away from the prison environment not only on remand but also sentenced custody, as it has been found that individuals are more likely to receive custodial sentences if they are remanded in custody (Utting and Vennard 2000; Flood-Page and Mackie 1998; Fitzgerald and Marshall 1999). This would not only be beneficial to the individual but it is also likely to ease the problem of prison overcrowding which has been widely reported to exist in Irish prisons (Inspector of Prisons 2005). Research has also revealed that alternatives such as bail supervision schemes are more cost effective than prison remands. For example, according to SACRO (2004) a bail supervision placement costs approximately stg. £1,000 (€1,500), which is only half that of a 24 day custodial remand (stg. £1,962 (€2,943)).

It is evident that remand alternatives possess many social, legal and financial benefits. But do they succeed in helping individuals abide by their bail conditions? Evaluation studies indicate that success rates vary among the different remand alternative schemes. Bail supervision schemes have been found to yield a success rate of approximately 80 per cent (Youth Justice Board 2002; SACRO 2004) which compares favourably with the 70 per cent success rate of all bailees (Brown 1998; SACRO 2004) particularly as those on the alternative schemes are considered to be a much more high risk population. A high breakdown rate in the arrangements for remand foster care and bail hostels has been identified, mainly due to the young people's array of problems and

behavioural difficulties. Despite this, such schemes still hold out much promise as they have been shown to exert a positive impact on offending levels (Lipscombe 2003; SACRO 2004).

In addition to the above alternatives, more young people may be removed from the prison setting through the establishment of bail information schemes. Such programmes which are currently provided in England and Scotland help to ensure that the necessary information regarding individuals' backgrounds and needs is provided to the courts. This enables more balanced and informed bail decisions to be made at an early stage of the criminal justice process and ultimately prevents individuals who may go on to receive bail at a later date from entering the prison system in the first place (Raes and Snacken 2004; SACRO 2004). Research studies indicate that the existence of such schemes results in approximately one quarter of individuals who would usually be remanded in custody being successfully granted bail (Stone 1988; Lloyd 1992).

While the alternatives to remand may cater for a large majority of young people, it is important to acknowledge that not all individuals may be suitable for such schemes and may still need to be detained in a secure setting. Thus, it is vital that improvements are made to the remand setting.

'The need to improve'

Given the findings, it is evident that many improvements are required to bring the remand settings in Ireland into line with Irish and European guidelines. Such improvements include the provision of cleaner and more modern facilities and a less restrictive regime where activities and rehabilitative services are provided. More initiatives also need to be introduced to assist young prisoners to be able to maintain contact with their families. Additionally, in order to improve young people's remand experiences and ensure that detention is for the shortest amount of time possible, it is essential that a maximum limit of detention for remand is introduced in Ireland. The Council of Europe (2003) recommends that young people should be remanded for no longer than six months before the commencement of their trial. Such practices already exist in countries such as Scotland and England (Raes and Snacken 2004; SACRO 2004).

Conclusion

To conclude, current remand provisions in Ireland fail to adhere to legislative guidelines and ultimately fail to provide for the needs of young people on remand. Several policy changes are required to bring Ireland up to date with its European neighbours. Nonetheless, as Raes and Snacken (2004: 514) state 'determining the future of remand custody and its alternatives is not an easy task'. Thus, it is imperative that detailed research is conducted in the coming years to establish the most effective alternatives for the Irish context. Measures must also be identified to ensure that such schemes are used for their defined purpose as an alternative to custodial remand rather than an extra sanction for those who are usually granted bail. The identification and implementation of such changes will hopefully bring about a more effective and just remand system in Ireland in the near future. A system which will enable remand prisoners' rights and entitlement to be presumed innocent until proven guilty not just to prevail in theory but in everyday practice within the Irish criminal justice domain.

Acknowledgements

I would like to thank all of the young people who participated in this research and the governors and prison officers for their assistance with the study. I would also like to express my gratitude to Dr Mairéad Seymour for her comments on an earlier draft of this paper.

Notes

1 For example in Ireland remand prisoners have the right to receive extra visits, make a greater number of telephone calls and obtain private health care at their expense if they so wish (Prison Rules 2005).

2 In 2004, there were 4,647 remand committals compared to 5,064 sentenced committals (Irish Prison Service 2004). In 2005 there were 4,522 remand committals compared to 5,088 sentenced committals (Irish Prison Service 2005).

3 It is important to note that a prisoner's anticipated duration in custody may in fact be extended further as trial dates can be subject to potential postponements due to a number of factors, including the availability of judges and courtrooms.

4 These figures may be higher as the expected total durations could only be calculated for the 22 participants who had been provided with a trial or sentencing date at the time of interview.

5 According to the most recent statistics (Irish Prison Service 2005) three fifths of all individuals committed to prison were detained for six months or less while four fifths were imprisoned for a year or less.

6 Two young males chose to be remanded to give them time to think and sort out their lives. Another two males were remanded voluntarily as an attempt to deter themselves from committing further crimes.

7 All remand prisoners are entitled to one 15 minute visit six days a week. Sentenced prisoners under the age of 18 are entitled to receive two 30 minute visits per week while those over the age of 18 can receive one 30 minute visit each week (Prison Rules 2005).

8 Visits were identified to be the main factor which made the prisoners feel happy on remand. The other factors identified included having friends in prison and participation in work.

9 Under the Criminal Procedure Act 1967, individuals on remand are required to attend court every eight days. This can be extended to a maximum of 30 days if both the accused and prosecution agree.

10 These include the Children Act 2001; The UN Convention on the Rights of the Child 1990 and The UN Standard Minimum Rules for the Treatment of Prisoners 1977.

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Chapter 13

Restorative Justice, diversion and social control

Potential problems

Diarmuid Griffin

Introduction

This paper will highlight some potential dangers of pursuing the use of Restorative Justice (RJ) for juvenile offenders in Ireland. It will look at penal reforms of the past. In particular, it will look at the work of Stanley Cohen and his examination of the development of 'community corrections'. Social control theorists, like Cohen, often view changes in penal structures differently to reformists and examine the underlying impact of expanding the social control apparatus beyond the prison system. In this paper I intend to use the template used by Stanley Cohen in the 1970s to analyse the development of Restorative Justice in the juvenile justice system. The dangers highlighted by Cohen will then be applied to restorative practices in order to provide a framework for the critique of this approach. While it is acknowledged that the development of such programmes is essential in developing an appropriate response to juvenile offending it is also important to critically discuss these projects to highlight the problems and potential dangers emerging out of their adoption. The focus of the paper will remain primarily on restorative programmes although many of the criticisms discussed can also be levied at diversionary programmes.

Restorative Justice, diversion and the Irish juvenile justice system

Marshall's generally accepted definition describes RJ as a 'process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications' (1999: 1). The focus is on repairing the harm done to individuals in the criminal process and restoring 'whatever dimensions ... [that] matter to the victims, offenders and the community, i.e. those affected by the crime' (Braithwaite 1997: 5). In practice, the process generally involves the bringing together of the victim, offender and if possible, individuals from the community, to negotiate a settlement aimed at dealing effectively with the offending behaviour. The provision of reparation by the offender to the victim of the crime is seen as crucial in addressing the offender's behaviour and addressing the needs of the victim. RJ is a relatively new concept in the context of Irish criminal justice. To date, restorative initiatives have mainly been limited to the juvenile justice system and have yet to be expanded beyond the programmes implemented to divert young offenders from the formal criminal process.¹ The restorative models that have been implemented in the juvenile justice system have been incorporated into an already existing programme that attempts to divert young offenders away from criminal activity.

The current restorative model was developed from a programme established by the Garda Síochána. The Juvenile Liaison Scheme was first initiated by the Garda Síochána on a limited basis in 1963 and was put on a national footing in the 1980s. A Juvenile Liaison Officer (JLO) is responsible for the 'informal monitoring of and contact with young people at risk' through supporting youth work and engaging in preventative activities (Dáil Éireann 1992: 40). The aim is to prevent children from

becoming involved with the criminal justice system. JLOs may administer a formal or informal caution to an individual under the age of 18 who has become involved in crime where the individual admits the offence, where the young person has not been cautioned before, and where the parents agree to co-operate.² This replaced the need, to some extent, for the juvenile to be processed formally through the criminal system, thereby limiting the harmful effects often associated with the court system.

The Children Act 2001 placed the Juvenile Liaison Scheme on a statutory basis, renaming it the Garda Diversion Programme. The programme incorporates a RJ approach to crime control. Specifically, Part 4 of the Act established two forms of RJ initiatives, namely restorative formal cautions and family group conferences (FGCs). Both initiatives involve the bringing together of those connected with the offending behaviour, in particular the victim and offender, to negotiate an outcome. Mediation between the offender and the victim during the process is desirable as is the provision of reparation by the offender to the victim. Under Part 8 of the Act, the Children Court may direct the Probation and Welfare Service to convene a family conference where the court believes it to be desirable.³ These are, in brief, the restorative programmes that operate in the Irish juvenile justice system.

Stanley Cohen's vision of social control and the development of 'community corrections'

Stanley Cohen examined the implications of the new ideology of 'community treatment' or 'community control' for crime and delinquency that emerged as an alternative to imprisonment and other forms of rehabilitation in the 1970s. He focused on the development of the 'community corrections' that were part of the penal welfare movement and the apparent changes that were occurring in the formal social control apparatus. Cohen drew parallels with the reform movement that resulted in entrenching the prison as central to the crime control system with the reform movement that instigated the development of 'community corrections'.

Foucault argued in *Discipline and Punish* (1991) that underlying the humanitarian reform from the public execution to the prison, the prison represented an investment in a more efficient and effective 'economy of power', that is, the control of those not only within the walls of the prison but the community outside as well.⁴ Foucault notes that 'so successful has the prison been that, after a century and a half of 'failures' the prison still exists producing the same results, and there is the greatest reluctance to dispense with it' (1991: 277). Foucault argues that if the rationale for imprisonment is correctionalism then it is a failure as it produces the conditions for recidivism. 'For the prison, in its reality and visible effects, was denounced at once as the great failure of penal justice' (1991: 264).⁵ Instead, he argues, '[m]ass imprisonment offered a new strategic possibility – isolating a criminal class from the working class, incarcerating the one so that it would not corrupt the industriousness of the other' (Ignatieff 1981: 90) Thus, Foucault identified the shift from the public execution to the prison as a movement aimed at a more efficient method of controlling populations both inside and outside the prison rather than a more humane method of punishment.

Further, he argues that the disciplinary regime evident in the prison was replicated within other socializing institutions such as the school, the mental asylum, the factory and the hospital. The punitive discipline that is characteristic of the prison system is dispersed out beyond the walls of the prison and is an integral component of 'non-custodial' punishments:

Foucault dissolves the difference between imprisonment and freedom, between punitive and non-punitive institutions and relationships, and shows us a mesh of disciplinary relationships, such that the citizens of modern industrial society are inhabitants of the punitive city, within the carceral archipelago.

(Barbara 1996: 126)⁶

Cohen notes that similar to the prison, 'community corrections' are not evaluated in terms of success: 'Social control is an enterprise, which largely justifies itself. "Success" is not the object of the exercise' (Cohen 1979a: 609). The secret success of the prison was to insert the disciplinary power more subtly within the framework of society. Cohen identifies the 'community corrections' reformation with the prison reformation and argues that it may be evidence of the dispersal of discipline beyond the walls of the prison into the community, thus creating new networks of social control and widening the ambit of the social control apparatus. 'Community corrections' can be interpreted as the expansion of the network of control beyond the confines of the prison system and embedding the apparatus of social control more subtly and deeply into society. In light of Foucault's interpretation of penal reform, Cohen examines the 'community corrections' movement with scepticism. He notes that the justification for the implementation of these reforms is based on two sets of 'pragmatic' assumptions:

Set 1

(a) prisons and juvenile institutions are ... simply ineffective: they neither successfully deter nor rehabilitate,... (they actually make things worse by strengthening criminal commitment)

(b) community alternatives are much less costly and

(c) they are more humane than any institution can be: prisons are cruel, brutalising and beyond reform. Their time has come.

Therefore: community alternatives 'must obviously be better'.

(Cohen 1979a: 609)

Set 2

(a) theories of stigma and labelling have demonstrated that the further the deviant is processed into the system, the harder it is to return him to normal life – 'therefore' measures designed to minimise penetration into the formal system and keep the deviant in the community as long as possible is desirable;

(b) the causes of most forms of deviance are in society (family, community, school, economic system) – 'therefore' prevention and cure must lie in the community and not in artificially created agencies constructed on a model of individual intervention;

(c) liberal measures such as reformatories, the juvenile court and the whole rehabilitative model are politically suspect, whatever the benevolent motives behind them. The state should be committed to doing less harm rather than more good – 'therefore' policies such as decriminalisation, diversion and de-carceration should be supported.

(Cohen 1979a: 609)

Primarily, Cohen argues that the policies of diversion, decriminalization and decarceration should be subjected to the same suspicion regardless of the appearance of benevolence. It is important to identify the potential of 'community corrections' to

expand the network of social control and not merely interpret these programmes as a mechanism of benevolent reform. It is instructive to analyse the development of restorative diversion programmes in Ireland utilizing the framework Cohen established to critique 'community corrections.' In this paper, the metaphors of 'widening the net', 'thinning the mesh', 'blurring the boundaries' and 'masking and disguising' will be used to highlight the potential dangers that may arise from implementing RJ diversionary programmes.

'Widening the net' and 'thinning the mesh'

A fundamental concept of the development of community sanctions, alternatives to imprisonment, and diversion is that the state should focus on doing less harm rather than more good. Cohen notes that '[i]t is ironical, then, that the major results of the new network of social control have been to increase, rather than decrease, the amount of offenders who get into the system in the first place' (Cohen 1979a: 610). He argues that 'something like "diversion" becomes not movement out of the system but movement into a programme in another part of the system' (Cohen 1979a: 610).

The problem regarding alternative sanctions is twofold: the net is widened through subjecting a wider population to control and the mesh is thinned through diverting individuals into the system rather than screening those individuals out. "[A]lternatives" become not alternatives at all but new programmes [sic] which supplement the existing system or else expand it by attracting new populations' (Cohen 1979b: 347). This is especially so if alternative programmes are used for shallow-end offenders (those individuals who would not ordinarily be sent through the formal process) instead of deep-end offenders (those who would ordinarily be sent through the formal process and would benefit from intervention). Commenting on the impact of psychiatry on the criminal justice system in the early twentieth century, Rothman states that 'rationales and practices that initially promised to be less onerous nevertheless served to encourage the extension of state authority. The impact of the ideology was to expand intervention, not to restrict it' (Rothman 1979: 347). Proof of the effectiveness of alternatives should be reflected in a decrease in the use of traditional criminal sanctions and institutions. However, Cohen notes the evidence suggests that 'in general, as the number of community based facilities increases, the total number of youths incarcerated increases' (1979b: 348).

Focusing on the area of juvenile justice, Cohen acknowledges that diversion has been an integral part of the juvenile justice system. However, the development of diversion, and what it currently reflects, is divergent from the original intention. Cohen notes the irony that diversion from the juvenile court has been developed when the juvenile court was itself the result of a reform movement primarily aimed at diversion. Police discretion was introduced on an informal basis to protect the juvenile from the 'damaging' effects of the criminal justice system. However, these discretionary practices of the police became increasingly formalized. Therefore, three methods of diversion are in place for the juvenile offender: the juvenile court diverts from the adult court, formal diversion programmes run by the police divert from the juvenile court, and the informal diversion programmes divert from formal diversion programmes.

Whereas the police used to have two options – screen right out ... or process formally – they now have the third option of diversion into a programme. Diversion can then be used as an alternative to screening (doing nothing) and not an alternative to processing.

(Cohen 1979a: 611)

While traditional diversion removed the juvenile entirely from the criminal process, new diversion diverts from the traditional system into a different system. Therefore, there is more intervention for a wider population of juveniles:

[T]he new movement – in this case of crime and delinquency at least – has led to a more voracious processing of deviant populations, albeit in new settings and by professionals with different names. The machine might in some respects be getting softer, but it is not getting smaller.
(Cohen 1979b: 350)

Applying Cohen's 'widening the net' and 'thinning the mesh' critique to RJ and diversion in Ireland, similarities can be drawn with the operation of diversion. The Children Court was initially adopted as a welfare-focused alternative to the 'damaging' adult criminal system.⁷ An informal diversion programme was established by the Gardaí under the Juvenile Liaison Scheme in 1963. This Scheme was then put on a formal statutory basis under the Children Act 2001, which also incorporated formal restorative cautions and FGCs.⁸ Thus, juvenile offenders may be dealt with on an informal and formal basis by the Gardaí, and also by the formal Children Court.

The classification of offence and offender, for which RJ is invoked as a mechanism in the justice process, is pivotal to restraining the potential for the process to draw in new populations of juveniles that were previously screened out of the criminal process. Due to a lack of empirical data, it cannot be validly asserted that cautions and restorative programmes are used for shallow-end offenders. However, as Diversionary Programmes are governed entirely by the Gardaí and the Probation and Welfare Service⁹ and there is no specific policy of using the process for deep-end offenders, there is significant potential for 'widening the net.' Thus, it is entirely probable that formalizing diversion and developing a new restorative approach will not in fact divert individuals who are to be formally processed in the Children Court. Those individuals destined for the Children Court will remain on course. Instead, restorative initiatives may simply result in the expansion of the system by involving individuals who would previously have been screened out to become involved in the criminal justice system through incorporating first-time offenders, those who commit minor offences or those in respect of whom there is a lack of evidence to pursue formal punishment. As Cayley notes, RJ may simply be 'used only to clean up the easy cases at the margins of the system [while] having little effect on the treatment of the main body of cases' (1998: 359). The danger of such an expansion for juvenile offenders serves as a particularly relevant warning of restraint regarding the discretion evident in RJ programmes and the need to use RJ as a real alternative for real offenders.

'Blurring the boundaries'

'Blurring refers to the increasing invisibility of the boundaries of the social control apparatus' (Cohen 1979a: 610). Previously, the prison or institution was removed from mainstream society and what occurred inside the walls of the prison could not be viewed by outsiders. There were clear lines between the prison and society, the imprisoned and the free, the guilty and the innocent. With the emergence of the community sanction and alternatives to imprisonment this clear distinction has been blurred. Cohen notes that the blurring of boundaries occurring in the crime control apparatus is not merely a loose end. In fact, '[t]he ideology of the new movement quite deliberately and explicitly demands that boundaries should not be made too clear' (Cohen 1979a: 610).¹⁰ He notes that 'alternatives' and 'diversion' blur boundaries by not

only increasing the pervasiveness and invisibility of social control but also through de-emphasizing the concept of delinquency: 'The ideology of community treatment allows for a facile evasion of the delinquent/non-delinquent distinction' (Cohen 1979b: 346). It also evades the public/private, criminal/civil distinction. This renders it difficult to determine who is and is not involved in the system and what conduct is serious enough to warrant intervention. Furthermore, the control of deviant behaviour is no longer the remit of a separate isolated system but involves the community, including family, school and neighbourhood in the discipline and normalization of an individual.

Cohen's concept of the blurred boundaries of 'community corrections' is particularly appropriate in an examination of the restorative process. In Ireland, the Children Court combines a welfare and justice focused alternative to the adult criminal justice system. Diversion from this system was developed under the Juvenile Liaison Scheme from 1963 onwards. Currently, there are three methods of diversion; an informal caution, a formal caution and a FGC. Conferencing can be organized on three occasions in the juvenile criminal process by three different state agencies. The Children Court may refer a child to a Health Service Executive governed conference at any stage of the process where the welfare of the child requires.¹¹ A juvenile may be recommended for entry to a FGC under the scheme run by An Garda Síochána.¹² The Children Court may refer a juvenile to a family conference governed by the Probation and Welfare Service.¹³ Aside from the financial issue of the duplication of a service by three different agencies providing similar functions, it is clear that the proliferation of agencies dealing with offenders through conferences results in a significant extension of the criminal justice mechanism. This blurs the lines between the criminal justice and welfare system and the delinquent/non-delinquent distinction. In particular, a Health Service Executive convened conference does not deal with criminal justice issues and is strictly welfare focused yet it is nonetheless attached to the criminal process. While the juvenile justice system combines a welfare/justice approach and thus encourages blurred lines, the hazy distinctions between welfare focused and justice focused diversion programmes raises concern.

The guilt/innocence distinction is also blurred as the restorative process skews the importance of procedural safeguards in an attempt to secure 'flexibility' and facilitate mediation and negotiation. The lack of legal safeguards prior to and post admission to the programme raises a concern as to the lack of visibility and accountability of such processes:

Instead of adjudication focused on prior conduct there is an assessment of whether the accused can benefit from the services offered by the program, a decision which often entails intentional avoidance of due process and the whole issue of guilt and innocence.

(Scully 1997)

Further, the agency-led, victim-oriented nature of the programmes undoubtedly affects the impartiality of the operation. There is also a significant danger that this deliberate blurring of boundaries may diminish the importance of imposing a proportionate response in respect of both the offence and offender.¹⁴

Also of note is the public/private divide associated with issues of crime control and the blurring of this distinction in the restorative process. In essence, the traditional view of the criminal justice system is that crime control is the responsibility of the state. However, in accordance with the general trend of making the public responsible for certain aspects of crime control,¹⁵ RJ involves family, school and community in the

discipline and surveillance of the juvenile. Concurrently, the juvenile is subject to the surveillance of the Juvenile Liaison Scheme. RJ therefore blurs the boundary between state and community intervention and their respective roles in crime control resulting in the enhancing of the surveillance of the juvenile within the community. Cohen notes that '[t]he uncertainties and blurrings ... perhaps beckon to a future where it will be impossible to determine who is enmeshed [sic] in the social control machine' (1979a: 610).

'Masking' and 'disguising'

Cohen notes '[t]he softness of the machine might ... be more apparent than real' (1979b: 350). The new strategies of diversion and correction are based on a social work framework rather than a legalistic rational. Terminology such as 'community' and in this specific case 'restoration', sound benign and attractive while still hiding the true nature of the 'alternative.' 'Alternatives' are only such if they are real and substantive. While most offenders might agree that a community-based alternative is preferable to a custodial sentence, this is only the case if a custodial sentence would be the outcome of formal processing having refused to enter an 'alternative' programme. Further, the assumption that these programmes are more humane and less stigmatizing than a formal criminal sanction should not be assumed:

In a system with low visibility and low accountability, there is less room for such niceties as due process and legal rights. '[N]ew diversion' ... occurs by deliberately avoiding due process: the client proceeds through the system on the assumption or admission of guilt. Indeed the deliberate conceptual blurring between 'diversion' and 'prevention' explicitly calls for an increase in this sort of non-legal discretion.

(Cohen 1979b: 351)

The issues regarding RJ's lack of compliance with fundamental due process procedures is beyond the scope of this paper. However, it is clear that the focus on the welfare of the child is used as a justification for relegating the importance of legal safeguards that are integral to the formal criminal process. The important question is whether the offender experiences the 'diversion' as being actually more humane and less stigmatizing than the traditional criminal process? This will only be the case if those offenders that are destined for the court system are diverted into the restorative system. If it is used for low-end offenders that would not be involved in the process if diversion programmes were not in place, then the term 'mask of benevolence' is appropriately applied.

The danger of disguising RJ and diversion in a mask of informality and non-legal discretion, while at the same time attaching itself to the formal system is highlighted by S.48 of the Children Act 2001 as amended by S.126 of the Criminal Justice Act 2006. This provision allows the prosecution to inform the court at sentencing in respect of an offence committed by a child, after the child's admission to the Programme of '(a) any acceptance by the child of responsibility for criminal behaviour in respect of which the child has been admitted to the Programme, (b) that behaviour, [and] (c) the child's involvement in the Programme' (Criminal Justice Act 1994: S.31). The potential for the behaviour of the juvenile in the programme to be subsequently admitted at sentencing stage undermines the ideology behind RJ proponents' arguments for informality and the removal of legal safeguards. In effect, it signifies that while RJ may be an alternative to the Children Court it still operates under the umbrella of the criminal process and is subject to its procedures. It communicates a

clear message to juvenile offenders participating in the restorative process: if your behaviour does not conform to the standard expected within the process, it may be used against you if you re-offend. Although RJ and diversion may operate within a social or welfare based framework rather than a legalistic one, it should not be assumed these programmes are necessarily benevolent in practice. The restorative process will not be a reflection of willing participants attempting conciliation and negotiation. The threat of harsher sanctions in a subsequent legal process undoubtedly undermines the voluntariness of the process for the accused and further limits his/her bargaining power within that process.

Conclusion

Returning to the two sets of assumptions that Cohen identified with the benevolent reforms of 'community corrections' and applying them to RJ, we should be wary of over-relying on benign sound bites such as 'mediation', 'negotiation', and 'restoration'. Prisons and juvenile institutions are ineffective; they do not successfully rehabilitate or deter. However, community alternatives like RJ are not necessarily less costly¹⁶ and their humanity is dependant on whether the individual involved experiences the process as more humane. This should not be assumed.

Theories of stigma and labelling have demonstrated that the further the individual is processed into the criminal system the more difficult it is for such an individual to return to a normal life. Despite restorative proponents' arguments to the contrary, RJ may in fact contribute to this labelling process by bringing in new populations that would not ordinarily come into contact with a criminal process. Thus, RJ should be examined as to its own potential to stigmatize and label. While, it is accepted that the causes of crime may lie in the community and 'therefore' prevention may also lie in the community, RJ is not necessarily the most appropriate way of addressing these concerns. It is questionable what real changes RJ can actually deploy to 'cure' crime and rectify the social problems of those who come into contact with the criminal process. And while the state should be committed to doing less harm rather than more good why should it be assumed that RJ represents less harm and more good rather than more harm and less good.

Cohen's vision of social control is an appropriate warning of the dangers of developing benevolent alternatives to the criminal justice system. RJ reflects a flexible and fluid process distinct from the formal system yet it is a criminal process in itself. There is a strong potential for this process to widen the intervention of the state under the mask of benevolence. As Cohen notes '[t]he humanitarian rationale for the move from imprisonment may be unfounded' (1979b: 360). It may result in a more extensive form of intervention for criminals and delinquents. The benevolence of RJ should not be assumed merely on the basis of its welfarist and communitarian appeal and benign terms such as mediation, negotiation and empowerment.

It is not the case that alternatives to the formal criminal process such as RJ are doomed from inception. Even Cohen accepts that there are genuine community alternatives that are effective in diverting individuals from the criminal process and are more humane and less intrusive. He notes that 'all these terrible sounding 'agents of social control' instead of being disguised paratroopers of the state, might be able to deploy vastly improved opportunities and resources to offer help and service to groups which desperately need them' (Cohen 1979b: 360). As O'Malley states '[s]ocial control can be viewed in a more positive light than some social theorists would admit' (2000:

5). The objectives of RJ, such as restoration and reintegration, are worthy and valid goals to aspire to and many of the concerns raised in this paper may be deemed minor or insignificant in light of the benefits of pursuing the restorative ideal. However, despite the undoubted benefits of RJ, it is also important to highlight the potential difficulties that may arise through the pursuit of restorative goals.

Notes

1 Other restorative schemes have been initiated on an ad hoc basis but have not been extensively utilized. The Department of Justice, Equality and Law Reform funds two Restorative Justice projects through the Probation and Welfare Service: (1) the victim–offender service in Tallaght and (2) the Nenagh reparation project.

2 Children Act 2001, s.23(1) (a), (b) and (c).

3 See also Parts 2 and 3 of the Children Act 2001, where a Health Board-governed conference may be convened if the Children Court deems it appropriate. This conference is not specifically restorative.

4 Foucault argues that the prison existed for two reasons: (1) prison is ‘deeply rooted’, i.e. embedded in the wider disciplinary practices which he deems to be characteristic of modern society; (2) it carries out certain precise functions namely, the creation of the delinquent, which he argues, is useful in a strategy of political domination because it works to separate crime from politics, to divide the working classes against themselves, to enhance the fear of the prison, and to guarantee the authority and powers of the police.

5 He further states that

[d]etention causes recidivism: those leaving prison have more chance than before of going back to it.... The prison cannot fail but to produce delinquents. It does so by the very type of existence that it imposes on its inmates.... The prison makes possible, even encourages, the organisation [sic] of a milieu of delinquents, loyal to one another, hierarchized, ready to aid and abet any future criminal act.

(Foucault 1991: 265–267)

6

In his work *Madness and Civilisation*, Foucault argued that seemingly more humane mental institutions had replaced the apparently more coercive prisons in modern societies as the central instrument of state control. This movement was packaged and sold by the state as a more humane, enlightened, reasonable response to deviance, but Foucault argued it was actually a way to expand the scope of state control.... [T]he state attempts to maintain its legitimacy by packaging its control efforts so that they appear to be reasonable, humane and necessary. But always hidden within this ‘velvet glove’ is an iron fist whose ultimate goal is to control troublesome populations.

(Vold et al. 2002: 223–224)

7 The Children Act, 1908 provided for the setting up of a special court for offenders aged between seven to seventeen.

8 Family Group Conferences.

9 Part 8 of the Children Act, 2001 governing the Probation and Welfare
Service led conferencing has recently been implemented.

10

New diversion agencies become attached to the court, without supposedly being part of the legal system. Very open prisons become indistinguishable from secure 'community correctional centres'. Intermediate treatment is supposed to be somewhere between sending a child away from home and leaving him in his normal home environment.

(Cohen 1979a: 610)

11 Part 2 of the Children Act 2001 allows for the Children Court to adjourn proceedings and direct the Health Board to convene a Family Welfare Conference where appropriate so as to make a care or supervision order under the Child Care Act 1991 (see Kilkelly 2004).

12 Children Act 2001, Part 4.

13 Children Act 2001, Part 8.

14 For a discussion on these issues see Griffin 2005.

15 The privatization of crime control through companies dealing in security and surveillance, the development of obligations in the community to respond to criminal activity (Company Law Enforcement Act 2001; Criminal Justice Act 1994) and the general responsabilization of the public through the development of programmes such as Neighbourhood Watch, etc. See Garland 2001: 124–127.

16 The financial tag of a FGC should be compared only with a police cautioning for a similar offence and not with official prosecution unless prosecution would be the result if the individual was not involved in the diversion process.

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Chapter 14

Researching youth victims and offenders

Methodological difficulties and preliminary findings

Kalis Pope

Introduction

The provision of statistics to support claims that youths are experiencing high levels of victimization in inner-city Dublin is the first step in raising awareness of the problem. Without these statistics, the focus of youth crime research will remain focused on establishing rates of offending, and victimization rates will most likely continue to be underestimated. A further problem lies in the emphasis on determining offending rates, which often results in the link between offending and victimization being overlooked. Research has shown that young offenders and victims are often the same people (Thornberry and Figlio 1974; Smith 2004). This is why it is imperative that both sides of the youth crime dichotomy are considered essential elements of research.

The purpose of this paper is to explore some of the links between youth victimization and offending in the context of the author's doctoral research. Preliminary findings from the first phase of the research will be provided, in conjunction with methodological difficulties surrounding the research. This paper is based on experiences encountered during the first phase of the Young People's Experiences of Crime Research Project, which investigated the experiences of victimization amongst 15–17 year olds in inner-city Dublin.

Rationale for the research

A victimization survey focusing on youth has yet to occur in Ireland. The first questions regarding crime and victimization in Ireland were published in 1999, as part of the September to November 1998 Quarterly National Household Survey. These questions revealed that approximately one out of every hundred persons aged 18 or over had been a victim of non-violent theft, that 5 per cent of households had experienced vandalism in the past year, and that young adults (18–24 years) were the most at risk (CSO 1999). These questions were useful in trying to get an overall picture of crime in Ireland. However, none of these questions were directed towards those younger than 18 years. Furthermore, a National Crime Victimization Survey is currently underway. Though it is a step in the right direction, it does not focus on young people and will only ask heads of household what youths of a particular age group, living in the home, have experienced.

Research has shown that adolescents experience victimization at two to three times the rate of adults (Wells and Rankin 1995). Without statistics on youth victimization in Ireland, youth policies will continue to be made in a research vacuum. This project aims to alleviate this difficulty by analysing the extent and nature of youth victimization and offending among 15–17 years olds in inner-city Dublin.

Sample and methodological issues

The sampling frame for this study was all Department of Education and Science schools and Youthreach centres located in Dublin 1, 2, 7 and 8. The size of the sample was 421 young people. In an attempt to capture a more accurate picture of the victimization experiences of all young people living in inner-city Dublin, young people attending both schools and Youthreach centres were included in the study. Of all the schools and Youthreach centres in the area (22 total) 12 agreed to participate.

The vast majority of the sample was Irish (89%), 4 per cent were African and 3 per cent Eastern European. The sample consisted of 218 males (52%) and 202 females (48%), with the following age classification: 15 year olds (16%); 16 year olds (53%); 17 year olds (26%) and other (5%).

The simplest way to contact large numbers of 15–17 year olds was to ask local schools and Youthreach centres to co-operate in the research. Once access was granted, a liaison person was appointed and made responsible for setting the date of the survey, collecting withdrawal of consent forms (if any), and providing assistance during the administration of the survey.

The research had been designed with the limitation of a school setting in mind. Specifically, the survey was designed for easy administration and completion within a 40 minute class period. The survey was completed by hand and was collected from each young person on the day of administration, along with their individual consent forms.

The greatest obstacle was gaining access to the schools. It took almost four months to persuade 12 of the 22 schools in the area to participate in the project. In addition to gaining access, one of the main methodological difficulties that arose in the study related to obtaining consent from parents and young people. Passive consent was obtained from parents/guardians, while active consent was obtained from all participants. Passive parental consent was deemed adequate due to the non-sensitive nature of the project and the age of the participants. Despite the relative ease of obtaining passive consent in comparison to active consent, neither was achieved without difficulty. Issues that had to be addressed while obtaining consent were:

- 1 Ensuring that all parents/guardians received the letter informing them of the study details and the opportunity to withdraw their child from the study.

Addresses were received directly from the liaison officers. Nevertheless, in a few instances young people expressed that they were positive that their guardians had not received the letter or were certain that their guardians would not approve. When these instances occurred, the young people were immediately withdrawn from the study.

- 2 Making sure that all participants without parental consent were properly removed from the study.

In order to ensure that all participants without consent were removed from the study, they were identified before the survey took place and did not enter the study area. Additionally, the young people were asked before they began if they had the consent of their parents and were told if there were any doubts that they should not participate.

3 Making sure all consenting participants filled out the consent form properly and returned it to the researcher before leaving the classroom.

While answering questions and monitoring the room, dates and signatures on each form were checked and the number of forms was verified. When there were large numbers of young people involved, this proved to be difficult with only 40 minutes to work with.

Preliminary findings and expectations

Before the preliminary findings for this sample of young people are discussed, a brief overview of similarities between victims and offenders will be presented. It is important to establish these similarities before reviewing findings, as they are an integral part of fully understanding the results.

Several previous studies have highlighted the similarities between victims and offenders. For example, Mawby (1979) found a highly significant relationship between offender status and victimization, while Lauristen et al. (1991) discovered that youth involvement in delinquent lifestyles greatly increases the risks of victimization. In this research these issues were approached primarily through the use of questions focusing on:

- how free time is spent and who it is spent with
- individual victimization experiences
- experiences of offending behaviour
- levels of parental supervision
- friends' involvement in crime
- youth lifestyles

Lifestyle factors are also central to determining youth victimization and offending risk. The best summary of why these factors are vital to youth crime research is provided by Gottfredson who explains 'the processes that reduce the restraints to offend are similar to the processes in lifestyle terms that affect the probability that persons will be in places at times and around people where the risk of victimisation is high' (1981: 726).

Generally speaking, many people do not realize that youth victims and offenders are, in most cases, the same people. Furthermore, investigating the similarities between the two groups and establishing the risk factors involved greatly improves the chances for prevention.

Perhaps unsurprisingly in this study, preliminary findings reveal that both victimization and offending incidents of a less serious nature were reported by youth more frequently than those of a serious nature. For example, 60 per cent of the sample had experienced name calling and 61 per cent had received prank calls; in contrast only 24 per cent of respondents reported having school items stolen and 27 per cent being hit for no reason. Similarly, in terms of offending, 58 per cent of young people reported that they had made prank calls and 43 per cent reported damaging property, while only 25 per cent reported stealing from shops.

The above findings highlight that, in general, young people report more incidents of minor than severe victimization and offending. However, these findings

also draw attention to the fact that the number of young people reporting the most severe incidents of both, though small, is very powerful. At this early stage of the analysis it is feasible to predict some of the correlations and potential risk factors that are expected to emerge, and which are represented in Table 4.1.

Table 4.1 Correlations and risk factors

<i>Correlations between</i>	<i>Possible risk factors</i>
Frequent offending and increased victimization	Having friends who are involved in crime
Gender and types of victimization	Crime in the neighbourhood
Gender and seriousness of offences	Low parental supervision
Lowest levels of victimization and no involvement in crime	Socioeconomic disadvantage

Although these are only expectations, previous research and the preliminary results of this study thus far seem to support them.

Conclusion

This paper has an overview of the methodological difficulties surrounding the research and some of the preliminary findings. Notably, only a small number of the victimization and offending incidents reported in the larger study have been covered here. However, these preliminary findings provide some insight into the possible trends that are likely to be revealed within the larger study. Once further analysis takes place, a clearer picture of both the similarities between victims and offenders and the effect of a small number of young people being responsible for the severest end of the spectrums will come to light.

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Appendix 1: Conference brochure

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‘Young People and Crime: Research, Policy & Practice’ Conference

Hogan Stand,
Croke Park Stadium,
Dublin 3.

12th/13th September 2005



Funded under Technological Enhancement,
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YOUNG PEOPLE'S EXPERIENCE OF CRIME PROGRAMME

REGISTRATION FORM

1. Delegate Details:

Name: _____
 Title: _____
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 Address: _____
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2. Registration Fee

(Please tick as appropriate)

Early Registration Fee (prior to 19th August 2005) ☐ €120

Later Registration Fee (after 19th August 2005) ☐ €150

Student Discount Rate (prior to 19th August 2005) ☐ €60

Student Discount Rate (after 19th August 2005) ☐ €75

Fee includes full day attendance for both days, lunch and wine reception.

Do you wish to attend the conference dinner?

Yes ☐ No ☐

There is an additional €25 fee for attendance at Conference Dinner in Croke Park on 12th September.

Make Cheques Payable to:

Dublin Institute of Technology

3. Parallel Sessions

(Please tick as appropriate)

Please select either Session One or Two:

Session 1: ☐ **Detention and Custody**

OR

Session 2: ☐ **Risk Factors for Youth Crime**

Please select either Session Three or Four:

Session 3: ☐ **Anti-Social Behaviour Orders**

& Local Communities

OR

Session 4: ☐ **Alternatives to Custody**

Centre for Social & Educational Research

Dublin Institute of Technology

23 Mountjoy Square

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Dublin Institute of Technology

The Dublin Institute of Technology is one of Ireland's largest third level institutions and is committed to teaching, conducting research, development and consultancy across the broad range of disciplines which it embodies. It seeks to promote excellence in applied learning and research. The School of Social Sciences and Legal Studies, within the Faculty of Applied Arts, uniquely comprises the disciplines of law and social sciences and works actively to develop research in both domains and to cultivate an interdisciplinary synergy between these disciplines.

The Centre for Social & Educational Research (CSER)

The CSER is a well-established independent research and policy analysis body, located within the Faculty of Applied Arts at DIT which conducts research into social and educational issues. It has a well-established track record of research on social and educational policies and practices including work patterns and family structure, early childhood care and education, social care/alternative care, diversity and equality issues, juvenile crime and youth justice.

Croke Park Location

The Conference will take place in the Hogan Stand, Croke Park Stadium, Jones Road. Car parking is available at the Canal Car Park. Located off the North Circular Road and accessed via St Margaret's Avenue (first left after Gills Pub on the corner with Russell Street). There is pedestrian access from the car park onto Jones Road / Russell Street for the main entrance to the Hogan Stand.



YOUNG PEOPLE'S EXPERIENCE OF CRIME PROGRAMME

The Conference

The first national conference on 'Young People and Crime: Research, Policy and Practice', hosted by the Centre for Social & Educational Research, Dublin Institute of Technology, is a two day event that brings together researchers, academics, policy makers and NGOs to address some of the most pertinent contemporary issues within the general arena of youth crime in Ireland, providing analysis and discussion across the various sectors present.

The three core conference themes are:

- **Criminological Perspectives on the Children's Act 2001**
- **Youth and Risk**
- **Restorative Justice**

As well as providing a forum through which discussion and potential collaboration can be built across the three sectors, it is also envisaged that the conference will provide an opportunity for those engaged in criminological research in Ireland to present to their peers and build academic collaboration within the discipline.

Keynote Speaker: Dr. Barry Goldson

Senior Lecturer and Director of Research in the Department of Sociology, Social Policy & Social Work Studies, University of Liverpool, Dr. Barry Goldson is best known for his work in the fields of youth criminology and criminal justice, the sociology of childhood and youth and state welfare policy. He has presented over 100 papers at conferences in the UK, Europe, Australia and the USA, and is editor of 'Youth Justice', the leading peer-reviewed journal in the UK specialising in youth crime and youth justice, and is a member of the Editorial Advisory Boards of the 'British Journal of Community Justice' and the 'Probation Journal' monograph series 'Issues in Community and Criminal Justice', and is patron of 'Safer Society: the journal of crime reduction and community safety'.

CONFERENCE TIMETABLE

September 12th

1.00 – 2.00	Registration and Coffee
2.00 – 2.15	Welcome & Introduction: Dr. Ellen Hazelkorn, Director of Faculty of Applied Arts, DIT
2.15 – 2.30	Opening Address: The Honorable Mrs. Justice Catherine McGuinness
2.30 – 3.30	Rationality and Rights: Towards a Principled Juvenile/Youth Justice Dr. Barry Goldson, Senior Lecturer, Department of Sociology, Social Policy and Social Work Studies, University of Liverpool
3.30 – 4.00	Coffee

Plenary Session 1: Youth and Risk

4.00 – 4.20	"Scripting" Risk: Young People and the Construction of Drug Journeys. Dr. Paula Mayock, Children's Research Centre, Trinity College Dublin
4.20 – 4.40	The Risks of Custody for Children in the Northern Ireland Criminal Justice System. Dr. Una Convery, School of Policy Studies, University of Ulster
4.40 – 5.00	Youth Diversion in An Garda Síochána: The Garda Diversion Programme and the Garda Youth Diversion Projects. Inspector Paul Moran and Inspector Finbarr Murphy, The National Juvenile Office, An Garda Síochána

Panel Discussion

DRINKS RECEPTION & DINNER

September 13th

Plenary Session 2: Criminological Perspectives on the Children's Act

9.00 – 9.20	Family Conferencing - The New Zealand Model: A Cause for Reflection Geoffrey Shannon, Law Society of Ireland
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T.B.A

Catherine Ghent, Solicitor, John McQuinn & Co. Solicitors

Bringing Life to Legislation: A Probation and Welfare

Perspective under the Children's Act 2001.

Ailish Glennon, Senior Probation and Welfare Officer, Probation and Welfare Services

Panel Discussion

Coffee

Parallel Sessions:

Session 1: Detention and Custody

11.00 – 11.15	The Culture of the Prison Class: Why Prison Fails. Karen Sugrue, Dept of Business & Humanities, LIT
11.15 – 11.30	Trinity House School Research Outcomes for 2003 and 2004 in Relation to Young People Leaving Secure Care. Bronagh Gibson, Special Residential Services Board

Irish Juveniles in the Custodial Remand System: The Empirical Evidence.

Sarah Anderson, School of Social Sciences and Legal Studies, DIT

The Life and Times of Young People on Remand: Implications for the Children's Act, 2001.

Sinead Freeman, School of Social Sciences & Legal Studies, DIT

Panel Discussion

Session 2: Risk Factors for Youth Crime

11.00 – 11.15
Youth Victims and Offenders: Exploring Similarities and Risk Factors.
Kalis Pope, School of Social Sciences & Legal Studies, DIT

11.15 – 11.30
Young People at the Interface of Welfare and Criminal Justice: An Exploration of Special Care in Ireland.
Nicola Carr, Special Residential Services Board

11.30 – 11.45
Dublin Children's Court: A Pilot Research Project.
Sinead McPhillips, Irish Association for the Study of Delinquency

11.45 – 12.00
A Qualitative Account of 22 Young Women's Involvement in Prostitution
Siobhan Quinlan, School of Social Sciences & Legal Studies, DIT

Panel Discussion

12.30 – 2.00
Lunch

Parallel Sessions:

Session 3: Anti-Social Behaviour Orders & Local Communities
2.00 – 2.15
Doughnuts, Alco-pops and ASBOs: Youth, Marginalisation and Joyriding
Mick Rush and Paula Brudell, School of Applied Social Sciences, UCD
Aoigan Mulcahy, School of Sociology, UCD

2.15 – 2.30
Young People and Street Crime in a North Inner-City Dublin Community: An Ethnographic Approach
Jonathan Ilin, Dept of Social Sciences & Legal Studies, DIT

2.30 – 2.45
ASBOs: Manufacturing Disorder
Claire Hamilton and Mairead Seymour, Department of Social Sciences & Legal Studies, DIT

Panel Discussion

Session 4: Alternatives to Custody

2.00 – 2.15
Face to Face Restorative Justice Conferencing: The Government Response to Youth Offending in Northern Ireland
Andrew MacQuarrie, Youth Conference Service, Youth Justice Agency of Northern Ireland

2.15 – 2.30
Restorative Justice, Diversion and Social Control
Diarmuid Griffin, Faculty of Law, N.U.I., Galway

2.30 – 2.45
Model for Engaging Young People at Risk of Crime – Irish Society for the Prevention of Cruelty to Children

Panel Discussion

Coffee

Plenary Session 3: Restorative Justice

3.30 – 3.50
Who Really Owns Justice?, A Community Restorative Justice Response to Crime and Anti-Social Behaviour.
Debbie Watters, Training Co-ordinator, Northern Ireland Alternatives

3.50 – 4.10
Restorative Justice in the Community - A Partnership Approach: An overview of the work of Restorative Justice Services; service structure, RJ practice models, challenges encountered, the way forward.
Peter Keely, Restorative Justice Services, Tallaght, Dublin.

4.10 – 4.30
Restorative Justice for Juvenile Offenders - Evaluation of the Garda Programme
Kieren O'Dwyer, Head of Research, Garda Research Unit, An Garda Síochána.

Panel Discussion

4.30 – 5.00
Closing Remarks:
John Lonnegan, Governor Mountjoy Prison

5.00 – 5.20

Conference Closing: Professor Brian Norton, President, DIT



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