THE CULTURE OF CONTROL and TRANSFORMATION in AN GARDA SÍOCHÁNA

William D. Fenney

Thesis submitted for the Degree of Doctor of Philosophy
School of Law University of Limerick

Supervisors
Professor Shane Kilcommins
Dr. Eimear Spain

Submitted to the University of Limerick
June 2019
ABSTRACT

The Culture of Control and Transformation in An Garda Síochána

Submitted by

William D. Fenney

In 2001 David Garland published his work on what he called “The Culture of Crime Control” relating to the systems of criminal justice in the U.K. and U.S.A. He argues that criminal justice in these large jurisdictions has, in the thirty years prior to 2001, become more authoritarian, punitive and coercive. He uses twelve benchmarks or what he calls “the Indices of Change” to make out his case. The author is a retired member of An Garda Síochána with in excess of thirty three years Garda experience. This thesis will use this experience to explore transformation in An Garda Síochána in the last half century since the late 1960s to 2018 to establish if Garland’s theory has any relevance to that transformation. It will be contended that the evidence presented here is compelling proof that Garland’s theory is authenticated in what occurred in Irish policing in the period under review. This thesis specifically examines six of Garland’s “indices of change” to demonstrate how relevant they are in explaining transformation in An Garda Síochána and policing generally in the Republic of Ireland. That is not to suggest that Garland’s remaining six indices are not relevant. They are, but they impact on Irish policing in a more indirect way and are more relevant to other agencies in the criminal justice system. It will be maintained Garland’s indices can be used to describe how An Garda Síochána has become scandal ridden and never more so than in the most recent decades. However, it will also be asserted that Garland’s theory can be the template for the Garda organisation to extricate itself from scandal and implement measures and procedures that will ensure good policing practice and a less turbulent future.
AUTHOR’S DECLARATION

I, the undersigned, hereby declare that this submission is entirely my own work, in my own words, and that all sources used in researching it are fully acknowledged and all quotations properly identified. It has not been submitted, in whole or in part, by me or another person, for the purpose of obtaining any other credit/grade. I understand the ethical implications of my research, and this work meets the requirement of the Faculty of Arts, Humanities and Social Sciences Research Ethics Committee.

William D. Fenney:

Student Number: 13196642

Signed:
ACKNOWLEDGEMENTS

In the words of Abraham Lincoln “All that I am, or hope to be, I owe to my parents.” My deep gratitude to my wife Gabrielle for her unequivocal support. To Mary Fogarty for her sharp eye for detail, her professionalism and unwavering patience. To both my supervisors Professor Shane Kilcommins and Dr. Eimear Spain for their confidence, guidance and encouragement and support.
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abstract</td>
<td>ii</td>
</tr>
<tr>
<td>Author’s Declaration</td>
<td>iii</td>
</tr>
<tr>
<td>Acknowledgement</td>
<td>iv</td>
</tr>
<tr>
<td>Table of Contents</td>
<td>v</td>
</tr>
<tr>
<td>List of Tables</td>
<td>viii</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>ix</td>
</tr>
<tr>
<td>List of Abbreviations</td>
<td>xi</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>xiv</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>The Culture of Control</td>
<td>1</td>
</tr>
<tr>
<td>Key Themes</td>
<td>3</td>
</tr>
<tr>
<td>Methodology</td>
<td>5</td>
</tr>
<tr>
<td>Shortcomings in Garland’s Theory?</td>
<td>13</td>
</tr>
<tr>
<td>Summary</td>
<td>17</td>
</tr>
<tr>
<td>Chapter 1: The Return of the Victim - Quality Service or Lip Service?</td>
<td>19</td>
</tr>
<tr>
<td>Introduction</td>
<td>19</td>
</tr>
<tr>
<td>The Exclusionary Rule/Due Process</td>
<td>20</td>
</tr>
<tr>
<td>Duty of Care</td>
<td>28</td>
</tr>
<tr>
<td>Community Engagement: Neighbourhood Watch</td>
<td>32</td>
</tr>
<tr>
<td>Mission Statement/Garda Practice</td>
<td>35</td>
</tr>
<tr>
<td>Garda Victim Support</td>
<td>37</td>
</tr>
<tr>
<td>Surveys</td>
<td>38</td>
</tr>
<tr>
<td>Restorative Justice</td>
<td>39</td>
</tr>
<tr>
<td>Community Relations</td>
<td>39</td>
</tr>
<tr>
<td>Victims Charter and Victims Service Policy</td>
<td>42</td>
</tr>
<tr>
<td>The Victim Directive 2012/29/EU and <em>Criminal Justice (Victims of Crime)</em> Act 2017</td>
<td>46</td>
</tr>
<tr>
<td>Garda and D.P.P.’s Office: Reasons for Decisions</td>
<td>49</td>
</tr>
<tr>
<td>Expenses</td>
<td>53</td>
</tr>
<tr>
<td>Garda, Victims and Investigations</td>
<td>55</td>
</tr>
<tr>
<td>Conclusion</td>
<td>59</td>
</tr>
<tr>
<td>Chapter 2: Above All, the Public must be Protected</td>
<td>61</td>
</tr>
<tr>
<td>Introduction</td>
<td>61</td>
</tr>
<tr>
<td>The Late 1960s and 1970s</td>
<td>63</td>
</tr>
<tr>
<td>The Legislation</td>
<td>69</td>
</tr>
<tr>
<td>Chapter 3: From Policing of the Community to Policing with the Community</td>
<td>131</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Introduction ..................................................................</td>
<td>131</td>
</tr>
<tr>
<td>Pre-Watershed Period 1968 to 1979 ................................</td>
<td>132</td>
</tr>
<tr>
<td>The Watershed Years 1980 to 1985 ..................................</td>
<td>137</td>
</tr>
<tr>
<td>Post Watershed Period 1986 to 2017 ................................</td>
<td>140</td>
</tr>
<tr>
<td>Conclusion .....................................................................</td>
<td>148</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 4: Police Force to Police Service – Who Pays the Watchman?</th>
<th>150</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..................................................................</td>
<td>150</td>
</tr>
<tr>
<td>Background ..................................................................</td>
<td>150</td>
</tr>
<tr>
<td>Transformation ................................................................</td>
<td>151</td>
</tr>
<tr>
<td>Transformation and Duties .............................................</td>
<td>153</td>
</tr>
<tr>
<td>Commercialisation and Codification .................................</td>
<td>157</td>
</tr>
<tr>
<td>Conclusion .....................................................................</td>
<td>161</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 5: Outputs over Outcomes – From Charge Sheets to Spreadsheets</th>
<th>163</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction ..................................................................</td>
<td>163</td>
</tr>
<tr>
<td>Tracing Language Change ...............................................</td>
<td>165</td>
</tr>
<tr>
<td>Managerialism – Economy and Efficiency ................................</td>
<td>171</td>
</tr>
<tr>
<td>Managerialism - Strategic Planning ..................................</td>
<td>186</td>
</tr>
<tr>
<td>Managerialism – Resources .............................................</td>
<td>199</td>
</tr>
<tr>
<td>Managerialism – Staffing ...............................................</td>
<td>204</td>
</tr>
<tr>
<td>Managerialism – Counting and Measurement .........................</td>
<td>212</td>
</tr>
</tbody>
</table>
Chapter 6: A Perpetual State of Crisis – From Scandal to More Scandal .......

Introduction .......................................................... 226
Background ............................................................. 226
Accountability ......................................................... 228
Prisoners ............................................................... 230
Intelligence ............................................................. 244
Media ...................................................................... 253
Conclusion ............................................................. 258

Discussion and Findings ........................................... 260

Bibliography .......................................................... 268
LIST OF TABLES

Table 1.1  Statistics for Neighbourhood Watch Schemes Periodically from 1986 to 2005.

Table 1.2  Public Perceptions of Garda Demeanour.

Table 2.1  Garda Statistics for Indictable Crime and Detection Rates from 1968 to 1979.

Table 2.2  Garda Statistics for Indictable Crime and Detection Rates from 1980 to 1989.

Table 2.3  Garda Statistics for Indictable Crime and Detection Rates from 1990 to 1999.

Table 2.4  Garda Statistics for Indictable Crime and Detection Rates from 2000 to 2009.

Table 2.5  CSO Statistics for Indictable Crimes 2008 to 2009.

Table 2.6  CSO Statistics for Indictable Crimes 2010 to 2016.

Table 3.1  List of Responsibilities of Community Relations Section.

Table 5.1  Summons Issued/Served/Unserved for period 2011 and 2012.

Table 5.2  FCPS Notices Issued and Cancelled for period 2011 to 2013.

Table 5.3  Fine on the Spot Details for 1969 and 1970

Table 5.4  Fine on the Spot Details Garda Commissioner’s Report 1982.
**TABLE OF CASES**


**CC v Ireland The Attorney General and Another** [2006] 4 IR 1.

**D.P.P. v. J. C.** [2015] IESC 31

**D.P.P. v. O’Donoghue.** Unreported Court of Criminal Appeal 18th October 2006.

**Damache v The Director of Public Prosecutions** [2012] IESC 11.


**Kelly v. Garda Commissioner** [2013], I.E.S.C. 47.


**Maguire v. Central Mental Hospital** [1996] 3.I.R. 1


**People (D.P.P.) v Colm Murphy** [2005] 2 IR 125.

**People (D.P.P.) v Colm Murphy** [2005] 4 IR 504.


**People (D.P.P.) v. McDonagh** [1998] WJSC-HC5790.


**People (D.P.P.) v. Pringle** [1995] 2 I.R.


**People (D.P.P.) v. Shaw** [1982] I.R.
People v. Paul Ward Judgement of the Special Criminal Court delivered by Mr. Justice Barr on the 27th day of November 1998.

S.H. v. The Director of Public Prosecutions [2006] 3 IR 57.

LIST OF ABBREVIATIONS

A.G. Attorney General
A.G.S. An Garda Síochána
A.S.B.O. Anti-Social Behaviour Orders
A.G.S.I. Association of Garda Sergeants and Inspectors
B.M.W. Motor Vehicle Producer
C.C.T.V. Close Circuit Television
C.I.E. Córas Iompair Éireann
CompStat. Computer or Comparative Statistics
C.A.B. Criminal Assets Bureau
C.H.I.S. Covert Human Intelligence Sources
C.P.D. Continuous Professional Development
C.P.O. Crime Prevention Officer
C.P.A.D. Concerned Parents Against Drugs
C.P.F.I. Commission on the Future of Policing in Ireland
C.D.U. Central Detective Unit
C.S.O. Central Statistics Office
D.M.A. Dublin Metropolitan Area
D.M.R. Dublin Metropolitan Region
D.N.A. Deoxyribonucleic Acid
D.D.U. District Detective Unit
D.P.P. Director of Public Prosecutions
E.U. European Union
F.L.O. Family Liaison Officer
F.C.N. Fixed Charge Notice
F.C.N.S. Fixed Charge Notice System
F.C.P.S. Fixed Charge Processing System
G.V.L.O. Garda Victim Liaison Office/Officers
G.E.R.M. Garda Establishment Reserve Model
G.I.A.S. Garda Internal Audit Section
G.S.O.C. Garda Síochána Ombudsman Commission
G.R. Garda Reserve
G.R.A.  Garda Representative Association
H.E.T.A.C.  Higher Education and Training Awards Council
H.M.S.O.  Her Majesty’s Stationery Office
H.S.E.  Health Service Executive
H.Q.  Headquarters
I.A.S.  Internal Audit Section
I.E.H.C.  Irish High Court
I.E.S.C.  Irish Supreme Court
I.C.C.L.  Irish Council for Civil Liberties
I.R.  Irish Reports
I.R.A.  Irish Republican Army
I.I.C.D.  Independent International Commission of Decommissioning
J.L.O.  Juvenile Liaison Officer
J.P.C.  Joint Policing Committee
M.A.T.  Mandatory Alcohol Tests
N.B.C.I.  National Bureau of Crime Investigation
N.C.T.  National Car Test
N.W.  Neighbourhood Watch
N.Y.P.D.  New York Police Department
O.P.W.  Office of Public Works
P.A.C.  Public Accounts Committee
P.E.M.S.  Property Exhibit Management System
P.I.R.A.  Provisional Irish Republican Army
P.S.U.  Professional Standards Unit
P.S.A.  Private Security Authority
P.U.L.S.E.  Police Using Leading Systems Effectively
R.A.P.I.D.  Revitalised Areas by Planning Investment and Development
R.D.S.  Royal Dublin Society (Showgrounds)
R.I.R.A.  Real Irish Republican Army
R.T.E.  Raidió Teilifís Éireann
R.U.C.  Royal Ulster Constabulary
S.C.  Senior Counsel
S.D.U.  Special Detective Unit
S.H.O.  Station House Officer
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.M.I.</td>
<td>Strategic Management Initiative</td>
</tr>
<tr>
<td>S.M.S.</td>
<td>Short Messaging Service</td>
</tr>
<tr>
<td>T.A.M.</td>
<td>Television Audience Measurement</td>
</tr>
<tr>
<td>T.D.</td>
<td>Teachta Dála</td>
</tr>
<tr>
<td>T.U.S.L.A.</td>
<td>The Child and Family Agency (Ireland)</td>
</tr>
<tr>
<td>U.S.A.</td>
<td>United States of America</td>
</tr>
<tr>
<td>U.K.</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Act Title</td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Bail Act 1997.</td>
<td></td>
</tr>
<tr>
<td>Child Care Act 1991.</td>
<td></td>
</tr>
<tr>
<td>Children First Act 2016.</td>
<td></td>
</tr>
<tr>
<td>Control of Dogs Act 1986.</td>
<td></td>
</tr>
<tr>
<td>Copyright and Related Rights Act 2000.</td>
<td></td>
</tr>
<tr>
<td>Criminal Assets Bureau Act 1996.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Amendment) Act 2009.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Burglary of Dwellings) Act 2015.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Drug Trafficking) Act 1996.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Forensic Evidence &amp; DNA Data Based System) Act 2014.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Forensic Evidence) Act 1990.</td>
<td></td>
</tr>
<tr>
<td>Criminal Justice (Public Order) Act 2011.</td>
<td></td>
</tr>
</tbody>
</table>
Criminal Justice (Search Warrants) Act 2012.
Criminal Justice (Surveillance) Act 2009.
Criminal Justice (Suspended Sentences of Imprisonment) Act 2017.
Criminal Justice (Terrorist Offences) (Amendment) Act 2015.
Criminal Justice (Terrorist Offences) Act 2005.
Criminal Justice Act 2011.
Criminal Justice Act 2013.
Criminal Law (Human Trafficking) (Amendment) Act 2013.
Criminal Law (Rape) Act 1981.
Criminal Law (Rape) Amendment Act 1990.
Criminal Procedure Act 2010.
Domestic Violence Act 1996.
Finance Act 1925.
Garda Victims Charter 2009.
Immigration Act 1999.
Larceny Act 1990.
Mental Health Act 2001.
Misuse of Drugs (Amendment) Act 2016.
Non-Fatal Offences Against the Person Act 1997.
Noxious Weeds Act 1936.
Offences Against the State (Amendment) Act 1972.
Offences Against the State (Amendment) Act 1998.
Proceeds of Crime Act 1996.
Prohibition of Incitement to Hatred Act 1989.
Road Act 1993.
Road Traffic (Amendment) Act 1978.
Road Traffic (No.2) Act 2011.
Road Traffic (No.2) Act 2014.
Road Traffic Act 1968.
Road Traffic Act 2002.
Road Traffic Act 2003.
Road Traffic Act 2006.
Road Traffic Act 2010.
Road Traffic Act 2011.
Road Traffic Act 2014.
Road Traffic Act 2016.
Road Traffic and Transport Act 2006.
Sex Offences Jurisdiction Act 1996
Sex Offenders Act 2001.
Sexual Offences (Jurisdiction) Act 1996.
Video Recording Act 1989.
INTRODUCTION

What does appear to be clear today is the old adage that it is better that 10 guilty persons should go free than for one innocent person to be convicted seems to have very few adherents now.¹

The Culture of Control

This thesis is about An Garda Síochána (AGS) an organisation that the writer has been proud to serve for in excess of thirty years. It is about the changes that have occurred in the organisation during that period and beyond. As a disciplined force, AGS has always adapted to changes. As with all change, the practices and procedures that come with it take time to become embedded or normalised within the group. In the last half century there has been a high velocity of transformation from without and within AGS that arguably has not necessarily been to its own benefit or to the advantage of policing in general. For the purposes of this thesis these reforms are examined in the context of what David Garland has referred to as the “Culture of Control”.² This work demonstrates Garland’s theory is very relevant in explaining what occurred in AGS over the last 50 years.

In 2001 David Garland published his seminal work on the subject.³ In the preface he sets out his stall, as it were, in the first sentence when he states that “(t)his book is about the culture of crime control and criminal justice in Britain and America”.⁴ This thesis will explore whether Garland’s work has any relevance or application to AGS. Garland examines “the dramatic developments that have occurred in our social response to crime during the last thirty years and about the social culture and political forces that gave rise to them”.⁵ This thesis will look at the evidence of similar developments in this jurisdiction commencing almost three decades prior to Garland’s publication and concluding almost two decades thereafter. The writer uses

³ D. Garland supra at note 2.
⁴ Ibid at Preface.
⁵ Ibid at Preface.
his own Garda knowledge and experience to set out the case that what Garland says transpired in Britain and America has also materialised in this jurisdiction in relation to AGS. The writer asserts that Garland’s theory insofar as Irish policing is concerned continues to be alive and very real.

At the outset Garland introduces us to his work by setting out “A History of the Present”. He states that “(w)e quickly grow used to the way things are. Today more than ever it is easy to live in the immediacy of the present and lose all sense of the historical processes out of which our current arrangements have emerged”. It is contended that this is correct. AGS has embraced so much change in the last half century that anyone who has served at the “coal face” during that period might have taken this change for granted. It is suggested that it is only when one stops to take account of this transformation does one realise how AGS has morphed over the decades. This thesis will focus on some of the internal and external influences that have prompted this evolution.

Specifically, Garland refers to what he calls the “Indices of Change” that is “the signs of movement and visible landmarks of the emerging new terrain”. Six of the twelve ‘indices of change’ will be explored in the context of AGS and they are as follows:

1) The Return of the Victim.
2) Above All the Public Must be Protected
3) The Expanding Infrastructure of Crime Prevention and Community Safety.
4) Civil Society and the Commercialization of Crime Control
5) New Management Styles and Working Practices
6) A Perpetual State of Crisis.

These six indices are selected for thorough examination because it is contended that they have a specific applicability when it comes to explaining transformation in AGS and policing over the last fifty years in this jurisdiction. It is not being argued here that these indices in isolation were the genesis of changes in policing but when examined fully and in their totality, it will be demonstrated that they have substantial relevance in how the Gardaí go about their duties and in delimiting Garda discretion.

---

6 Ibid at p.1.
7 Ibid at p.1.
8 Ibid at p.6.
9 Ibid at p.6.
10 Ibid at pp. 8-20.
Similarly, it must be acknowledged that six remaining indices as set out by Garland are also relevant to the remodelling of AGS specifically and policing generally and are clearly connected to the indices under examination in this work. These other indices\(^\text{11}\) highlighted by Garland are:

1) The Decline of the Rehabilitative Ideal  
2) The Emergence of Punitive Sanctions and Expressive Justice  
3) Changes in the Emotional Tone of Crime Policy  
4) Politicization and the New Populism  
5) The Re-Invention of Prison.  
6) The Transformation of Criminological Thought

While six indices have been selected for examination in this dissertation, it is impossible to carry out such examination completely disregarding the remaining six indices. Therefore, they too must be considered, and each chapter will demonstrate how each of the indices under examination relate to those that are not specifically under review.

**Key Themes**

Garland in explaining his theory says that his “concern is to understand the historical conditions of existence upon which contemporary practices depend, particularly those that seem most puzzling and unsettling”.\(^\text{12}\) He says that his study “thus tackles a problem that is at once historical, penological and sociological,”\(^\text{13}\) It is these key themes which underpin the analysis in an Irish context also.

*Historical* - Garland argues that there has been a movement away from the assumptions that were the bedrock of criminal justice governance since circa the 1980s: “the central agencies of the modern criminal justice state have undergone quite radical shifts in their working practices and organisational missions”.\(^\text{14}\) Therefore, in this thesis the history of AGS from the late 1960s to the present day will be analysed to demonstrate the validity of Garland’s theory in explaining what happened to AGS in the period under review. The scandals that have rocked

\(^{11}\) Ibid at pp. 8-20.  
\(^{12}\) Ibid at p.2.  
\(^{13}\) Ibid at p.3.  
\(^{14}\) Ibid at p.3.
and tainted the organisation will be considered together with how the Gardaí managed themselves over the period. In addition, how the Gardaí dealt with and investigated crime will be reviewed together with how the Gardaí engaged with victims of crime. Similarly, how the Gardaí reacted to or perhaps did not react to different crises over the decades will also be explored.

Penological – Garland asserts that since the 1980s:

(p)olicy development appears highly volatile with an unprecedented amount of legislative activity, much dissension in the ranks of particular groups and a good deal of conflict between experts and politicians. The battle line of debate seems blurred and rapidly changing. No one is quite sure what is radical and what is reactionary.15

Here again it will be argued in this work that there is compelling evidence in the period of review in Ireland to support Garland’s theory. Evidence of the massive empowerment of Gardaí in the last half century will be explored in this context. The gradual acceleration in the powers given to Gardaí expand beyond the investigation of serious crime into other areas such as road traffic enforcement, public order and non-violent theft. Not only was there an increase in Garda empowerment but there were also increases in the number of crimes and offences on the Irish Statue Book together with an increase in penalties and sanctions. Traditional due process rights were gradually being pared back in response to criminal activity and the public’s perception of it.

Sociological – Garland argues that:

Todays reconfigured field of crime control is the result of political choices and administrative decisions – but these choices and decisions are grounded in new structure of social relations and coloured by a new pattern of cultural sensibilities.16

Since the foundation of the State members of AGS had massive discretion and there were a lot more Garda stations than there are now. Crisis and scandal forced change both in and on AGS and were essentially the cause of the erosion of traditional Garda discretion. Similarly, administrative matters like budgets came to the fore and acutely influenced the decision making of Garda management in how crime was investigated, and policing was organised. The fear of

15 Ibid at p.4.
16 Ibid at p.6.
crime became an issue and crime came to have an inflated media profile. Consequently, the public wanted their Gardaí to deal with and face down criminal activity. Politicians not wanting to appear soft on crime and lose votes chose to, mass empower the Gardaí. Notwithstanding consistently high public support and trust, AGS is now the most accountable organisation in the State with layer upon layer of oversight. In this thesis it will be argued that there is substantial evidence in what occurred to AGS to support Garland’s view when he states:

> The remodelling of an established institutional field, the emergence of different objectives and priorities and the appearance of new ideas about the nature of crime and of criminals also suggests shifts in the cultural underpinning of these institutions.\(^{17}\)

Therefore, this historical, penological and sociological study in what occurred within and without AGS in the past fifty years will be set out over six chapters. Each chapter examines a Garland index that has been selected for review for the purpose of this exercise. However, as highlighted earlier, Garland’s remaining six indices will also permeate and be relevant to the inquiry.

**Methodology**

This thesis employs several methodologies to answer the research question which has been posed, namely the extent to which Garland’s culture of control thesis can be utilised to document changes in the practices and operation of AGS. In first applying historical analysis, a vast number of secondary sources were consulted including newspaper articles, reports, academic journal articles and books. The reports include material emanating from AGS itself and from sources that were tasked with carrying out the miscellany of investigations into the organisation in the past number of decades.

A doctrinal legal methodology will also be employed to catalogue the common law, legislative and constitutional constructions that have been formulated around Garda operations. It will also detail how these laws have changed over time. There were in excess of one hundred pieces of legislation scrutinised to demonstrate and analyse expanding Garda empowerment which continues to this date. In addition, the decisions of the judiciary in the Ireland’s highest courts...
are examined both to show not only the trammelling of Garda discretion and empowerment but also the endorsement of Garda power.

Other supporting methodology will be employed to counteract any lacuna arising from a doctrinal approach. In particular a socio-legal methodology will be engaged to enrich the doctrinal analysis. It seeks to understand the legal provisions in a broader social and institutional context. This is achieved in practical terms, using Garda operational reports, parliamentary debates, academic and media commentaries and so on which reveal the practices beyond legal rules. Of course, Garland’s culture of control thesis will provide an excellent conceptual framework for this socio-legal consideration, which comprise historical, penological and sociological considerations.

Therefore, in Chapter 1 “The Return of the Victim”\textsuperscript{18} as a driver of change will be scrutinised, and it will be shown that Garland’s theory is authenticated in what occurred in AGS in how it dealt with victims of crime in the period under review. Garland argues that the crime victim is now front and centre of criminal justice policy, while in the past the interests of the victim were “subsumed under the general public interest and certainly not counter-posed over the interests of the offender”.\textsuperscript{19} Garland notes that “all this has now changed”\textsuperscript{20} and that “the new political imperative is that victims must be protected”\textsuperscript{21} and that the “symbolic figure of the victim has taken on a life of its own”.\textsuperscript{22} The historic interaction of victims and Gardaí over five decades will be traced and it will be demonstrated how due process, the rules of evidence and the absence of a legal duty of care for crime victims impugned upon how victims were treated by Gardaí. The chapter also sets out how AGS endeavoured to improve the quality of their interaction with those injured by crime through their Victims Charter\textsuperscript{23} and Service Policy\textsuperscript{24}. It also looks at how Gardaí and D.P.P. have adapted to the new E.U. Directive\textsuperscript{25} and its supporting legislation\textsuperscript{26} in this jurisdiction. Especially so in respect of prosecutorial

\textsuperscript{18} Ibid at p.11.
\textsuperscript{19} Ibid at p.11.
\textsuperscript{20} Ibid at p.11.
\textsuperscript{21} Ibid at p.11.
\textsuperscript{22} Ibid at p.11.
\textsuperscript{23} An Garda Síochána Victims Charter, Edition June 2010 accessed at www.garda.ie on the 3\textsuperscript{rd} August 2018 at 8.50 p.m.
\textsuperscript{24} An Garda Síochána Victims Service, accessed at www.garda.ie on the 3\textsuperscript{rd} August 2018 at 8.50 p.m.
\textsuperscript{25} 2012/29/EU Victims’ Rights Directive.
\textsuperscript{26} Criminal Justice (Victims of Crime) Act 2017.
decisions. The Gardaí have also been scandalised because of the poor and inadequate responses to victims of crime and these matters are highlighted by means of the findings of the Guerin\textsuperscript{27} and O’Higgins\textsuperscript{28} Reports. It will be argued that what occurred in AGS as it applies to this Garland index is cogent evidence in support of his theory.

In Chapter 2 the index which Garland styles “Above all the Public Must be Protected”\textsuperscript{29} is considered and it is argued that this project strongly validates his theory when tested against Garda and legislative history. Garland notes that “protecting the public has become the dominant theme in penal policy”\textsuperscript{30} and that “(t)oday there is a new and urgent emphasis on the need for security, the containment of danger, the identification and management of any kind of risk”.\textsuperscript{31} In order to verify Garland’s theory and its applicability to AGS, events in Garda history are traced from the late 1960s to the current time. These events are placed side by side with the miscellany of criminal justice legislation and Garda empowerment that took place during the period and analysed in tandem with Garland’s theory. Again, it will be argued that the ideal of public protection is strongly relevant and valid when it comes to explaining what happened in policing in Ireland and to AGS over a fifty-year period.

What Garland refers to as “The Expanding Infrastructure of Crime Prevention and Community Safety”\textsuperscript{32} is put under the spotlight in Chapter 3 and what he says is cross referenced with what occurred in the Garda organisation over the decades but in particular the 1980s. When the heroin epidemic and the illicit drug scene generally came to the fore in the mid-1980s the Garda hierarchy began to consider that AGS was losing the hearts, minds and goodwill of the public in light of the Gardaí’s perceived inability to deal with the problem. They felt they had to re-assert themselves and win back public support or at least reassure the public that they were up to the job. AGS embraced community policing and all its derivative activities.\textsuperscript{33} AGS sent its members out into neighbourhoods and parishes of the nation on a form of a charm offensive to

\textsuperscript{27} Report of An Taoiseach Enda Kenny on a Review of the Action Taken by An Garda Síochána pertaining to Certain Allegations Made by Sergeant Maurice McCabe. (Sean Guerin S.C. 6\textsuperscript{th} May 2014). [hereinafter Guerin].

\textsuperscript{28} Commission of Investigation (Certain Matters Relating to the Cavan/Monaghan Division of An Garda Síochána) Final Report 25\textsuperscript{th} April 2016. [hereinafter O’Higgins].

\textsuperscript{29} D. Garland \textit{supra} at note 2 at p.12.

\textsuperscript{30} \textit{Ibid} at p. 12.

\textsuperscript{31} \textit{Ibid} at p.12

\textsuperscript{32} \textit{Ibid} at p.16.

\textsuperscript{33} \textit{Ibid} at p. 17.
reassure a worried and sceptical public. There were similar policing parallels in New York. Garland would refer to such interactions between the Gardaí and the public as “preventable partnerships”\textsuperscript{34} which he described as “low key efforts to build up internal controls of neighbourhoods and to encourage communities to police themselves”.\textsuperscript{35} It will be contended here that there is ample evidence under this index to support the application of his theory in this jurisdiction. The chapter explores the rhetoric of different senior officers over the years and notes evidence to support Garland’s theory.

Chapter 4 will explore the relationship between “Civil Society and the Commercialization of Crime Control”\textsuperscript{36} and the evidence of what occurred in policing in this jurisdiction will be tested against Garland’s theory. He argues that “policing has become a mixed economy of public and private provision as more and more routine security functions are undertaken by private police”.\textsuperscript{37} In this chapter it will be demonstrated that the Gardaí have ceded ground to private security interests. Given limited resources the Gardaí cannot be everywhere, and the vacuum has been filled by private security. The public and private police generally work well together but Garda rosters, budgets and station closures have diminished the visibility of AGS members and meanwhile private security has thrived. In addition, the public have become more affluent and Garda priorities had to change. This chapter sifts through evidence and finds ample proof of Garland’s viewpoint.

In Chapter 5 the Garland index of change, “New Management Styles and Working Practices”\textsuperscript{38} is probed to ascertain its relevance to AGS. Garland argues that there is now “a new and all-pervasive managerialism that affects every aspect of criminal justice”\textsuperscript{39} and that “across the system as a whole, new forms of system monitoring, information technology and financial auditing have extended centralised control over a process that was previously less co-ordinated and highly resistant to policy management”.\textsuperscript{40} It will be submitted in this chapter that management and supervision within AGS has impacted the force in line with Garland’s theory under this index. The management structure in AGS remained more or less the same from the

\textsuperscript{34} Ibid at p.17.
\textsuperscript{35} Ibid at p.17.
\textsuperscript{36} Ibid at p.17.
\textsuperscript{37} Ibid at p.18.
\textsuperscript{38} Ibid at p.18.
\textsuperscript{39} Ibid at p.18.
\textsuperscript{40} Ibid at pp. 18-19.
formation of AGS in 1922 until it began to change in the mid-1990s in response to the Strategic Management Initiative (SMI) which was set up by Government directive to ensure value for money. The Gardaí would have to manage themselves and educate themselves in the ways of the private sector. AGS would now operate like a business and it will be argued in this chapter that many of the difficulties that have befallen AGS since the mid-1990s can be traced back to the mid-1990s period and what emanated from the SMI. The advent of managerialism to AGS will be traced here through following criteria:

1) Language Change
2) Economy and Efficiency
3) Strategic Planning
4) Staffing Resources
5) Resources
6) Performance Measurement and Counting

It is submitted that when Garda practice and procedure is reviewed under all these headings it will produce compelling evidence of what Garland has to say under this index.

The final Garland index examined in this study is what he calls “A Perpetual State of Crisis”. In this chapter Garda history will be analysed and cross referenced with periods in the last half century when the organisation was faced with crisis. Anyone who has served in AGS will know that crises in any section of their organisation will have a ripple and often turbulent effect on the whole organisation. It is submitted that it is the nature of Garda work that mistakes and errors can always be amplified. It is also the nature of police work that when things go wrong then they can do so catastrophically with the loss of life, the infliction of severe injury and the premature termination of careers of capable and dedicated police officers. This it is submitted is consistent with Garland’s theory. He argues that for “the last two decades” there has been “an unmistakable malaise” in the criminal justice system. He says that it is referred to as a “crisis” but considers the term “inappropriate” because it has “endured for several

41 Ibid at p.19.
42 Ibid at p.19.
43 Ibid at p.19.
44 Ibid at p.19.
decades”.

Since the 1980s AGS has been battered by scandal and crisis. The 1970s also brought its share of trouble for AGS. In this chapter crises and scandal in AGS will be vetted under the benchmarks of:

1) Accountability
2) Prisoners
3) Intelligence
4) Media.

Crises have always forced change in AGS and the transformation always impacted on Garda morale. In any event it will be contended that what is set out in the chapter will strongly uphold the validity of Garland’s thesis.

It will also be argued here that the evidence as set out in each of the chapters is also indicative of the Garland indices that are not explored in depth in this study. The mass empowerment of Gardaí and the increase in the number of criminal offences and penalties as set out under the “Protection of the Public” index in Chapter 2 is surely also evidence of what Garland refers to as “the Decline in the Rehabilitative Ideal” and “The Re-Emergence of Punitive Sanctions and Expressive Justice”. As noted by Garland “the rehabilitative possibilities of criminal justice measures are routinely subordinated to other penal goals particularly retribution, incapacitation and the management of risk”. Similarly, what Garland says about the “re-emergence of punitive sanctions and expressive justice” is evinced by what he asserts in respect of “The Return of the Victim” which is studied here in Chapter 1. He states: “The feelings of the victim or the victim’s family, or a fearful outraged public are now routinely invoked in support of new laws and penal policies”. Specifically, he asserts that:

Punishment – in the sense of expressive punishment conveying public sentiment – is once again a respectable openly embraced, penal purpose and has come into effect not

---

46 Ibid at p.19.
47 Ibid at p.12.
48 Ibid at p.8.
49 Ibid at pp. 8-9.
50 Ibid at p.9.
51 Ibid at pp. 8-9.
52 Ibid at pp. 11-12.
53 Ibid at pp. 11-12.
just high-end sentences for the most heinous offences but even juvenile justice and community penalties. 54

Simply put, “the return” of the victim and public protection has caused the “re-emergence” of strict laws, penalties and the enhancement of Garda powers. This nexus between Garland’s different indices can also be seen elsewhere. In respect of “Changes in the Emotional Tone of Crime Policy”. 55 He says here that:

Fear of crime has come to be regarded as a problem in and of itself quite distinct from actual crime and victimization and distinctive policies have been developed that aim to reduce fear levels rather than reduce crime. 56

It is submitted that it is interlocked with Garland’s theory on “crime prevention and community safety” 57 which is detailed in Chapter 3 and looks at how Gardaí went about assuaging public fears during the drugs epidemic in the mid-1980s. These changes in emotional tone are also relevant in Chapter 5 which highlights how the Gardaí managed themselves, measured performance and handled crime statistics during the period. The fear of crime is also arguably relevant to the commercialisation of crime in Chapter 4 where the private police blossomed as the public police became more embattled.

Garland argues in respect of his index on “Politicization and the New Populism” 58 that: “A highly charged political discourse now surrounds all crime control issues so that every decision is taken in the glare of publicity and political contention and every mistake becomes a scandal.” 59 It is submitted all this is also evidence of the “perpetual crisis” 60 which is dealt with in Chapter 6. The AGS has almost been immersed in a perpetuity of crises in the last fifty-years which has changed how the Gardaí have carried out duties and how government have legislated on criminal justice matters and again it is argued here that these relate back to the “protection of the public” 61 and Garda “management styles and practices.” 62

54 Ibid at p.9.
55 Ibid at pp. 10-11.
56 Ibid at p.10.
57 Ibid at p.16.
58 Ibid at pp. 13-14.
59 Ibid at pp. 13.
60 Ibid at pp. 19-20.
61 Ibid at p.12.
62 Ibid at p.18.
Garland also looks at what he calls the “Re-Invention of the Prison”. He states that:

For most of the post war period imprisonment rates in America and Britain decreased in relation to the numbers of crime recorded and offenders convicted … In the last twenty-five years this long-term tendency has been reversed … the reversal of this trend was followed by the steepest and most sustained increase in the rate of imprisonment that has been recorded since the birth of the modern prison in the nineteenth century.

Similarly, in Ireland the prison population increased substantially over seven decades. Before 1970 the daily average number of prisoners stood less than 800. In 1957 it was 395. By 1975 the average increased to 1,000 and by 1989 it doubled again to more than 2,000. By 2001 it was 3,112 and in 2010 it stood at 4,290. Prison incarcerations peaked in 2011 and 2012 with the figures standing at 4,390 and 4,318 respectively. In 2013 there was a decrease to 4,158 and the downward trend continued in 2014 with the figures standing at 3,915. Similarly, the average daily incarcerations fell in the three-year period from 2015 to 2017 with the figures recorded at 3,722, 3,718 and 3,680 respectively. The figure on the 1st January 2019 stood at 3,904. Therefore between 1970 and 2011 there was a 400% increase in the daily average prison population. These figures support the Garland thesis in respect of this index but reflect changes that were taking place in criminal justice legislation under other indices. He argues under this index that there was “a transformation of criminological thought”. He argues that “control theories began from a much darker vision of the human condition. They assume that individuals will be strongly attracted to self-serving, anti-social and criminal conduct unless inhibited from doing so by robust and effective controls”. Hence the public appeal for imprisonment strong penalties and increased sanction.

63 Ibid at p.14.
64 Ibid at p.14.
66 Ibid.
67 Ibid.
68 Ibid.
69 Ibid.
70 Ibid.
72 Ibid.
73 Facts and Figures. Irish Penal Reform Trust @www.iprt.ie accessed at 1.50 p.m. on 24th January 2019.
74 Ibid.
75 D. Garland supra at note 2 p.15.
76 Ibid at p.15.
Clearly it can be seen that each of the Garland indices “piggy back” on the other and while the focus and scope of this study are the selected indices – simply because they can easily be applied directly to AGS – the remaining six indices are also relevant to policing in Ireland. While this study strongly argues that Garland’s theory is substantially all fours with what happened in AGS in the last half century there are a few inconsistencies that merit highlighting.

**Shortcomings in Garland’s Theory?**

At the very outset of Garland’s seminal publication in 2001 he comes clean in respect of his theory on “crime control”. He readily acknowledges that his theory is only a theory and it will not cover or apply to every single nuance of human behaviour. He states that:

> In our attempts to make sense of social life there is an unavoidable tension between broad generalization and the specification of empirical particulars. The standard response to any wide-ranging social or historical interpretation is to point to specific facts that don’t fit, the variation that has been missed or the further details that are needed to complete the picture. ‘It’s more complicated than that! Or ‘they do it differently in Minnesota!’ (or for that matter, Manchester or Midlothian) are the inevitable critical complaints and in their own terms these criticisms are always well taken.

The “specific facts that don’t fit” or “the variation that has been missed” require consideration, but in the end, it will be contended that shortcomings in Garland’s theory are not significant enough to make a difference to the authenticity or indeed legitimacy of what he asserts in respect changes in Irish policing and the Irish Police force over the last five decades.

It is true that AGS has benefitted from mass empowerment in the period under review. The right to silence has been eroded, interviews are being video/audio recorded. New offences have been created to make it easier to bring persons to book for gangland and other serious crime and information technology has been so enhanced that Gardaí if necessary, can pinpoint a person’s movements by what they call “pinging” a person’s mobile phone. AGS can hardly

---

77 Ibid at Preface.  
78 Ibid at Preface.  
79 Ibid at Preface.  
80 Ibid at Preface.  
keep abreast of their new powers of stop, search and seizure. The PULSE system has also assisted in police accountability and its investigative prowess. It contains massive amounts of information. Everything must be recorded on the system under pain of strong penalty and/or scandal if it is not. All these matters are highlighted in the chapters that follow. One could also be forgiven for thinking that on the face of it, AGS was part of the apparatus of an authoritarian state. Not so. It has been stated already in this study and will be stated again that AGS is one of the most accountable organisations in this jurisdiction. Its members were essentially accountable by means of the organisation’s own disciplinary regulations, civil and criminal law and judicial review. Since the mid-1980s its members are now also more accountable via G.S.O.C.\(^83\)(previously the Garda Complaints Board),\(^84\) the itinerant Minister for Justice of the day,\(^85\) Dáil Éireann by means of Dáil Committees and the various forms of Commissions of Inquiry not to mention the Policing Authority\(^86\) and the Commission set up to examine the future of Policing in Ireland.\(^87\) The evidence that Gardaí glean in investigations must be submitted for consideration and direction to the independent office of the Director of Public Prosecutions. In the event of investigations progressing to prosecution then the Gardaí must submit their efforts to due process. These are very onerous responsibilities that the members of AGS choose to take on every day. The media is also quick to spotlight and highlight Garda issues. This creates a pressure environment in which to work. It might be said that being a member of AGS is like being in a goldfish bowl looking out at everyone else looking in.\(^88\) It is submitted that this level of accountability strongly pushes back on Garland’s crime control theory. The police are themselves being robustly controlled.

Garland underlines the “Return of the Victim”\(^89\) to the centre stage of the criminal justice system. “Putting the Victim First”\(^90\) has been called “the devil’s greatest trick”.\(^91\) The victim

---

\(^83\) The Garda Sióchána Ombudsman Commission (G.S.O.C.) was established under the Garda Síochána Act 2005.

\(^84\) The Garda Sióchána Complaints Board was established under the Garda Síochána (Complaints) Act 1986.

\(^85\) The Garda Síochána Act 2005 empowers the Minister for Justice to set priorities for the AGS. In addition the Garda Commissioner comes under the direct control of the incumbent Minister for Justice.

\(^86\) The Garda Síochána Policing Authority Act 2015.

\(^87\) The Commission of the Future Policing in Ireland was set up by the Minister for Justice Frances Fitzgerald in May 2017. [hereinafter C.F.P.I.]

\(^88\) C. Kennedy, Historic Conversations on her Life with John F. Kennedy (Hachette UK 2011.) Jacqueline Kennedy stated that her time in the White House as First Lady was something akin to living in a goldfish bowl with everyone looking in while she was looking out.

\(^89\) D. Garland supra at note 2 at p.11.


\(^91\) Ibid.
must first go through the trauma of making a complaint to Gardaí. Time will pass as Gardaí will gather evidence and prepare their file. The D.P.P. will give directions to prosecute or not. If there are no proceedings directed for whatever reason the victim will be at least disappointed. If criminal proceedings are directed, then the case will go to court and take its place on a court list. More time will pass. Adjournments may come and go, and a hearing day eventually arrives. Maybe the case will get heard. Maybe. The Court might not get to hear it due to the previous workload on the day’s list. Maybe a crucial witness would be unexpectedly unavailable. Another adjournment. More delay. The victim may be disheartened. Eventually the case goes ahead. A juror might take ill or there might be another issue with the jury. Maybe something might be said in court that would be in breach of due process. Mistrial declared. Case put back. The victim goes home again. Eventually the victim gives his or her evidence. Legal argument takes place. A due process rule might be breached, or the Judge directs that the case cannot go before a jury. Case dismissed. The accused is free to go. Let’s say the jury gets to determine the matter. It possibly deliberates for hours, maybe days. The jury decides not guilty. The victim feels that he or she was not believed. Maybe the jury cannot decide. “Hung jury.” The case goes back and the D.P.P. must decide on retrial. Maybe, the jury will return a verdict of guilty. It has now been a long time since the victim made the complaint to the Gardaí. The victim awaits sentencing of the accused. Maybe the victim will be pleased with the sentence handed down to the accused by the court. Maybe not. Either way they will go home. Perhaps on the way they will recall the words of defence counsel seeking to appeal some aspect of the case. Some Garda will have to tell the victim it might all have to be gone over again if the accused’s appeal is successful. The Judge and the prosecution and defence teams move onto the next case. The investigating Garda goes back to the Garda Station and before long he/she will be re-directed to his/her next crime for investigation not to mention all those he/she has outstanding on the desk. The Garda will also immediately have to update the PULSE system with the outcome of the case.

This is part of the reality of the criminal justice system and how it impacts on victims of crime. The recent E.U. Directive\textsuperscript{92} and supporting legislation\textsuperscript{93} here changes none of the reality that has just been described. As noted in Chapter 1 the victim may have returned to centre stage,

\textsuperscript{92} 2012/29/EU Victims’ Rights Directive
\textsuperscript{93} The Criminal Justice (Victims of Crime) Act 2017.
but that stage must be shared by the accused, the Gardaí, the Judge, the jury and prosecution and defence teams. It is a crowded place.

There are further push backs against the Garland thesis in decisions from the Irish Courts. Kilcommins considered four cases to highlight this.94 In CC v Ireland and Others,95 a 19-year-old accused was charged with what might in Garda parlance be called “the statutory rape” of a 14-year-old female. The accused of 19 years stated that the girl had told him she was 16 years of age. The accused said the intercourse was consensual. There were four charges against him contrary to Section 1(1) of the Criminal Law (Amendment) Act 1935. The section did not provide for any defence once sexual intercourse took place. It took no account of the man’s honest or innocent belief. The Supreme Court ultimately held that criminalising the “mentally innocent” was wrong and the statutory provisions were found inconsistent with the Irish Constitution.

In the case S.H. v The Director of Public Prosecutions96 the delay in bringing prosecutions in respect of belated complaint of historical sexual abuse was considered. Since the 1990s these types of cases have become more public. As noted by Kilcommins the Supreme Court held “that the only relevant question in such cases is whether there is a real or serious risk that the accused by reason of the delay would not receive a fair trial. The accused benefits from the presumption of innocence at all stages of the process.”97 Heretofore the courts were disallowing an accused from succeeding in a plea of prejudice because of the delay in bringing the case if the prosecution could prove that such delay was due to a close personal relationship between the accused and the complainant.

In Damache v The Director of Public Prosecutions98 the Supreme Court prevented the Gardaí from relying on a search warrant which was issued under Section 29 of the Offences Against the State Act 1939 because the Garda Officer who issued it was involved in the investigation. The section was struck down by the Supreme Court as being repugnant to the Irish Constitution.

96 S.H. v The Director of Public Prosecutions [2006] 3 IR 57.
97 S. Kilcommins supra at note 94.
98 Damache v The Director of Public Prosecutions [2012] IESC 11.
because it was not issued by an independent person. The State has since legislated to remedy the situation and Ali Charaf Damache99 in recent times has pleaded guilty to a U.S. charge of supporting terrorism.

In the case of People (D.P.P.) v Colm Murphy100 the criminal charges related to a car bomb explosion in Omagh in 1998. The Special Criminal Court convicted and sentenced the accused to 14 years imprisonment. The accused had raised the issue at trial concerning the alleged doctoring of notes by interviewing Gardaí. The Court of Criminal Appeal would later overturn the conviction based on the tainted evidence.

It is submitted that all these cases are push backs on Garland’s theory on the “culture of control”. All the cases concerned heinous crimes but at the highest courts in the land were not going to accept the at least questionable behaviour of the Gardaí (the Damache101 and Murphy102 cases) and were not going to accept due process rights being eroded in historical sex abuse and statutory rape type cases. (CC103 and SH104.) These terrorist cases are discussed later in the substantive chapters and while they are evidence of a push back on Garland’s theory under his “public protection”105 and “crises”106 indices it could be argued that they are evidence of the accountability now being brought to bear on the Gardaí in his “new management styles working practices”107 index. Police activity is being watched with a jaundiced eye.

**Summary**

In summary therefore, this thesis examines transformation in AGS by means of Garland’s theory on the “Culture of Control”.108 Six of Garland’s indices of change are specifically analysed in separate chapters simply because they are easily applicable to policing. However, it is acknowledged that the remaining indices are also relevant. The study uses Garland’s
devices of historical, penological and sociological themes and some of the shortcomings in Garland’s theory have been featured. In the end it will be concluded that Garland’s thesis is strongly, if not fully evinced by what happened within and without AGS since the late 1960s.
CHAPTER ONE

THE RETURN OF THE VICTIM
QUALITY SERVICE OR LIP SERVICE?

Three lads just ran in, with caps on and their faces covered. They had guns. They grabbed me and pulled me against the bullet proof glass and demanded the takings … Afterwards the Gardaí came and took statements. Asked later if he was given any support he said, ‘a bloke in the pub next door offered him a brandy’.109

Introduction

Garland argues that “(o)ver the last three decades there has been a remarkable return of the victim to centre stage in criminal justice policy.”110 Is this correct? And if so, how has this change manifested itself in the transformation of AGS over the last number of decades in particular? This chapter will examine Garland’s assertion in an Irish context and argue that there is ample evidence to support his view.

This section will highlight different areas of policing which historically may have tainted how the Gardaí interact with victims. In that regard criminal due process and the Gardaí’s duty of care to the public are relevant. It will be demonstrated how the Gardaí over the years have made considerable progress in their service and commitment to victims of crime in particular by means of their neighbourhood watch and community relations programmes. In addition, restorative justice has been codified in legislation in respect of juvenile offenders. In recent years AGS heralded its own Victims Charter and its Victim Service Policy. Notwithstanding this, the Guerin and O’Higgins Reports (infra) have unhappily shown how Gardaí have failed victims during criminal investigations and were stingily criticised and exposed for these failures. This chapter will also highlight the new E.U. Victims Directive (infra) and the supporting Criminal Justice (Victims of Crimes) Act 2017 which will give effect to such Directive. It will explore how these events will impact on how the D.P.P. and Gardaí make decisions in criminal cases. It will look at how the whole area of reimbursement of expenses

110 D. Garland supra at note 2 at p. 11.
to witnesses which in view of the recent Directive will now have to be improved upon. It is submitted that all the foregoing is strongly indicative of the “return of the victim”.

In the end the evidence presented in this chapter will demonstrate that: “The victim is no longer an unfortunate citizen who’s been at the receiving end of criminal harm and who’s concerns are subsumed in the public interest that guides the prosecution and the penal decisions of the state.”

**The Exclusionary Rule/Due Process**

As noted by Garland “(i)n the penal welfare framework individual victims featured hardly at all … (t)heir interests were subsumed under the general public interest and certainly not counter-posed to the interests of the offender. All this is now changed”.

A crime victim in an interview with Gartland and Holland in the *Irish Times* states that once a crime is reported to Gardai there is an expectation that it will be dealt with “very quickly”. She adds however that the process “can be very slow, necessarily so as the guards have to work through statements of evidence.”

This has always been the case. Due process demands that the AGS must patiently build the prosecution case and must explain to a victim that the investigative process can be slow and time consuming. Members of AGS must describe to injured parties the rigors of due process and how it will manifest itself in a contested criminal trial. In the past there was no such thing as support for the victim but now as observed by Garland a victim is a “righteous figure whose suffering must be expressed and whose security must henceforth be guaranteed”.

As further noted by Shapland *et al*:

Prosecution is a process occurring over weeks and months, a process in which the victim makes an appearance at different stages but only plays a peripheral role…the police appear to reserve the prosecution process to themselves requiring victims to jump the hurdle of deciding to press charges as soon as possible and then seeing them as having little further role until the time comes to give evidence in court.

---

111 D. Garland *supra* at note 2 at p.11.
112 D. Garland *supra* at note 2 at p.11
114 D. Garland *supra* at note 2 at p.11.
Similarly, Newburn noted:

> In the modern police service victims have been conceived as suppliers of evidence to help the State makes its case against the offender. Sympathetic treatment no matter how genuinely felt by individual officers has at an institutional level been offered primarily to secure the cooperation of victims in that endeavor.116

In Ireland in the pre-1990s era, victims of crime had to rely on the individual professionalism or perhaps the thoughtfulness of the investigating Gardaí not only to update them on the progress of an investigation but also to explain the criminal justice system to them. Too often the Gardaí did not do this very well and even in today’s surveys carried out by the Gardaí themselves, victims are still critical of them in this area.117 However, the Gardaí have endeavoured to improve notwithstanding that the views of Shapland et al and Newburn remain very relevant in how the Gardaí approach crime investigation. In the failed Ian Bailey civil action against the Gardaí in 2014/2015 there is a good example of garda preoccupation with evidence which can push the role of the victim to the periphery. In a taped conversation on the 26th June 1997 between two gardai who were involved in the investigation of the murder of Sophie Toscan de Plantier both men spoke of witness statements as follows:

> **Garda 1**– You see there are statements here that I have to go back and fill it in. I have to talk to them, one man put it in here ‘I believe she was attempting to tell the truth and trying to recall’…when the evidence clearly shows…she is anything but, she has been out there working, conniving, twisting.

> **Garda 2**– That’s not fucking evidence.

> **Garda 1**- I know but it is in the statement and has to be taken out of it.118

None of the Gardaí were aware that their conversation was being taped by their own organisation but demonstrates that Gardaí were sharply focusing on evidential proofs in contemplation of any future court case. This chapter will show that notwithstanding police

---


117 Garda Public Attitudes Survey 2008. Fewer than half the persons who reported crime to Gardaí expressed satisfaction of being kept informed of progress in the investigation of the crime they had been victim o (44%) at p. (v.i).

118 Mary Carolan, “Garda had weak circumstantial evidence on Bailey” *Irish Times*, 20th December 2014 at p.6 (Italics by author)
procedures, victims have returned to ‘centre stage’.119 As noted by Kilcommins et al “a growing consciousness has evolved in Ireland of the need for victims of crime or witnesses to be more prominent actors in the theatres of prosecution and sentencing.120 This too it is suggested is correct and it acknowledged that much has happened in the last four decades or so that has improved the lot of crime victims. It is submitted that the Gardaí have been to the forefront of this change and will even more so with the advent of E.U. Directive 2012/29 (Victims’ Rights) which came into effect in November 2015. The Criminal Justice (Victims of Crime) Act 2017 transforms the Directive into Irish Law.

However, it will also be argued that notwithstanding all the changes that have taken place over forty years – victims must still share centre stage with the accused, the Gardaí, the legal profession and the judiciary. In this chapter it will be submitted that the changes that have occurred and that are about to occur while substantially beneficial victims – are in some ways cosmetic and superficial. It will be shown how the changes have impacted on how the Gardaí deal with victims during investigations and during trial. It will also be shown that victims are no longer willing to acquiesce and remain silent when they believe justice, as they see it has not been done and as stated by Newburn:

… the police now have a responsibility to victims to ensure that their primary harms are addressed and that security harm (i.e. that which may result from engaging with the criminal process) is minimal…the police are now supposed to be providing a service to victims.121

It is submitted that the rigors of criminal due process have not served victims well in the last number of decades and has coloured how the Gardaí have interacted with victims. In 1999 Waddington noted:

Detectives are valued more than patrol officers not because they catch criminals – which they do not – but because they legalize police decisions. Transforming the messy reality of the streets into the clinical world of “evidence” that will be publicly examined in court in an enterprise fraught with danger for the police organization if done incompetently. This the reason why patrol officers are treated so badly is that save for

119 D. Garland supra at note 2 at p.11.
121 T. Newburn supra at note 116 at pp. 800-801.
the most exceptional circumstances what they do is of little consequence for the organization however important it might be to others.122

It is contended that those with detective experience in AGS have substantial court experience and as a result a substantial knowledge of the laws of evidence. Those members of AGS with detective experience are always conscious of evidential rules and practices and have a solid practical knowledge of the “exclusionary rule”.

When an experienced Garda arrives at the scene of a serious crime he/she is immediately thinking of the court room – arrest, caution, the Judges Rules, search for exhibits, bagging and tagging exhibits, chain of evidence, warrants, preservation of crime scene, notifying and updating the chain of command. Consequently, it is submitted that while many experienced investigators can be very adept, sympathetic and empathetic to a crime victim and/or his or her family, their minds are very much elsewhere. To an investigator identifying and apprehending a suspect and getting the evidence for court can and often does mean more to them than a victim’s immediate needs. A Garda investigator’s view is grounded on his/her investigative and legal experience and training. The Gardaí are all too aware that any sloppiness or shortcomings in their investigations will be ruthlessly exposed in a contested court case and the judiciary and a jury, in the end are likely to be very unforgiving of any Garda unprofessionalism.

It is contended that Gardaí would agree with the view of Bacik et al:

Nor is the prosecution assigned the function of accommodating the victim’s unique position and particular needs in the trial process. The contribution of the victim to proceedings is at best secondary, passive and incidental and it is carried without formal provision for representation or support. 123

As further noted by Mr. Justice Paul Carney now deceased:

Victims tend to instinctively feel that counsel appearing on behalf of the prosecution is “their” barrister as they would put it. This is not the case and the prosecution does not in any way represent the victim. There may be a coincidence of interest and there may

It is suggested that experienced Garda investigators of all ranks are very familiar with the views of the courts and this experience guides their view, conduct and behaviour. A victim can get lost in all of this. The Gardaí get wrapped up in their investigation and the victims get left by the wayside. It is suggested that over the years that any perceived coldness or detachment by Gardaí when conducting criminal investigations is a reflection or an extension of the Rules of Evidence. As noted by Geoghegan J. nearly two decades ago: “in the extreme history of the criminal law and procedure it has never been permitted for the victim to be separately represented at a criminal trial. Such representation could dangerously compromise the necessary independence and detachment of the court and jury.”

McCracken J. a decade later in a Cork murder case held that if victim impact reports “deviated from court guidelines then the victim could be held in contempt of court and that scurrilous unfounded allegations may mitigate a sentence imposed on an accused.” A year later Judge Paul Carney, R.I.P. would state that this was a “right of censorship on killers and rapists over victims.”

It is contended that while the decisions of the courts weigh heavily on the mind of Garda investigators in all their deliberations and enquiries into criminal matters there is none more so than those decisions that pertain to the exclusionary rule and even here this rule has evolved over time. Nowhere does the Rule include the word “victim” but it does include the word “accused” and it is submitted that practically in every contested criminal trial this Rule must be explained by AGS members to victims who have little or no comprehension of why compelling evidence of guilt is being excluded from the prosecution case being presented to the jury.

Some fifty years ago in (A.G.) v. O’Brien [1965] I.R. 142 the Supreme Court held:

---

127 “Accused has no future in this country when his time is served”, Irish Times, (11th October 2007), at p.16. Article cites in full a speech given by Mr. Justice Paul Carney at University College Cork entitled “The Role of the Victim in the Criminal Process: Part 11” in October 2007.
The Courts in exercising their judicial powers of government of the State must recognize the paramount position of constitutional rights and must uphold the objection of an accused person to the admissibility at his trial of evidence obtained or procured by the State or its servants or agents as a result of a deliberate and conscious violation of the constitutional rights of the accused person where no extraordinary exclusionary circumstances exist, such as an imminent destruction of vital evidence or the need to rescue a victim in peril. I would also place in the exclusionary category evidence by a search incidental to and contemporaneous with a lawful arrest although made without a search warrant.\textsuperscript{128}

This rule was tightened further some twenty-five years later in \textit{The People (D.P.P.) v. Kenny} [1990] 2 IR.110 when Finley C.J. stated:

To exclude only evidence obtained by a person who knows or ought reasonably to know that he is invading a constitutional right is to impose a negative deterrent. It is clearly effective to dissuade a policeman from acting in a manner which he knows is unconstitutional or from acting in a manner reckless as to whether his conduct is or is not unconstitutional. To apply on the other hand the absolute protection rule of exclusion whilst providing also that negative deterrent incorporates as well a positive encouragement to those in authority over the crime prevention and detection services of the State to consider in detail the personal rights of citizens as set out in the Constitution and the effect of their powers of arrest, detention, search and questioning in relation to such rights.

It appears to me to be an inexplicable conclusion that a principle of exclusion which centres on both negative and positive force is likely to protect constitutional rights in more instances than is a principal with negative consequences only.\textsuperscript{129}

It would be another seventeen years in 2007 when there would be some indication of a revision of the rule in \textit{Kenny}. There would now need to be a balancing of interests between society and the accused. Charlton J. in High Court commented in the \textit{People (D.P.P.) v. Cash}:

A rule which remorselessly excludes evidence obtained through an illegality occurring by mistake does not commend itself to the proper order of society which is the purpose of the criminal law. Any system of the exclusion of improperly obtained evidence must be implemented on the basis of balancing interests. The two most fundamental competing interests in that regard are those of society and the accused.\textsuperscript{130}


\textsuperscript{129} \textit{The People (D.P.P.) v. Kenny} [1990] 2 I.R.110.

However, it would be fifteen years later in 2015 when the Supreme Court would decide that the exclusionary rule in respect of warrants would be relaxed. It is submitted that these decisions are more “victim friendly” O’Donnell J. in D.P.P. v. J.C. stated for the majority:

First it seems clear that Kenny represents a near absolute conclusion which is the most extreme position adopted in the common law world. Second it is apparent that on analysis the exceptions allowed for in Kenny have little or no scope for practical application particularly in the case of warrants. Viewed in this way Kenny is worse than an absolute rule: it presents itself as superficially balanced while in practice always resulting in the exclusion of evidence.

A central function of the administration of justice is fact finding and truth finding. Anything that detracts from the courts capacity to find out what occurred in fact detracts from the truth finding function of the administration of justice. As many courts have recognized where cogent and compelling evidence of guilt is found but not admitted on the basis of a trivial technical breach the administration of justice far from being served may be brought into disrepute.\textsuperscript{131}

While the decision in D.P.P. v. J.C. would be in ease to the “force publique” or AGS during criminal investigations the Supreme Court struggled to relax the Kenny decision. As noted by Hardiman J. (now deceased) for the minority:

The State have suggested albeit very obliquely that protections of citizens such as those contained in Kenny are perhaps no longer necessary because of developments since 1990. I consider this as entirely fallacious and have endeavored in Part IV to give some examples of serious cases of concern which presently exist including the finding by a former President of the High Court that “proper discipline had been lost from An Garda Síochána”. If the State have their way in this case it will be possible to disregard breaches of the Constitution and of Constitutional Right and admit the fruits of these in evidence just as if the Constitution had not been breached at all … I am ashamed that our State is bringing this situation about.\textsuperscript{132}

In Part IV of his decision Hardiman J. lists the Morris Tribunal, the Smithwick Tribunal, the Short case, the Guerin Report and a reference is made to a phrase from author and former GSOC Commissioner Conor Brady referring to Gardai as “fortress Garda”\textsuperscript{133} as an example of why the AGS or the “force publique” cannot be trusted.

\textsuperscript{132} Ibid. at para 16 Hardiman J.
It is submitted that there can never be any doubt that the courts should always remain vigilant to ensure that any citizen’s constitutional rights are not breached by AGS and the examples cited by the learned Judge are strong and compelling corroboration of his view. However, the same Judge does not seem willing to give any credit for the solid investigative work that AGS has been carrying out since its foundation. Nor does the Judge take account of how victims might feel if a case against and accused failed because of some technical error. The annual reports of the Court Service and D.P.P.’s Office furnish the statistics for the volumes of Garda investigative material coming before the Courts. Gardaí have been murdered because of their dedication to duty but it would appear from the decision of Hardiman J. that there is no currency in that. Nor indeed is there any apparent consideration for the victims of crime - only the accused.

It is submitted therefore that the decisions of the court bear heavily on how Garda investigators carry out their work. Evidence is paramount. A witness or victims is only a part of the prosecution case which the Gardaí are obliged to prepare to very high standards. Gardaí will busy themselves with their investigations and the victim may become detached from all that is going on. To counteract this, the Gardaí have appointed Family Liaison Officers (FLOs) to engage with victims and families in serious cases to update them with details of Garda processes and the investigation itself. They will also supply families with details of victims’ organisations that can support them and in the event of a trial they will assist families with transport and accommodation if lengthy travel distances are involved. At trial they will explain the process and whatever the outcome or verdict will continue to maintain contact with the family. This will also be the case even if the Gardaí investigation proves inconclusive or no proceeding are directed by the D.P.P. However, even here it is a two-way street. The F.L.O. is part of the investigation team and is expected to elicit any valuable information from victims and families and bring such information back to the investigation team. In the end insofar as the Gardaí are concerned it is all about the investigation and the prosecution case. If the Gardaí fail to bring someone to book for a crime – in particular a serious one – or if they fail to secure a conviction because of some mistake, the victim, as will been shown will have little difficulty in litigating.
**Duty of Care**

Traditionally AGS did not owe any duty of care to victims of crime. In legal terms if a duty of care is owed by persons or organisations to others then a civil action for damages will lie against those who fail in giving effect to that duty. No such duty applied to AGS. In effect and broadly speaking a victim had no redress in Irish civil courts if members of AGS were negligent in how they pursued an investigation. Walsh uses the *Hill* case as an example of where the law in respect of victims of crime might have been heading. In that case he says that the House of Lords in the U.K “ruled that victims of the ‘Yorkshire Ripper’ had no cause for action against the police for the negligent failure of the police to detect and apprehend the ‘Ripper’ before he claimed them as victims.”

Walsh highlights the rationale of the House of Lords:

…to enforce such an obligation on the police would have a negative impact on the overriding public interest in the efficient prevention and detection of crime. If police officers had to conduct criminal investigations under the burden of a duty of care towards third parties there is a risk that they would become too hesitant and less robust in their detection and apprehension of offenders to the detriment of the public good.

It would appear that this judgment is correct. It is arguable that restricting police discretion in how they conduct serious criminal investigations in order to accommodate victims through recognition of a duty of care to victims would be detrimental to human life and police efficacy. Police will follow all lines of inquiry but inevitably will attach more weight to certain lines of inquiry rather than others because either evidence or intelligence leads them in a particular direction. It is not an exact science. As Morris noted, “being a policeman or woman in our society is a profession and a rightly respected one.” Experienced police officers build up a substantial knowledge of their work and the people they police over many years. Making subjective judgment calls is part of the job. To have experienced investigators fearful to make

---

136 D. Walsh *supra* at note 134 at pp.272-273.
137 D. Walsh *supra* at note 134 at pp.272-273.
these decisions because of “a duty of care to third parties”\textsuperscript{139} would, it is submitted, be an unwarranted interference with their professionalism. However, the \textit{Hill} case shows that victims now have little difficulty in challenging the police for decisions made in the course of investigations.

Ben Mannering in the \textit{Irish Times} reviewed similar case law in this jurisdiction regarding the duty of care of Gardaí.\textsuperscript{140} The decisions run parallel with that of \textit{Hill}. In \textit{Lockwood v. Ireland}\textsuperscript{141} in 2011 a rape trial collapsed because of a Garda mistake in the arrest of the accused. The rape complainant sued Gardaí, but the court dismissed the claim. The court held that the claimant would have to establish male fides on behalf of the Gardaí to succeed in her claim and that there was “no duty of care such as would create an entitlement to damages arising from the manner in which the Gardaí conducted its investigation.”

Again in 2001 Hedigan J. in \textit{LM v. Garda Commissioner}\textsuperscript{142} in the High Court dismissed an action by another rape complainant who complained that the Gardaí had failed to properly investigate a complaint made in 1990 when she was a child. She complained that Gardaí only took up the matter in 1996 when an English Child Protection Agency contacted them. She sued Gardaí for the delay in prosecuting. In his decision Hedigan J. said:

\begin{quote}
The imposition of liability might lead to the investigational operations of the police being exercised in a defensive frame of mind. The result would be a significant diversion of police manpower and attention from their most important functions that of the suppression of crime.
\end{quote}

In \textit{Lorcan Roche Kelly v. Garda Commissioner}\textsuperscript{143} Kearns J. reviewed Garda and State liability where crimes are committed by a person on bail for other offences. Lorcan Roche Kelly was the husband of Sylvia Roche Kelly who was murdered by Gerry McGrath on the 8\textsuperscript{th} December 2007. He claimed that the Gardaí at the bail hearing failed to inform the court of other offences in which McGrath had been charged and as a result he was out on bail when he should have been incarcerated. Mr. Justice Kearns dismissed the claim on the basis of long-established

\textsuperscript{139} D. Walsh \textit{supra} at note 134 at pp.272-273.
\textsuperscript{140} B. Mannering, “Bail Crime and Garda’s Duty of Care”, \textit{Irish Times}, (25\textsuperscript{th} May 2015).
\textsuperscript{141} \textit{Lockwood v. Ireland} [2010]. I.E.H.C., 450.
\textsuperscript{143} \textit{Kelly v. Garda Commissioner} [2013]. I.E.S.C., 47.
common-law principle whereby a duty of care was deemed to arise was not present on the facts of this case.

Notwithstanding the decisions in ease of the Gardaí in these cases, it is suggested that each of them are examples of the new-found willingness of crime victims to act and speak out when they believe the Gardaí have failed them. Lockwood & L.M. were both appealed. O’ Donnell, J. in the Supreme Court noted that the plaintiff claims in each of these cases were dismissed at a preliminary stage and “no evidence was heard or facts found.” He allowed the plaintiffs appeal in each case stating that “these plaintiffs should be allowed bring their cases to trial” and have them “properly and fairly determined.” So it now can be seen that the judiciary have come to a point where they will not now automatically dismiss such cases of victims at a preliminary stage without a full hearing giving consideration to the facts of the case. There can be no doubt that this is a very pro victim judgment which could have serious ramifications for AGS. Similarly, Peart J. in the High Court at around the same time made a very comparable pro victim decision.Crime victims are now also willing to speak out against the judiciary. Heretofore that may not have been the case. While Judges in this jurisdiction do not de jure owe a duty of care to crime victims it could be argued that de facto they now do so. It would be a foolhardy jurist who would not now attach substantial weight to the views of a crime victim. Perceived lenient sentences handed down in a higher court are now appealable by the D.P.P. who will take into consideration the views of the victims before deciding on such an appeal. This has been case since it was provided for in the Criminal Justice Act 1993. A jurist may also not want to fall foul of the court of public opinion if his/her decision(s) are reported and not perceived to proportionate to the gravity of the crime perpetrated on the victim. In 1986 Gertie Shields with others set up Mothers Against Drunken Drivers (MADD) after her daughter died with five other girls in February 1983 when the mini bus in which they were travelling was hit by a car driven by a drunk driver. An obituary written in the Irish Times on the 22nd of August 2015 after Gertie Shield’s death recalls the aftermath:

145 Ibid at p.69.
When the case came to the Circuit Court later that year before Judge Frank Roe the man concerned was given a two-year suspended sentence and a 15-year driving ban. Just before that case Judge Roe had sentenced a sheep rustler to six months imprisonment. The contrast between the two sentences brought firstly Gertie’s son David to his feet to ask the judge “are sheep more important than people?” Mrs. Shields then reminded the judge “that’s my daughter you are talking about.” In the days before victim impact statements in court the judge put Mrs. Shields in the witness box where she asked him who would see to it that the defendant would stay off the road all the 15 years. Judge Roe answered that he would see to it; in fact, the man’s license was restored seven years later.\footnote{Obituary Gertie Shields, *Irish Times*, (22nd August 2015). MADD the organisation.}

MADD the organisation she went on to set up had ten basic demands including a reduction in the alcohol limits, compulsory testing for drivers involved in accidents, photographs of drivers to be included on driving licenses and an obligation on those who sell alcohol to check the ages of customers before serving them alcohol. In time all these aims were ultimately achieved, and the Shields case is a good example of victims asserting themselves and moving to the centre stage of the criminal justice process.

Mawby contends that there are several reasons why it is important that the police provide a satisfactory service to the victim:

1) Bring crime to attention and identify leads,
2) Police are still the main agency to respond to the victim. If wrong, it exacerbates the victims experience of crime and may lead to

It is submitted that these reasons could ground at least in part, why AGS should owe a duty of care to parties injured by crime. However, while no formal duty of care may have existed, it is contended that AGS since its foundation in 1922 has for the most part always endeavoured to be mindful of and respectful of victims of crime. In other words, the absence of a legal duty of care was balanced by the basic humanity and conscientiousness of individual members of AGS. The murder of Garda Tony Golden on the 11th of October 2015 at Omeath, Co. Louth is evidence of that. He went to the assistance of a seriously distressed female victim of domestic violence because of his commitment to his duties and his concern for the victim and
her family. Garda Golden saw it as his job. In eight Garda Public Attitude Surveys carried out since 2002 up to 2018 the Gardaí have always had high satisfaction ratings with the public notwithstanding the scandals that have occurred during that time. There can be no doubt the controversies in more recent years had a more damaging effect on the organisation, but it continues to have the good will of the public. Since the inception of the organisation the Gardaí have brought hundreds of thousands of accused people to book for their crimes. These crimes range from murder to petty theft. The Gardaí deal with victims all the time. Even a light perusal of annual D.P.P or Court Service reports over the years would corroborate this. The news media report on many of these cases. It is submitted that Gardaí generally were and are good at dealing with victims. While it may not have been legally enforceable, a duty of care existed between the AGS and public it policed. That is not to say that victims have been treated properly all the time. Sometimes AGS has members who might be suited to another occupation or profession. Sometimes there are significant lapses in the how the guards would deal with victims of crime. The Guerin Report\textsuperscript{149} which will be highlighted later gives examples of some of these experiences. It is contended that while AGS always prided itself as an organisation over many decades on its attentiveness to victims of crime, perhaps AGS took this attentiveness for granted. So much so that for years there were no definitive policies within the organisation setting out a protocol in what the public could expect from Gardaí when they report a crime. This has changed with the advent of the ‘Garda Victims Charter’ in 2010\textsuperscript{150} but it is submitted that any examination of the early Commissioners Annual Reports would manifest sparse detail on victims.

**Community Engagement; Neighbourhood Watch**

It was in 1978 when the Gardaí set up its Community Operations section\textsuperscript{151} while in the early 1980’s it was reported that a full time Garda Crime Prevention Service was operating in Garda Divisions.\textsuperscript{152} Different security surveys were carried out by respective Crime Prevention Officers of banks, post offices and commercial premises in each division. In 1983 the concept of Neighbourhood Watch was explained to a number of community groups and\textsuperscript{153} there were

\textsuperscript{149} Guerin Report *supra* at note 27.

\textsuperscript{150} *Garda Victims Charter* 2010.

\textsuperscript{151} Report of Commissioner of An Garda Síochána 1978 at p.29.

\textsuperscript{152} Report of Commissioner of An Garda Síochána 1980 at p.27.

\textsuperscript{153} Report of Commissioner of An Garda Síochána 1983 at Foreword and p.28.
concerns in 1984 of attacks on the elderly throughout the country.\textsuperscript{154} In 1986 they recorded 92,783 households in 32 Neighbourhood Watch Schemes with a total of 200 Community Alert Schemes.\textsuperscript{155} It would seem that the benchmark criteria used by the Community Relations/Crime Prevention Section in each Annual Garda Report to measure what they were actually doing were the statistics for Neighbourhood Watch Schemes and the households in them. It is submitted that these statistics are evidence of the realisation of Gardaí that they had to reach out to communities and seek their help not so much to solve crime but to assure and demonstrate to the public that the Gardaí were there and dealing with the problem.

1986 - 92,783 households in 322 schemes\textsuperscript{156}
1987 - 135,528 households in 527 schemes\textsuperscript{157}
1988 - 160,800 households in 702 schemes\textsuperscript{158}
1989 - 184,084 households in 872 schemes\textsuperscript{159}
1990 - 199,701 households in 999 schemes\textsuperscript{160}
1992 - 227,953 households in 1,531 schemes\textsuperscript{161}
1993 - 304,205 households in 1,709 schemes\textsuperscript{162}
1994 - 300,000 households in 1,700 schemes\textsuperscript{163}
1997 - 2,332 schemes\textsuperscript{164}
1998 - 2,617 schemes\textsuperscript{165}
2000 - 2,469 schemes\textsuperscript{166}
2001 - 2,476 schemes\textsuperscript{167}
2002 - 2,371 schemes\textsuperscript{168}
2005 - 2,443 schemes\textsuperscript{169}

Table 1.1 Statistics for Neighbourhood Watch Schemes Periodically from 1986 to 2005

\textsuperscript{154} Report of Commissioner of An Garda Síochána 1984 at Foreword.
\textsuperscript{155} Report of Commissioner of An Garda Síochána 1986 at Foreword and p.29.
\textsuperscript{156} Ibid.
\textsuperscript{157} Report of Commissioner of An Garda Síochána 1987 at p.29.
\textsuperscript{159} Report of Commissioner of An Garda Síochána 1989 at p.32.
\textsuperscript{160} Report of Commissioner of An Garda Síochána 1990 at Foreword and pp.32-33.
\textsuperscript{161} An Garda Síochána Annual Report 1992 at p.5.
\textsuperscript{162} An Garda Síochána Annual Report 1993 at p.11.
\textsuperscript{163} An Garda Síochána Annual Report 1994 at p.11.
\textsuperscript{164} An Garda Síochána Annual Report 1997 at p.8.
\textsuperscript{165} An Garda Síochána Annual Report 1998 at p.46.
\textsuperscript{166} An Garda Síochána Annual Report 2000 at p.24.
\textsuperscript{167} An Garda Síochána Annual Report 2001 at p.10.
\textsuperscript{168} An Garda Síochána Annual Report 2002 at p.21.
The Gardaí stopped recording the number of “households” in the late 1990s and focused on the figure for Neighbourhood Watch Schemes. The number seemed to have reached the apex in 1998. There was a falloff in recorded numbers after that. It is submitted that statistics show that Gardaí saw merit in setting up and recording the numbers of Neighbourhood Watch Schemes to assuage the fears of the public in respect of crime. It is suggested that these figures are good examples of Garlands ‘Outputs over Outcomes’ theme which is dealt with later in Chapter 5. Local Gardaí were assigned to these schemes. They met with neighbourhood representatives and had local meetings with all the Neighbourhood Watch Schemes with the local Superintendent in attendance. It is the author’s experience that meetings were poorly attended by neighbours when crime was “quiet” or non-existent. However, in areas that were problematic, these meetings could fill community halls and much anger would be vented at Gardaí and actions demanded to deal with whatever the local problem was. Local Superintendents and even Chief Superintendents would attend these. They would always ensure that local Gardaí (the familiar faces) were present to assuage public anger.

Most persons attending these meetings would normally hold the local Gardaí in good regard but in some cases might hold the local Superintendent with some suspicion. Many crime victims would attend these meetings and vent their ire and assert their views in a very no nonsense, articulate and maybe sometimes in colourful fashion, the Gardaí became adept at dealing with anger at these meetings and “soaked up” people’s fear and frustration and reassured them that everything was being done that could be done e.g. extra (more visible) patrols in the area, more checkpoints, all leads being followed up, station opening times improved. Generally speaking the effort would dissipate after a time especially if the criminal were brought to book. Nothing has changed. As noted more recently in the editorial of the Garda Review in October 2015:

In rural Ireland, there has been an underlying fear of crime that passed without reflection from the political elite. Those citizens who expressed their fears were humoured with slogans such as ‘smart’ and ‘intelligence led policing’ that would save their communities from becoming ‘criminal badlands’. Some accepted these platitudes, some remained vigilant – but now that the truth is beginning to emerge it has become apparent that certain swaths of the country were largely abandoned to ‘lip service’ policing.  

The advent of Neighbourhood Watch in this jurisdiction is a good example of Garland’s ‘Community Policing’ index which is examined in Chapter Three (infra).

**Mission Statement/Garda Practice**

Meanwhile while Gardaí were dealing with the public in neighbourhood watch meetings, in 1991 Garda management produced their first Mission Statement which in effect was a nascent example of a victims’ charter. It stated that:

The broad functional role of the Gardaí is: -

a) to provide service within a legal framework.
b) to encourage and advise the community on how to protect their person and property.
c) To provide and assist
   (i) young people to achieve social maturity.
   (ii) in cases of tragedy whether of a personal and family nature

and in so doing provide a quality service to the public and the individual citizen while maintaining the highest standard of integrity, professionalism and efficiency.171

Victims of crime were now “customers” of AGS and its contact with them had to be measured and quantified. Notwithstanding that victims were now so called “customers” there remained no legal duty of care towards them like other private/public organisations might owe to their customers. It is submitted that in 1991 these words were very different to what Gardaí on the ground had been taught years earlier during their basic training in Templemore. The principal function of all members of AGS as set out in internal regulations had not changed for decades. As noted by Breathnach in 1974 the “principal function of all members” according to the Garda Code at Section 3.10 was “to prevent and detect crimes, to protect life and property and to maintain public peace and good order.”172

Now in 1991 the language of managerialism was becoming part of the Garda vocabulary. Insofar as the public and victims were concerned the Gardaí were to provide service “within a legal framework”. Did they not always? We now have the words “service”, “framework” and “quality service”. Managerialism was on the way and the public and crime victims were being referred to by Garda managers as “customers”. It is submitted that what Gardaí on the ground had been doing reasonably well for years i.e. dealing with the public and crime victims every day – now it had to be quantified. Heretofore there was no currency for Garda management in how it dealt with victims of crime. Now it could be measured by Neighbourhood Watch Schemes, the number of meetings with victims and other groups. As noted by Murphy in 1999:

Customers are often categorised in terms of internal organisational employees and people outside the organisation to which we deliver our diverse range of Garda services. Internally we regard every member and civilian employed in An Garda Síochána as well as their representative bodies as key customers. 173

It is submitted what he is asserting here, on the face of it at least, is problematic. He advocates members of AGS and their representative associations are customers. He seems to be asserting that it is solely Garda management are AGS and the rest of its membership is not. He goes on in the same article to suggest that the “customer base” of AGS is very diverse. He even lists the categories of customer’s AGS has.

- The Public
- Crime Victims
- Community/Voluntary organisations
- Social Partners
- Offenders
- Prisoners and their families
- Statutory Bodies
- Judiciary
- Legal Officers and Practitioners
- Department of Justice Equality and Law Reform

• Community organizations
• Non-Nationals
• Other Gardaí and Garda Organisations.\textsuperscript{174}

It is not intended here to debate what Murphy is saying. It is enough to highlight the language he is using. Crime Victims, the judiciary, prisoners and offenders are all customers of AGS not to mention the D.P.P. It is submitted that this cannot be the case. The Gardaí have massive powers provided for in common law and statute. The courts have determined that during their investigations the Gardaí do not owe a duty of care \textit{per se}. Gardaí and civilians can lose their lives if Gardaí make a poor judgement call or fail to act or act improperly. What is set out here is of import because it shows that crime victims now had elevated profile in the mindset of Garda managers. AGS now saw merit in measuring its contact with victims which demonstrates a new-found salience of victims in the Garda mindset. Again, it is also an example of Garland’s ‘Outputs over Outcome’s theme discussed in the Chapter 5 (\textit{infra}).

\textbf{Garda Victim Support}

In 1994 the Garda Victim Support Manual was published for the first time. The advent of the Irish Association of Victim Support is mentioned very briefly. It was Derek Nally a retired Garda Sergeant who set up this organisation nine years earlier in 1985. The 1994 Garda Report states with some brevity: -

\begin{quote}
Crime can seriously affect the lives of people. While Gardaí strive to do their utmost for people in the aftermath of crime it is not possible for the Gardaí to supply all the support a victim needs. Note should be taken of the following telephone number 01-6798673.\textsuperscript{175}
\end{quote}

It is suggested what appears in the Garda Report of 1994 is reflective of what Judge Paul Carney (now deceased) stated in 2007 “(i)n this community victims were ignored and even treated with disdain until a situation came about that they decided that they would take it no more and organised themselves”\textsuperscript{176} or as noted by Sanders “because the State can do little about

\textsuperscript{174} \textit{Ibid}.  
\textsuperscript{175} An Garda Síochána Annual Report 1994 at p.30.  
\textsuperscript{176} P. Carney \textit{supra} at note 124 at p.11.
crime it turns its attention to the consequences of crime and victims in particular.” In addition the 1994 report indicates crimes perpetrated on tourists would now be in a separate heading in Garda crime statistics. In 1999 the Garda Community Relations Section acknowledged that it “would continue to review the manner in which victims of crime are treated and our partnership with victims support to enable the organisation to provide a better service.”

Surveys

A year later in the year 2000 there is evidence of the Gardaí carrying out surveys to measure its “quality of service.”

- 91% of those surveyed were satisfied with how phone queries were handled.
- 81% of calls were answered between 1 and 6 rings.
- 85% of 999 calls were answered within 10 seconds.
- 94% of Garda respondents identified the station.
- 94% of letters of correspondence was answered within 10 working days.
- 82% of respondents rated Garda performance in their locality as “fairly good or very good”.
- 89% were satisfied with Garda service.
- 60% satisfaction rating was recorded in publicly provided housing in large towns.

The survey even went so far as rating perceptions of Garda demeanour.

<table>
<thead>
<tr>
<th></th>
<th>Better than Expected</th>
<th>As Expected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Helpfulness</td>
<td>33</td>
<td>62</td>
</tr>
<tr>
<td>Competence</td>
<td>25</td>
<td>70</td>
</tr>
<tr>
<td>Sensitivity</td>
<td>22</td>
<td>64</td>
</tr>
<tr>
<td>Politeness</td>
<td>26</td>
<td>68</td>
</tr>
</tbody>
</table>

Table 1.2  Public Perceptions of Garda Demeanour


It is suggested that this survey is evidence of the importance AGS placed on its public perception. In fact, the AGS carried out four public attitude surveys between 2002 and 2008 and four more between 2015 and 2018. AGS realises it needs to know where it stands with the public and victims of crime and it can no longer take its public support for granted.

**Restorative Justice**

In the *Children’s Act 2001* children over 12 years and under 18 years of age who come to the attention of Gardaí in the commission of crime would now receive the benefit of a caution perhaps on more than one occasion. Habitual offenders will ultimately end up on the wrong end of criminal proceedings in court. There now exists a voluntary process known as “Restorative Justice” where a young person accepts responsibility for a crime. If they so wish, a victim can have their views expressed at a meeting with a young person. These views may be expressed face to face or through a third party. The meetings are arranged through the local Garda Juvenile Liaison Officer. The process is enshrined in a statutory framework. As Garland states the “public good must be broken down into individual components. Specific victims are to have a voice…” Section 26 of the *Criminal Justice (Victims of Crime) Act 2017* now underpins restorative justice in respect of adults.

**Community Relations**

By 2002 the Community Relations section had its own Chief Superintendent and two Superintendents. In 2003 in a public attitude survey 57% of the public were critical of Gardaí at not being kept informed of the progress of their cases. This was reduced from 63% in 2002. Also in 2003 the Gardaí could print *pro forma* victim letters from the PULSE system. Commissioner Conroy also signed a “partnership” agreement with the Victim Support organisation during the same year. Working groups were established to progress this agreement. The 2003 report further noted that 75% of persons felt safe in public areas and the Garda Research Unit carried out a review of the implementation of policing concerning victims

---

181 *Children’s Act 2001* ss.22-26.
182 Ibid.
183 D. Garland *supra* at note 2 at pp.11-12.
of crime in collaboration with the Community Relations Section and the Victims Support Groups.

In 2005 5,590 pro forma PULSE letters were sent to victims of crime.\textsuperscript{186} In 2006\textsuperscript{187} AGS had an 80% satisfaction rating and this was notwithstanding the release of the first Morris Tribunal report in 2005. 41% reported a fear of being a victim of crime which was down 4% from 2004. 86% reported they felt safe at home at night. In 2007 37% of victims worried about being a victim of crime.

It is arguable that the watershed moment in terms of crime victim policy in AGS came in 2010 and 2011\textsuperscript{188} when the organisation produced and commenced the implementation of its new Victims Charter. The Garda Crime Victims Liaison Officers worked towards developing a strategy for victims of crime. Two national Crime Victims fora were set up and seven victim’s workshops were put together where crime victims could share their experiences with the Garda when reporting crime. In 2013 a text alert initiative was set up countrywide.\textsuperscript{189} This enabled Gardaí to contact the public on their mobile phones with information regarding crime prevention or suspicious activity in an area. It has also been effectively used by Gardaí disseminating traffic information and known or anticipated delays and diversions to traffic flow. It is a helpful and effective initiative.

In 2014 the scheme had morphed 580 text alert groups and approx. 100,000 signed up for it.\textsuperscript{190} It is a joint initiative between the Garda Victim Liaison Office, Muintir na Tire and I.F.A. In the same year Commissioner Noirin O’Sullivan stated that she was “committed to supporting the victim support organisations that assist in alleviating pain associated with crime.” In the same year and in response to a stinging report from the Garda Inspectorate she announced the role out of 28 Divisional Garda Victims of Crime Offices that would be in place by 2015. She also stated that there would be PULSE enhancement to facilitate the organisation interaction with crime victims in 2015.

\textsuperscript{187} An Garda Síochána Annual Report 2006 at p.8.
\textsuperscript{188} An Garda Síochána Annual Report 2011 at p.34.
\textsuperscript{189} An Garda Síochána Annual Report 2013 at p.12.
\textsuperscript{190} An Garda Síochána Annual Report 2014 at inside cover “2014 by the Numbers”.
By 2018 Garda Victim Liaison Offices have been set up in each Garda division. Each office is staffed by a Garda and clerical officer. Its staff contact victims (by phone) in the aftermath of crime and pass on information to the victim about victim support organisations should they require this information. The G.V.L.O. also ensures the PULSE *pro forma* letters are dispatched to victims and then make call backs (more phone calls) in the aftermath of crime. They can also act as a liaison between the attending or investigating Garda and the victim to ensure that the victim is given updates on the progress of their case. The G.V.L.O. is presently in its infancy. Time will judge their effectiveness and whether or not they address criticism in the Guerin¹⁹¹ and Garda Inspectorate Reports of 2014.¹⁹²

As can be seen it is not too difficult to chart changes in the Garda attitude and commitment to victims of crime from 1978 when the Community Relations section was set up to 2010 when the Gardaí set out its new Victims Charter. It can be seen from the Gardaí’s own reports that as an organisation it was becoming more sensitive to public perception. The advent of Neighbourhood Watch and Community Alert Schemes are early evidence of this Garda sensitivity. It’s carrying out of public attitude surveys and its new mission statement is further corroboration of what Garland says “(t)he victim is no longer an unfortunate citizen who has been on the receiving end of criminal harm whose concerns are subsumed by the “public interest”.”¹⁹³ The victim is now willing to pressure and advocate change in how AGS deals with them. This is done in the media through news shows, through the courts, through the investigative auspices of G.S.O.C. when they believe Garda standards have fallen short of expectation and through their public representatives. In addition, Garda management is not slow to initiate disciplinary procedures for alleged Garda lapses or investigative shortcomings. Change may have been sometimes slow between years 1978 to 2010 but in the last nine years AGS has been pushed to improve its commitment to victims. The watershed document was the Victims Charter in 2010 but the lightning rod for change, were those events examined by Guerin. *(Infra)*¹⁹⁴

¹⁹¹ Guerin Report *supra* at note 27.
¹⁹³ D. Garland *supra* at note 2 at p.11.
¹⁹⁴ Guerin Report *supra* at note 27.
Victims Charter and Victims Service Policy

In 2010 the Victims Charter was written acknowledgement by AGS that the prominence of the victim is very much at its apex. It begins with the words: “We are very aware of the special place that victims have in the Garda service and within the criminal justice system” and concludes with the sentence “[t]he welfare and support of the victims are central to our partnership with community groups, statutory agencies and voluntary organisations.” Compare these words with that of Garland, “[t]he new political imperative is that victims must be protected, their voices must be heard and their memory honored, their anger expressed, their fears addressed.” What Garland asserts is evidenced in the words of the Charter. Walsh argues that the Charter does not go far enough and what is needed is “a comprehensive code of victim’s rights together with clear procedures for its enforcement.” Booth and Carrington have a similar view regarding such Charters when they state that they “have been criticized as policy instruments that do not provide any substantive rights for victims but are an unenforceable set of minimal standards implemented in an ad hoc manner without much state funded support.” It is submitted that the advent of the Charter was substantive change for the AGS and its very existence evinces Garland’s view that victims were arriving “centre stage” insofar as the Gardaí were concerned.

While the Victims Charter was on the face of it a substantial step forward it would still appear that Gardaí on the ground might have had some way to go in honouring its commitments. In a 2010 report Kilcommins et al in research in this area found that “(r)oughly 1 in 10 of their respondents who reported a crime” indicated that “they did not receive the name of the Garda” to whom they reported the crime. A further “1 in 5 indicated they did not receive the contact details of the investigating Garda while 1 in 2 indicated they did not get the PULSE incident number.” A further 1 in 2 did not receive a contact number for a group supporting crime victims. The same report found a staggering 40.3% victim dissatisfaction rating with Gardaí concerning the information provided to them during the investigation. It is submitted that

196 D. Garland supra at note 2 at p.11.
197 D. Walsh supra at note 134 at p.276.
individual Gardaí might argue that in many cases there might not have been many developments to report – but in any event these figures show that in practice at least Garda members needed to do more to honour the Victims Charter of their own organisation.

The Gardaí continue to move to address these issues. The PULSE system has been enhanced to facilitate the easy production of a *pro forma* letter to each victim of crime signed by the local Superintendent or Inspector containing the name of the investigating Garda and the PULSE Incident Identification Number. Similarly, in burglary and domestic violence cases Gardaí are to call back to the victim.

In a more recent 2013 report Kilcommins *et al* conducted “comparative research on the legal and service provisions that are made available to people with disability as victims of crime.”[^200] They looked at Ireland and several other jurisdictions such as New Zealand, Australia and Canada not to mention England, Wales, Northern Ireland and Scotland. Their report highlighted the “service gaps that exist in Ireland in respect of victims of crime with disability” and how these may be cured by “reference to international standards and best practice.”[^201] The report says that the “lack of data collected on people with disabilities as victims of crime is striking.”[^202] The Garda PULSE system did have a “tick box” facility to record if an injured party has a disability. However, the annual Garda crime report does not provide these figures, but the new PULSE enhancements brought into effect in November 2015 will enable the Gardaí to record these issues.

In England and Wales for example there exists a Code of Practice for Victims of Crime. The Code is admissible in evidence in criminal proceedings. A person is not liable to criminal proceedings for failing to comply with the Code.[^203] It does enable crime victims “to receive an enhanced service under the Code.” The Code requires the police to ensure that there is an automatic referral to a local victim support group for a vulnerable victim. It sets out criteria for the notification of victims if suspects are arrested or released in respect of their reported

[^202]: *Ibid.* at para 2.2.3 at p.25.
[^203]: *Ibid.* at para 1.1.2 at p.43.
The new victims’ legislation to be enacted in this jurisdiction in tandem with the new E.U. Victims Directive will run along similar lines (infra). The Police Service of Northern Ireland has “defined a disability related incident to be any incident perceived to be on the grounds of a person’s physical or mental impairment by the victim or any other person.” In 2011/2012 there were 33 such individuals. Scotland’s Police Authority published a “Diversity Booklet” in 2008. It said that the police are “mobilised to make reasonable adjustments so that persons with disability receive the same level of service as non-disabled persons.” In New Zealand the police have an emergency text messaging service for people who are deaf and hard of hearing. The Canadian Mounted Police Service has a link on their website specifically for persons who are apprehensive about reporting a crime. It enables them to discuss matters with a victim service worker. It is a service that is available at any hour of the day by calling a toll-free dedicated helpline. Australian Police Authorities have separate help lines for people who have speech and hearing difficulties in addition to a text messaging service. They also support systems in place for vulnerable persons when being interviewed by police. These supports are in place whether the vulnerable person is a suspect or a victim.

The depth of research in both reports from Kilcommins et al and the fact that these reports were commissioned at all it is submitted are evidence of Garland’s thesis insofar as AGS is concerned “(i)t is no longer sufficient to subsume the individual victim’s experience in the notion of the public good: the public good must be individualized, broken down into individual comparative parts.” Recently under Section 15 of the Criminal Justice (Victims of Crime) Act 2017 the needs of the victim now need to be assessed at an early stage by the Gardaí.

In March 2015 the Gardaí published their “Victim Service Policy” and “Implementation Guidelines”. The documents begin with the words: -

An Garda Síochána has developed a policy to enhance the Garda services being provided to victims of crime and traumatic events. The policy will place victims at the centre of the Garda service by providing a respectful reassuring responsive reliable
service addressing the needs and expectation of all victims who require an individual response.²¹¹

This policy document and guidelines are being implemented in line with E.U. Directive 2012/29/EU which establishes minimum standards of rights of victims. As stated heretofore each Chief Superintendent is to establish a Divisional Garda Victim Service Office which would “augment the service provided by all Gardai and will be available to assist victims in receiving timely updates. They will be the central co-ordinating point of contact in each division for all victims.”²¹²

Many rank and file Gardaí might argue that this is an unnecessary layer of bureaucracy and that the injured party could always contact the local Garda Station directly. However, the Garda Inspectorate’s Report of 2014 found that “victims find it extremely difficult to contact the investigating officer”²¹³ and that there was “no formal process to monitor quality of service provided to victims.”²¹⁴ They also found that “frontline Gardaí and detectives recognise the importance of updating victims but often cannot find the time to do so.”²¹⁵ The difficulty in contacting investigating Gardaí is exacerbated by the organisation’s new rostering system. Frontline Gardaí in plain clothes or uniform now work ten hour shifts instead of eight-hour ones which was the practice since the 1970s. The same Gardaí work 6 days followed by 4 rest days. In effect that means that individual Gardaí are not on duty for approximately 50% of days in any twelve-month period. This would include adding normal rest days with 34 days annual leave. It is hoped therefore that the Garda Victims of Crime Office operating on a 9 a.m. to 5 p.m. basis Monday to Friday can fill the vacuum created by Garda rostering. However, it seems at present the Garda Victims Office are referring everything back to the investigating Garda – so it might be a simple case of déjà vous – but time will tell.

The Garda Inspectorate’s Report 2014 recommended a system of referral to victim support agencies be put in place and the improvement in training in taking statements from victims

²¹² Ibid.
particularly where sexual offences are reported to them. In 2015 the Gardaí will now provide
details of Victim Support organisations to victims and this must be recorded on PULSE by
investigating Gardaí to show that this has been done. In relation to children, the Gardaí now
have a specialist interviewer unit to acquire statements from them when they are under 14 years
of age. In addition, these interviews with children are carried out in separate private premises
away from Garda Stations. It is submitted that these enhancements to Garda service about
victims have been pressed upon the organisation due to the advent of the E.U. Directive
2012/29/EU and the Criminal Justice (Victims of Crime) Act 2017 which has been enacted by
the Oireachtas and will give effect to the corresponding E.U. directive. The Guerin and Garda
Inspectorate Reports of 2014 also bore heavily on the Gardaí to do better for victims.


On the 16th November 2015 the aforementioned E.U. Directive came into force. It declares
the establishment of “minimum standards on the rights, support and protection of victims of
crime.” It is a straight forward document which states that “crime is a wrong against society
as well as a violation of the individual rights of victims.” As noted by Garland:

... in the penal framework the offending individual was at centre stage the primary
focus of criminological concern ... The individual victim featured hardly at all. For
the most part he or she remained a silent abstraction; a background figure whose
individuality hardly registered, whose personal wishes and concerns had no place in the
process.218

Garland goes on to say that the whole scene is now “reversed”:

(t)he process of individualization now increasingly centers upon the victim. Individual
victims are to be kept informed, to be offered the support they need, to be consulted
prior to decision making, to be involved in the judicial process from complaint through
conviction and beyond. Victim impact statements are to be produced in court in order
to individualize the impact of the crime to show how the offence affected this particularvictim.219

---

217 2012/29/EU Victim’s Rights Directive supra at note 25
218 D. Garland supra at note 2, p.11.
219 D. Garland supra at note 2 at p.179.
It is submitted that the recent Directive and Victims legislation contain all what Garland asserts. A victim is now defined as a “natural person who has suffered harm or a family member of a person who dies because of a criminal act.” It appears therefore that a victim is a victim if they alone say they are victims. The definition of victims in the proposed Irish legislation runs parallel to the E.U. Directive. A person is also a victim “regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them – and for the purposes of the Directive the moment a complaint is made to Gardaí “should be considered as falling within the context of legal procedures.” When reporting a crime, victims should now receive a letter of acknowledgement of that report. The Directive allows for the provision of information to victims “sufficient detail … to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings.” It also states that victims should know “about the current status of any proceedings and to allow them a request to review of a decision not to prosecute by the Gardaí or the D.P.P.” The Act also requires that Gardaí carry out an assessment of the victim at an early stage and where necessary ensure that measures are put in place to protect a victim from secondary or repeat victimisation, intimidations or retaliation. The prosecution must assess and consider if the victim should give evidence otherwise than that of *viva voce* evidence in court. The Gardaí must record these issues and will be able to do so with the PULSE enhancements which came into effect in November 2015.

The Directive states that where the victim is a child, “the child’s best interest must be the primary consideration” and “shall be assessed on an individual basis.” It is submitted that the child’s “best interest” is always open to individual interpretation. A social worker’s view may be different to that of a Garda. The problem here is who gets to decide what is in the best interest of a child and when?

In an investigation by Emily Logan, the Ombudsman for Children, she found the Gardaí wanting when they invoked their power under s.12 of the *Child Care Act 1991* to take a child

---

220 Section 2 of the *Criminal Justice (Victims of Crime) Act 2017*.
221 *Ibid*.
222 *Ibid*. at Sections 8, 9 & 10.
223 *Ibid*. at Sections 7 & 15.
224 *Ibid*. at Section 15.
226 Report of Ms Emily Logan under Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána Order 2013), July 2014 at para 4.3.3 and p.110. [hereinafter Logan].
in an emergency from a place of danger to a safe place. It is submitted that it is only used by Gardaí in emergency situations where Gardaí have concerns for the safety of a child. Ms. Logan found that the Gardaí who had taken a child from a Roma family had racially profiled that family and acted improperly. The child was white while its family were of Roma origin. A member of the public had brought this situation to the attention of Gardaí. At around the same time there was a case in the media involving the abduction of a young child in Greece. A blonde haired and blue-eyed child had been located by the police authorities on a Roma settlement and so there was a certain heightened awareness amongst the public in these types of cases. It is contended that Gardaí would have acted in the best interests of the child by taking the child to a place of safety while investigating the child’s family origin. They invoked their authority under section 12 of the Child Care Act 1991 to do so. Ms. Logan found otherwise. It is submitted that if Gardaí declined to invoke their authority in the case and that child then went missing or came to harm the Gardaí would be scandalised, ridiculed and would possibly face criminal charges. Whatever the legislation or directive might be, the Gardaí can be damned if they do and damned if they do not. Ms Logan had four months from the 9th December 2013 when the Inquiry was set up to 2nd of April 2014 when she submitted her report to the Minister to make her inquiries. It is argued the Gardaí had no such luxury and a judgement call had to be made and it is submitted that they erred on the side of caution for the child’s safety. It was not the case the Gardaí simply took custody of the child because it had a different complexion but there were also three discrepancies on the birth certificates which required clarification. The Victim’s Directive has the noble provision that a child victim’s interest must be paramount, but the Directive is silent on who decides the issue. So, a victim’s interests are certainly to fore, but the Directive is open to subjective interpretation.

Insofar as Garland’s thesis is concerned the E.U. Directive and its corresponding legislation in this jurisdiction is substantial and compelling evidence of what he asserts. While it might be fair to say that Gardaí had moved over the decades to address victims’ concerns, the situation for the organisation is now more acute. As noted by Kilcommins et al in 2004 “the State feels itself to be under an imperative to respond to the victims and their protection is the most important priority for penal policy.”

---

AGS as a result is now obliged to ‘up its game’ and ensure that lapses exposed in the Guerin and Garda Inspectorate reports in 2014 are not repeated. However, while these developments have emphatically pushed victims onto “centre stage” there are some caveats in the proposed changes that are worth considering.

**Garda and D.P.P.’s Office: Reasons for Decisions**

Under the new Directive and enacted legislation, it would appear that a victim will be a victim if he or she says they are. The D.P.P.’s own Victims Charter states victims will be entitled to reasons from the Gardaí and D.P.P. for not prosecuting their complaints and are entitled to a review of these decisions. It is not uncommon for people to make false and spurious allegations to Gardaí for their own nefarious reasons. Notwithstanding this, the Directive and legislation does not appear to make any provision on how to deal with it. The Gardaí and the D.P.P. sometimes will decide that a complainant’s (who will be a victim for the purposes of E.U. Directive and Irish law) credibility or *bona fides* for whatever reason may be in issue. However, such people will still be entitled to demand reasons for non-prosecution and a review of the decision not to prosecute. How will Gardaí and the D.P.P.’s Office tell such complainants that they are not proceeding with criminal charges based on their complaint because they don’t believe them, or they believe their complaint is spurious, vexatious or even frivolous? How will the D.P.P.’s office and the Gardaí tell a complainant that they believe it is unsafe to proceed with their complaint? Will it ultimately be sufficient to tell complainants that there is “insufficient evidence” to pursue criminal proceedings. These are potential but real difficulties that will have to be surmounted over time.

The D.P.P.’s office has now set up a separate section and structure to deal with these matters and provide assistance to the Gardaí when responding to victims when criminal proceedings are not instigated. It may be that any appeal of a Garda decision not to prosecute will be reviewed by the D.P.P.’s office. It is submitted that insofar as the D.P.P.’s office is concerned this means extra resources and probably extra cost. There is also a review procedure in place for those unhappy with the reasons for D.P.P. or Garda decisions not to prosecute. Insofar as the Gardaí are concerned this is yet again another layer of accountability along with internal disciplinary regulators G.S.O.C., the Inspectorate, the Professional Standards Unit (PSU), the Internal Auditors, Civil Law, Criminal Law and Judicial Review. As regards the proposal to furnish reasons/reviews for non-prosecution to victims the Charter states that the D.P.P. will
prospectively furnish reasons in cases where their decisions were made on or after the 16th of November 2015 while in fatal cases they will do so where the fatality occurs on or after the 22nd of October 2008. It is not clear if a victim were to litigate the matter, if a court would be persuaded that the D.P.P. or Gardaí should be directed to review their decisions made before these dates. If that were to happen it is contended that such a direction could be problematic for the prosecution authorities in terms of workload.

There is nothing in the victim’s legislation that will impugn the “independence” of the D.P.P.’s office228 However, it is contended that the fact the D.P.P. now has to give reasons for decisions not to prosecute does impugn on the D.P.P.’s independence and arguably there is a danger that the independent filter in deciding to instigate criminal proceedings has been eroded. Where in the past the D.P.P.’s office may have directed no prosecution to Gardaí, that office may now decide simply to run prosecutions to avoid explaining their reasons not to prosecute and in the interest of transparency. It is submitted that there is much danger here to guard against. As noted by Sanders:

If the crime control and due process models no longer encapsulate reality what about a victim’s rights approach? Using the purest form of this approach, victims would determine all decisions. Vengeful (and false accusing victims) would be able to insist on prosecution when there was no evidence and would be able to insist on widely disproportionate sentences.229

A recent article by Maeve Sheehan in the *Sunday Independent* is a good example of this issue. The heading reads “(p)ressure on D.P.P. to appeal leniency of rapist’s sentence” the sub heading follows with “victims call backed by mounting public outrage.”230 The article began: “(p)ressure is mounting on the DPP to appeal the seven-year suspended sentence handed down last week to a Norwegian man who repeatedly raped his girlfriend in her sleep.” It is not intended here to argue the merits or demerits of such an appeal but simply to state that a victim can now via the media exert pressure on the independent legal officer of the State to bring an appeal in her case. The article goes on to say that the victim has “yet to hear from the D.P.P. and (she) would welcome contact from that office to let (her) know what they intend to do”. It is submitted that the victim’s words in this case could be construed as if she believes the D.P.P.

228Section 2(5) of the *Prosecution of Offences Act 1974*.
229A. Sanders *supra* at note 177 at p.205.
is in some way accountable to her. If this is the case, then it is a complete change from might have happened thirty years ago when the victim would probably not have been able to progress her case much further and the D.P.P. had no right to appeal sentences handed down in court.

Retired District Judge Michael Pattwell raised this type of “filtering” issue in 2014 in an article in *The Irish Examiner* concerning the prosecution of two Gardaí for assault.231 The case had been investigated by G.S.O.C. and proceeded with on D.P.P. direction. The case against Gardaí went to hearing and was demolished in a very short time by Mr. Frank Buttimer, Solicitor acting for one of the Gardaí. Judge Olan Kelleher who heard the case adjourned proceedings so that the D.P.P. could decide what to do. The D.P.P. later withdrew the matter. Judge Pattwell queries how the case might have come to court at all. He stated “I’d expect GSOC to be a filter … they should have seen it was a non-starter … I’d expect the D.P.P. to be even a finer filter.”232 Historically the D.P.P. did not give reasons for decisions made by his office. However, in recent years the D.P.P. would consider giving reason for decision not to prosecute to family members in cases were a death had occurred. In 1991 in *H v. D.P.P.* the Supreme Court stated:

> The stance taken by the DPP is that he should not in general give reasons in any individual case as why he has not brought a prosecution because if he does so in one case he must be expected to do so in all cases. I would uphold this decision as being a correct one.233

It is suggested therefore that D.P.P.’s office is an important and independent filtering process regarding the commencement of criminal proceedings. It is suggested that any legislation insisting that the D.P.P. give reasons for decisions erodes that office’s independence to the detriment of due process. On examining a Garda file, the D.P.P. may decide that there is a lot of evidence contained therein to indicate that a suspect may be guilty, but not enough evidence to commence a prosecution. The D.P.P. cannot impugn a suspect by revealing this reason to an injured party. Similarly, the D.P.P. should not disclose reasons for non-prosecutions where a person’s life may be jeopardised. Section 11 of the *Criminal Justice (Victims of Crime) Act 2017* codifies the D.P.P.’s criteria for non-disclosure of reasons not to prosecute but the issue

---


it is suggested might be problematic in particular where there has been a loss of life. There is a substantial interplay between the D.P.P.’s office and AGS. The D.P.P.’s office receives approximately 15,000 files annually mostly from the Gardaí and it is arguable that this legislation may in hard cases cause the D.P.P.’s office to be no more than a rubber stamp in proceeding with criminal matters, particularly so in 50/50 cases where there is a doubt regarding the State being able to prove a case beyond a reasonable doubt. In other words, the D.P.P. in hard cases may for the purposes of transparency decide to prosecute cases simply to “wash dirty laundry” in public rather than refuse to prosecute on the merits of the evidence presented by the Gardaí.

Traditionally Garda files to the D.P.P.’s office were for the most part confidential and the D.P.P.’s office formed an independent view of all the evidence presented on the Garda file. It is now possible that Garda files will now be less candid and more politically correct in presentation of investigative paperwork. The Gardaí may have anecdotal evidence which goes to the credibility of a complainant or witness or several witnesses but may not now be willing to disclose same because of a fear they could at some stage be relayed back to the complainant. There exists a provision in the legislation where reasons for non-prosecution will not be given where:

- It will interfere with an ongoing investigation
- Prejudice proceedings
- Endanger a person’s security
- Endanger the security of the State.

Only in the fullness of time will we see how these provisions will be interpreted by the AGS and D.P.P. via its review panels and grievance bodies and how they will impact on the independence and quality of their decision-making processes. Similarly, it will be seen how far a victim in litigation will be prepared to go to obtain in-depth information from the D.P.P.

---

**Expenses**

The issue of victims’ expenses is addressed in the E.U. Directive but not clearly in Irish legislation. S.23 of the Directive states:

> Information about the reimbursement of expenses should be provided from the time of first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member states should not be required at this early stage of the criminal procedures to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.\(^{236}\)

It is suggested victims and witnesses may not always be properly remunerated by the State as regards the recoupment of their expenses from the State after or during criminal proceedings. Section 5 of the Victims legislation allows for the Minister to pay witness expenses while Section 7 provides that victims can seek such information at the point of contact with Gardaí. However, the information is not easily available.

There can be delays in AGS processing claims for witness expenses. The same goes for the State funding of Victim Support groups most of which is done on a voluntary basis by trained volunteers who receive little or no expenses. At the conclusion of a court case the Judge may award a witness his expenses if such expenses are brought to the notice of the Judge. The Judge will allow for reasonable expenses for any state witness. However, the State may not bring the expenses issue to the attention of the court. Alternatively, the Gardaí will use the schedule submitted to them from the Department of Finance via the Department of Justice. The schedule arguably gives lie to the rhetoric of Victims Charter’s Mission Statement, Victims Service Policy, Victim Policing Directive, Victims Services Offices and Garda Charters. It came into effect on the 1\(^{st}\) January 2003 and it has not been changed since.

The Department of Finance has sanctioned the rates of allowance which may be paid with effect from the 1 January 2003 to lay witnesses who appear on behalf of the State.\(^{237}\) For self employed persons the allowance paid by the State for a day will be equivalent to the loss certified by their accountant. For salary and wage earners the amount allowed by the State will


\(^{237}\) Department of Justice Witness Expenses Schedule.
be equal to that which is certified by the person’s employer. Non-income earning persons will receive €22 if they are absent for 4 hours or more and €11 if they are absent for under 4 hours. School-going children are paid nothing. Subsistence allowances are paid to the amount of €26 for an overnight stay covering a period from 6 p.m. to 8 a.m. A daily allowance is paid for the period 8 a.m. to 6 p.m. This amounts to €11 for a period of 5 to 10 hours or €17 if in excess of 10 hours or more (but not extending to an overnight stay). Hotel accommodation will be paid up to €82 provided the claim is accompanied by a receipt. Witnesses are allowed travelling expenses when using public transport by means of second-class rail or bus fare. If they use their private car they will be allowed 37c per mile while if using a motor cycle 22c per mile will be allowed. The cost of a hired car will be paid provided it is vouched for and only when public transport is not available or is not reasonably practicable.

It is suggested the witness expenses schedule is paltry. They are mostly only paid after the witnesses have attended court and as stated before there are sometimes significant delays in processing mostly due to the workload of the Gardaí and some queries and clarifications of expenses claim at different levels. It is submitted the witness expenses allowable in each case are untenable (even back in 2003) and it costs money for a victim to attend court. School going children (who according to the E.U. Directive a victim child’s interest are of “primary consideration”)238 get nothing and while victims may have arrived at ‘centre stage’ they will be out of pocket for the privilege notwithstanding the lofty language in reports, E.U. Directives and the ancillary legislation. The schedule has now been removed from the Department website.

It is further suggested that the expenses schedule will be in clear breach of Section 47 of the Victims Directive which state “Victims should not be expected to incur expenses in relation to their participation in criminal proceedings.”239 It is contended that witnesses in many cases do not pursue expenses either because they feel they have a moral responsibility to attend court or they are not made aware that they are entitled to such expenses.

It will be interesting to see how long it will take the State to change the expenses schedule (as it will have to) and will Gardaí be able to speed up the process of payment? Further evidence

---

of the State’s poor performance in this area is highlighted an article in the Irish Examiner on the 7th of August 2015 by Sean O’Riordan headed “Crime Victim Support Group forced to beg for funding.” The article states that a “charity that has provided support to more than 10,000 victims of crime has had to send out begging letters because of a shortfall in financial support from the Department of Justice.” The State does not appear to be in any hurry to improve matters. It is also worth noting that the new Victims Directive and supporting legislation does not appear to allow for any penalty for breach of its provision. However, it is expected that the Directive will ultimately bring about positive change on this issue by elevating the salience of the victim in the mindset of AGS and the Department of Justice via its policies and training.

**Gardai, Victims and Investigations**

Members of AGS have seriously been found wanting in their attitude to and dealings with victims. The Guerin report published on the 6th May, 2014 made for uncomfortable and unsettling reading for AGS. While the Guerin report didn’t make any finding in respect of the matters inquired into it did make several observations and recommendations to Government that some of the issues it looked at required further investigation. In response the Government set up the O’Higgins Inquiry to look into these matters. Therefore, for the purposes of this chapter some of the incidents examined in the Guerin/O’Higgins reports are worth reviewing for the purposes of demonstrating how things in practice might go wrong in a Garda investigation and how victims suffer as a result.

- At 4.30 a.m. on the 25th February 2007 a female made contact with her Garda station to complain of the behaviour of a number of youths on a minibus she was driving, and she requested Garda assistance. Although a statement was taken from the complainant an investigation file in the incident was never completed. O’Higgins found the investigation into this matter was very poor and the injured party’s “legitimate expectation of the Gardai was not met.”

---

241 Guerin Report supra at note 27.
242 Guerin Report supra at note 27 at Chapter 4 para 4.1 at p.21.
• On the 14th April 2007 a victim alleged he was assaulted and “felt a bang on the side of his head” at a night club. The file was allegedly poorly prepared. The conflict of evidence in the case could have been clarified by CCTV footage which but it was never downloaded. The case was dismissed, and the Garda investigation was subject to unfavourable remarks by the sitting District Judge.244 O’Higgins concluded that the Garda investigation into this matter was “characterised by delay and error.”245

• Another case involved a person who a committed serious crime on bail. A Superintendent allegedly had full details of the two serious incidents. When seeking directions from the D.P.P. on a local matter he failed to advise the D.P.P. of the charges in existence in another Garda district and failed to make contact with Gardaí in that other district to establish the background of the case.246 O’Higgins found inter alia that there was “a lamentable failure to communicate effectively within An Garda Síochána.”247

• In respect of a public order incident on the 5th August 2007 Guerin observed that a “practice of confronting a suspect in an unstructured and uninvited way even for the purposes of an apology is undesirable” as it may intimidate a complainant.248 O’Higgins later held that the injured party in the case was not “well served”.249

• In respect of an alleged assault false imprisonment on the 2nd December 2007 Guerin observed that “it would be surprising to think that a matter of such gravity would be left entirely in the hands of an inexperienced probationer Garda”. Guerin went on “(t)he investigation lacked the direction of an appropriately experienced and attentive officer.” Even more seriously he states that “one significant and abiding concern” in relation to this investigation is that “I have seen no document which identified any grounds for suspecting that the person was arrested for those offences may have committed it.” Guerin believes that the fact that interview took only 31 minutes “lends

244 Guerin Report supra at note 27 at Chapter 5 para 5.1 at p.39.
245 O’Higgins Report supra at note 28 at p.70.
249 O’Higgins Report supra at note 28 at p.150.
weight to the concern that there was either no real evidence against the suspect or there was inadequate preparation for interview.”

O’Higgins again later held that “the victim was not well served in this investigation.”

- On St. Stephen’s night 2007 a BMW reversed into the doors of a hotel premises. Guerin reviewed the Garda paperwork in this matter and stated that “the Commissioner’s letter of the 26th February, 2013 to the Secretary General of the Department of Justice fails to mention that there was no investigation of the offence until well after a year after it was committed.”

Later O’Higgins would conclude that “the investigation never recovered from a fundamental failure to properly identify who was investigating it.”

- On 23rd May 2007 a serious assault took place, but the CCTV was not ascertained by the Gardaí in time after three days. The injured party in the case withdrew his complaint but he alleged he was told by Gardaí that there was insufficient evidence in the case and nobody in the pub had seen anything and the Gardaí presented him with a prepared statement of withdrawal for him to sign.

Later O’Higgins in his conclusion chose to refer to a quote from a victim who gave evidence to the Inquiry. She stated:

My husband and I were raised in Bailieboro. It is a small town so if you have trouble or are concerned or anything your first stop is the Garda station. They are who you trust. They’re who you go to and that is what we did, we went to them.

O’Higgins concluded “unfortunately in this instance their trust was not justified.”

The cases give a brief outline of some of the cases that Guerin reviewed. He said that his analysis of these and other cases “reviewed information which supports allegations that there were significant deficiencies in the conduct of these investigations.” He said that these

---

254 Guerin Report supra at note 27 at Chapter 10.84 at p.199.
deficiencies “were widely replicated.” It would “challenge the public confidence in the criminal justice system itself.”

It should be noted that Guerin doesn’t use the word “victim” very often in his report notwithstanding that people involved in these incidents would be defined as victims as set out in the E.U. Directive and proposed victim legislation in this country. O’Higgins does use the word “victim.” However, it is clear from the examples given that many of problems highlighted in the Guerin report and investigated by O’Higgins emanate from a lack of supervision. The Garda Inspectorate in its report in 2014 stated that supervision was a problem in AGS. In many cases it doesn’t exist or does so only on paper or in skeletal format. No matter how effective Garda training is, there no substitute for real life policing experience. As noted by the Garda Inspectorate in its most recent report “lack of availability of patrol Sergeants and Inspectors to supervise is a contributing factor of poor investigation.” It is noted that victims who contacted them during the enquiries acknowledged good initial action by the attending Gardaí but unsatisfactory follow up by them.

It should be noted that Gardaí who for the most part respond to public calls for assistance come from what are known as the “regular unit”. There are five units detailed to provide 24 hours service 365 days of the year. As observed by the Garda Inspectorate, “In most cases regular units are the first responders and will complete the full investigation of that case.” The Inspectorate was critical of this practice when it stated, “regular units are under pressure to move to the next call for service resulting in some aspects of the initial investigation being postponed.”

This practice has been the way the Gardaí have dealt with what the organisation calls “crime ordinary” for decades. Most burglaries and thefts are investigated in this way. The attending Gardaí will request the attendance of the local scenes of crime unit at the crime locus and any leads or suspects will be passed on to detective branch personnel who will assist them in the

---

256 Guerin Report *supra* at note 27 at para 17.1 at p.287.
257 The Garda Síochána Inspectorate Report on Crime Investigation 2014 *supra* at note 192 at Part 5 at p.11 and Part 7 at p.27.
258 The Garda Síochána Inspectorate Report on Crime Investigation 2014 *supra* at note 192 at Part 3 at p.8 at Part 7 at p.20
259 The Garda Síochána Inspectorate Report on Crime Investigation 2014 *supra* at note 192 at Part 7 at p.20
follow up of their investigation. Sometimes Gardaí will be able to confront criminals at the scene of the crime and make arrests. Victims are normally fulsome in their praise for the bravery Garda members on these occasions.

Since the Garda Inspectorate report in 2014 matters have not changed much about the Gardaí’s initial response to crime. There are very elaborate enhancements to the PULSE system instigated in November 2015 to ensure that victims receive the service they are entitled to. The planned new enhancements to the PULSE system are essentially box ticking exercises. Details such as Garda or doctor gender requests by the victim are recorded i.e. whether they require a male/female doctor or Garda to deal with their complaint. It will now be recorded if a victim is fluent in Irish or English or if he or she has specific needs e.g. “visual”, “hearing”, “literacy”, “mobility” etc. A preferred contact method is recorded and so too are “discriminatory motives” such as “ageism”, “homophobia”, “anti-Muslim” “racism”, “anti Roma”, “sectarian” “anti-Semitic” and “anti-traveller” are some of those listed.

It is contended that these PULSE enhancements while helpful to victims will be cosmetic in practice if AGS do not provide adequately trained personnel and supervisors to ensure crimes are followed up on. It is submitted that the lack of recruitment in the AGS in the last number of years has badly damaged the organisation in this and other reports and so victims’ issues will not be fully remedied in the immediate or foreseeable future.

**Conclusion**

It is submitted that there is ample evidence in this chapter to demonstrate what Garland asserts i.e. that the victim has returned to “centre stage”. It has also been shown that this “stage”, as it were, can be a crowded place. AGS may now have it Victim’s Policy and Charter but the victim must also share the limelight with the accused, the judiciary, the legal profession and the Gardaí. In response to the E.U. Victim’s Directive AGS has enhanced its PULSE system to ensure that Garda contact with the victims is recorded monitored and proper service maintained.\(^\text{261}\)

The Courts have held that the Gardaí do not have a duty of care to victims *per se* but that does not prevent victims from litigating contra AGS when things have gone wrong. However, the judiciary in their later decisions show a reluctance to dismiss a plaintiff victim’s proceedings contra AGS at a preliminary stage and these cases will now go for a more substantial hearing. When the Gardaí or D.P.P. do not prosecute, a victim can now ask why? This chapter has shown that Gardaí will always focus on evidence in their investigation sometimes to the detriment of their service to victims and the Garda obsession with evidence comes from their training, experience and judicial precedent. This chapter also highlights how Gardaí have been scandalised when they have done or are perceived to have done little or nothing for victims. However, Gardaí have much improved and enhancements in the Garda service to crime victims has moved those victims into the limelight.

It is contended that this chapter shows that victims have certainly returned to centre stage as Garland asserts but that they are not always properly compensated by the State for the privilege. This should change, and it is very likely that victims will not easily be moved or pushed from centre stage for a long time. However, while victims may have to compete for the limelight it is argued that this chapter contains overwhelming proof of Garland’s thesis insofar as AGS and its interaction with victims is concerned. There has been much transformation in how the AGS treats crime victims. The transformation in many ways may be flawed and imperfect but it is substantial and ongoing. It is submitted that what has been outlined is evidence of “a new cultural theme, a new collective meaningful victimhood and a reworked relationship between the individual victim, the symbolic victim and the public institutions of crime control and criminal justice.”

It is contended that what has been set out in this part convincingly proves Garland’s theory in respect of victims of crime in that: “the victim is now in a certain sense a much more representative character who’s experience is taken to be common and collective rather than individual and atypical – whoever speaks on behalf of victims speaks on behalf of us all.”

---

262 D. Garland *supra* at note 2 at p.11.
CHAPTER TWO

Above All, The Public Must Be Protected:263
From Delinquent to Crackhead.264

Gangland did not exist before the late 1960s. Ireland was a sleepy place in the days before the outbreak of war in Northern Ireland and the mayhem which spread south of the border as a result. The economic boom of the 1960s also played its part in the transformation that was to come. In a few short years, petty crime became much more serious. The burglars and the pickpockets of the 1960s became the armed robbers of the 1970s. And in turn, a lot of robbers became the drug barons of the 1980s and 1990s... (d)rug dealing brought death and devastation to the streets. It also created a new gangland phenomenon – the contract murder.265

Introduction

Garland states that “(p)rotecting the public is a perennial concern of crime policy ...”266 He acknowledges that when crime rates were low “and fear of crime was not yet a political motif, protecting the public was rarely the motivating theme of policy making”.267 However, times have changed. He argues that there is now “a new and urgent emphasis upon the need for security, the containment of danger, the identification and management of anything of risk and that (p)rotecting the public has become the dominant theme of penal policy.”268

Garland’s work examines what occurred in the U.S.A. and the U.K.269 This chapter will focus specifically on his index of change, the protection of the public, to establish if Garland’s theory has any relevance to this jurisdiction and in particular to the transformation of AGS generally. Garland notes that “there is a relaxing of concern about the civil liberties of suspects and the rights of prisoners and a new emphasis upon effective enforcement and control.”270 He highlights that the “call for protection from the state” is now second best to the demand “for

263 D. Garland supra at note 2 at p.12.  
264 D. Garland supra at note 2 at p.102. Collins English Dictionary & Thesaurus (Glasgow-Harper Publications 2000) defines 'Delinquent' as “someone especially a young person guilty of delinquency/of an offence or Misdeed.” It defines ‘Crackhead’ as “a person addicted to crack.” Cocaine is normally referred to as ‘crack’  
266 D. Garland supra at note 2 at p.12.  
267 Ibid at p.12.  
268 Ibid at p.12.  
269 D. Garland supra at note 2.  
270 D. Garland supra at note 2 at p.12.
protection by the state.”

He notes that surveillance cameras are now a routine feature of the public streetscape and criminal justice procedural safeguards have been eroded while bail or release from custody are subject to “intense scrutiny” and concludes that the “risk of unrestrained state authorities, of arbitrary power and the violation of civil liberties seem no longer to figure so prominently in public concern.”

He notes too the perception of the “needy delinquent” and “feckless misfit has transformed into the “career criminal(s)” the “crackhead,” the “thug” and the “predator.”

Garland’s theory if correct would place AGS at the frontline of the changes that he describes. Indeed, it is argued in this chapter that there is a plethora of evidence in this jurisdiction to corroborate his theory and in particular its relevance to AGS. In an effort to demonstrate the accuracy of his theory, a review of Irish legislation is carried out over the best part of five decades from 1968 to 2017. The legislation is examined to trace the extension of Garda powers for the period under review and to highlight where procedural safeguards were adjusted downwards. Indeed, it will be shown that new criminal offences were created, and existing ones extended, penalties were strengthened, detention periods were elongated, Garda powers of arrest were increased, bail was restricted and the right to silence was fettered. The D.P.P. subject to the approval of the Court, would now determine in many types of cases (i.e. hybrid offences) if a case would be dealt with on indictment by Judge and Jury. Watershed moments in Garda and criminal activity are brought to the fore to demonstrate what prompted and brought about these profound and radical legislative changes.

The chapter is broken into a number of sections. Each section covers a ten-year period. Each section commences with details of what was taking place on the criminal and policing scene in Ireland at that time. Each statute is then listed, and the more substantive provisions highlighted. The historical narrative together with highlighted legislative changes are cross referenced with Garland’s work to demonstrate how his theory runs very much parallel with what he says took place in the U.S.A. and U.K. It is not being contended that the historical narrative given here is exhaustive or complete. Nor is it contended that the highlighted legislative provisions are likewise. What is being contended is that the evidence presented in

---

271 D. Garland supra at note 2 at p.12.
272 D. Garland supra at note 2 at p.12.
273 D. Garland supra at note 2 at p.102.
this chapter is strong corroboration of Garland’s theory when he states “(l)aw making becomes a matter of retaliatory gestures intended to reassure a worried public and to accord with common sense, however poorly these gestures are adapted to dealing with the underlying problem.”274

The Late 1960s and 1970s

It has been argued that from: “(t)he 1960s onward, Ireland in common with virtually every other western country saw a steady rise in organised crime, albeit from a low base.”275 The Supreme Court in its judgment in the O’Callaghan case in 1966276 impacted at the time in how the Gardaí did business. Prior to O’Callaghan suspects were arrested, charged and remanded to an eventual court hearing. If convicted, then sentences were handed down. The system de facto empowered the Gardaí to have criminals taken off the streets for substantial periods without conviction because of a Garda belief that other crimes may be committed. As a result of the Supreme Court ruling, this manner of policing was now at an end.

A comprehensive Road Traffic Act was enacted in 1961 to reflect the increased use of motor vehicles in Irish society. The public would now have to be protected from bad driving practice and strong Garda powers of arrest were provided for. The Garda Commissioners’ reports of the time recorded no gangland crime but “from the late 1960s to the closing years of the 20th century ‘the Troubles’ overshadowed the political and public life on the island of Ireland … and while the politicians and civil servants sought to deal with the political crisis, the Garda Síochána was given the primary task of holding the security line.”277 Holding the “security line” would not be easy and Gardaí would lose their lives and be seriously injured in the effort.

On the 20th February 1970 six men carried out a raid at a bank in Rathdrum, Co. Wicklow and stole guns from a nearby gunsmith. Telephone wires had been cut outside the town. This was one of a number of similar raids at the time. Gardaí believed them to be the work of a group

274 D. Garland supra at note 2 at p.134.
277 C. Brady supra at note 275 at p.1.
who styled themselves “Saor Éire”. The raiders operated with speed and forward planning. On the 3rd April 1970 Garda Richard Fallon was shot and killed when he responded to one of these raids at a bank at Arran Quay in Dublin a very short distance from the Four Courts building. It was nearly three decades since a Garda was murdered on duty. The investigation into Garda Fallon’s murder and the follow-up would be controversial. Violent crime was beginning to escalate, and the State would have to act. In 1971 the Garda Commissioner’s report stated that 111 people were charged with drugs offences and there were no heroin seizures. The figures are indicative that the sale and supply of illicit drugs were not yet problematic for AGS and that form of criminality was in its very nascent stage.

In 1972 as “The Troubles” spilled over into the Republic of Ireland, the British Embassy was mobbed and attacked in Dublin. It was burnt down notwithstanding AGS attempts to defend it. On the 8th June 1972 Inspector Samuel Donegan was killed in a booby trap explosion in Co. Monaghan near the border. This was followed on the 26th of November 1972 when an I.R.A. team attempted to secure the release of a convicted I.R.A. member who was in custody but attending the Mater Hospital. The escape effort failed after a shoot-out with Gardaí. The previous day a bomb went off at Burgh Quay at a cinema. A substantial amendment to the Offences Against the State Act 1939 would follow (infra). Later, on the 1st December 1972 two C.I.E. employees would be killed in a bomb blast near Liberty Hall in Dublin. The year 1972 would see the establishment of the non-jury Special Criminal Court when the government exercised its power under s.35 (2) of the Offences Against the State Act 1939. In 1973 the “Claudia” vessel would be intercepted off the southern Irish coast with five tonnes of arms bound for the P.I.R.A. In the same year rioting took place in Mountjoy Prison and prison officers were taken hostage. Gardaí supported by the defence forces eventually restored order. In Portlaoise Prison, Saor Éire prisoners refused to wear prison clothing and an

\[\text{C. Brady supra at note 275 at pp.29-30}\]
\[\text{C. Brady supra at note 275 at p.34}\]
\[\text{C. Brady supra at note 275 at p.48}\]
\[\text{C. Brady supra at note 275 at p.50}\]
\[\text{C. Brady supra at note 275 at p.55}\]
\[\text{C. Brady supra at note 275 at p.55}\]
\[\text{C. Brady supra at note 275 at p.55}\]
\[\text{C. Brady supra at note 275 at p.56}\]
\[\text{C. Brady supra at note 275 at p.65}\]
\[\text{C. Brady supra at note 275 at p.67}\]
\[\text{C. Brady supra at note 275 at p.67}\]
unsuccessful attempt was made by a mob to burn down Dundalk Garda Station. Later in the year a helicopter would touch down in Mountjoy Prison and three P.I.R.A. prisoners would make their escape in same. As noted by Brady, “the escape made headlines around the world.”

In addition to crime linked to the “troubles” the Garda Commissioner’s Report in 1972 acknowledged the “growth in industrialisation” in this country and the resulting “opportunities for planned as well as casual crime”. The Commissioner states that the “techniques employed by criminals had become more sophisticated” and the “commission of crime by criminals on bail awaiting trial stood at 1784 crimes against property, committed by 462 persons while on bail.” Also, in 1973 the Gardaí would set up the Traffic Corps “aimed at improving behaviour of road users and roadway accidents and saving lives.” It was hoped that the unit would have 300 members throughout the country.

In 1974 came the Dublin and Monaghan bombings and Senator Billy Fox of Fine Gael was murdered in Monaghan. The Beit Art Collection at Russborough House was stolen but later recovered. Rose Dugdale a P.I.R.A. member would later be convicted of the crime. The Littlejohn brothers would escape from Mountjoy but one was quickly recaptured while I.R.A. prisoners would blast their way out of Portlaoise Prison. The Gardaí would now be assigned prison duty to secure the prisons. In 1975 Ireland had its first Director of Public Prosecutions in Eamon Barnes and the Gardaí would have a Forensic Science Laboratory in the precincts of their own headquarters in Phoenix Park. Garda Michael Reynolds was shot dead when off duty when he set off in pursuit of armed bank robbers in Dublin on the 11th September 1975. Tiede Herrema, the Managing Director of Ferenka a Dutch company in Limerick was kidnapped but later released in Monasterevin after a siege involving the

---

289 C. Brady *supra* at note 275 at p.68.
289 C. Brady *supra* at note 275 at p.69.
293 C. Brady *supra* at note 275 at p.83
294 C. Brady *supra* at note 275 at p.88.
295 C. Brady *supra* at note 275 at p.89.
296 C. Brady *supra* at note 275 at p.89.
297 C. Brady *supra* at note 275 at p.89.
298 C. Brady *supra* at note 275 at p.89.
299 C. Brady *supra* at note 275 at p.91.
kidnappers, Gardaí and defence forces. A detective Garda was wounded when shot at by one of the kidnappers.\footnote{C. Brady supra at note 275 at p.92.} On the 10\textsuperscript{th} June 1975 Larry White was killed in a hail of machine gun fire in Cork City.\footnote{“Man Shot Dead in Cork City,” \textit{Irish Times} (11\textsuperscript{th} June 1975) at p.1} A number of persons were charged. The Supreme Court in the \textit{Madden} case\footnote{\textit{The People (D.P.P.) v. Madden} [1977] I.R. 336. [hereinafter \textit{Madden}]} would later free one of those convicted in respect of the crime as the incriminating statement he made to Gardaí was made partly when his period of detention under the \textit{Offences Against the State Act 1939} as amended had expired. The Commissioner’s 1975 Report would state that “criminals were becoming more vicious and mean.”\footnote{Annual Report of the Commissioner of the Garda Síochána 1975 at Foreword.} Capital murders, kidnappings, dramatic prison escapes, “drive by murders” bombings and high-profile thefts, and the illegal importation of firearms on a large scale all occurring in a five-year period. The Government would respond by entrusting AGS with the most draconian of powers to protect the public and the State itself (\textit{infra}).

In 1976 what became known as the Sallins Mail Train Robbery took place on the Dublin/Cork mail train in Kildare and nearly €250,000 in cash was stolen. Six members of the Irish Republican Socialist Party were arrested under Section 30 of the \textit{Offences Against the State Act 1939} and detained and questioned under the same provisions. They were charged and brought before court. No money was ever recovered by Gardaí. At trial hearings before the Special Criminal Court allegations would be made that the Gardaí beat confessions from those accused.\footnote{C. Brady supra at note 275 at pp.97-99} Also, in 1976 five P.I.R.A. prisoners would blast their way to freedom from the Special Criminal Court in Green Street\footnote{C. Brady supra at note 275 at p.99.} and the British Ambassador to Ireland Christopher Ewart-Biggs would be assassinated as he travelled from his home in Dublin. A civil servant travelling with the Ambassador was also killed when a bomb exploded under the car they were travelling in.\footnote{C. Brady supra at note 275 at p.102} The government would enact two important pieces of legislation in the aftermath. (\textit{infra}) Garda Michael Clerkin was killed in a booby trap explosion in Portarlington on the 16\textsuperscript{th} October 1976.\footnote{C. Brady supra at note 275 at p.99.} On the 29\textsuperscript{th} September 1976 Joseph Shaw was arrested with another male in Galway City for being in a stolen car. They were questioned in respect of the disappearance of two young women from Mayo and Wicklow some four days and four weeks
previously. They made incriminating statements to Gardaí implicating themselves in murder. There was no statutory power for their questioning or detention. 308 The Supreme Court in the Shaw case 309 would ultimately hold that there were “extraordinary excusing circumstances” in line with the Kenny Judgment 310 to justify the Gardaí’s actions. At the time of the arrests the Gardaí believed that the missing Mayo girl might still be alive and her constitutional right to life superseded that of the rights of the accused. AGS was making full use of its powers and the Supreme Court would tolerate AGS acting ultra vires if there were “extraordinary excusing circumstances” It is submitted that the protection of the State and the public were paramount in the mindset Government and the Supreme Court.

In 1977 in the Irish Times allegations of a Garda Heavy Gang would surface. Kerrigan & Brennan state that “no-one paid too much attention at first when allegations emerged that Gardaí were beating up suspects.” He says that:

the allegations remained consistent from area to area; the same names of Gardaí cropped up again and again … the (h)eavy (g)ang seems to have begun informally with Gardaí coming to know which of their colleagues in which sections of the force were prepared to take the gloves off when interrogating suspects. It developed from that into a still informal but recognisable group which saw itself as doing a distasteful but necessary job in which occasional violence and the threat of violence was inevitable. There was no cohesive group answering to the Heavy Gang nickname. 311

These allegations would have robust legislative repercussions later (infra) and while the veracity of the allegations against members of the Gardaí are not for consideration here it is contended that AGS was making full use of its empowerment and taking its public protection duties very seriously. Also, in 1977 there was a disturbing dispute between two Garda fingerprint experts regarding a finger-mark found on a helmet found at the scene of the British Ambassador assassination. No fingerprint was found on initial examination. When a second Garda expert examined the exhibit, a finger-mark was found that was identified as that of an I.R.A. man known to Gardai. The first Garda expert who examined the exhibit couldn’t believe that he had missed something so vital. The mark was later established to be that of the first Garda and not the I.R.A. man. The event was embarrassing for the Irish government who had

308 C. Brady supra at note 275 at pp.103-104
to recant on what was initially told the British authorities that the mark was that of an I.R.A. man.\textsuperscript{312} It is submitted that this is an example that AGS was under pressure to solve violent crime.

In 1978 in Belfast a U.D.A. member was arrested by Gardaí when a number of firebombs detonated in a number of Dublin commercial premises.\textsuperscript{313} Also, in that year the O’Briain Report\textsuperscript{314} published what safeguards could be put in place for persons in Garda custody. The O’Briain Committee was set up the previous year in response to allegations of heavy-handed Garda mistreatment of persons being detained. His recommendations would be reflected in legislation that would come piecemeal for many years thereafter such as custody officers or “custodial guardians” who would be responsible for the proper treatment of prisoners and the establishment of an independent body which would investigate complaints contra the Gardaí. The Garda Commissioner Patrick McLaughlin would state that our legislation was “studiously vague as to Garda powers and interrogation … the few statutes that authorised (the Gardai) to question remained silent on any need to answer.”\textsuperscript{315} He went on to say that “we have down the years tried to make an impossible system work only to find ourselves being constantly accused of being the ’bad guys’ whose only aim is to deprive people of their rights. Why should the Gardaí be trying to do the job that you expect us to do, have to put up with constant vilification both inside and outside the courts in their efforts to make a bad system work?”\textsuperscript{316} It is submitted that the State in the fullness of time would substantially if not fully address these matters (see \textit{infra}) AGS would receive arguably all the powers it had been seeking at that time. The Commissioners words it is suggested, are indicative of a certain sensitivity to Gardaí being portrayed as the “bad guys” when all they’re doing is trying to protect the public. In 1979 Lord Mountbatten and three others were killed when they were blasted to death by the P.I.R.A. while sailing on his boat near Mullaghmore, Co. Sligo. He was under Garda protection at the time.\textsuperscript{317} It contended that since the early 1970s insofar as this jurisdiction is concerned “protecting the public had become the dominant theme of penal policy.”\textsuperscript{318}

\begin{footnotes}
\item[312] C. Brady \textit{supra} at note 275 at pp.114-116
\item[313] C. Brady \textit{supra} at note 275 at p.119.
\item[315] “New Garda Chief criticises Rules of Evidence” \textit{Irish Times} on 13\textsuperscript{th} January 1978 at p.11 accessed @ Irish Times Archive.
\item[316] \textit{Ibid.}
\item[317] C. Brady \textit{supra} at note 275 at pp.129-131.
\item[318] D. Garland \textit{supra} at Note 2 at p.12.
\end{footnotes}
Notwithstanding the events highlighted above the Gardaí were also facing substantial increases in the level of indictable crime. The Annual Garda Commissioners Report\textsuperscript{319} set out the figures:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Indictable Offences</th>
<th>Detection Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968</td>
<td>23,104</td>
<td>61%</td>
</tr>
<tr>
<td>1969</td>
<td>25,792</td>
<td>61%</td>
</tr>
<tr>
<td>1970</td>
<td>30,756</td>
<td>50%</td>
</tr>
<tr>
<td>1971</td>
<td>37,781</td>
<td>46%</td>
</tr>
<tr>
<td>1972</td>
<td>39,237</td>
<td>43.4%</td>
</tr>
<tr>
<td>1973</td>
<td>38,022</td>
<td>47.6%</td>
</tr>
<tr>
<td>1974</td>
<td>40,096</td>
<td>48.1%</td>
</tr>
<tr>
<td>1975</td>
<td>48,387</td>
<td>43.4%</td>
</tr>
<tr>
<td>1976</td>
<td>54,382</td>
<td>41.3%</td>
</tr>
<tr>
<td>1977</td>
<td>69,946</td>
<td>38.8%</td>
</tr>
<tr>
<td>1978</td>
<td>62,000</td>
<td>40.7%</td>
</tr>
<tr>
<td>1979</td>
<td>64,057</td>
<td>41.2%</td>
</tr>
</tbody>
</table>

Table 2.1 Garda Statistics for Indictable Crime and Detection Rates from 1968 to 1979

In the Foreword of the Report of 1975 the Commissioner remarks that “the overall crime figure can only be described as disturbing.”\textsuperscript{320} After 1975 the upward trend continued.

**The Legislation**

The legislation enacted for the period 1968-1979 that strongly relates to the Gardaí can be set out as follows:

1. *Road Traffic Act 1968*
2. *Offences Against the State (Amendment) Act 1972*
3. *Air Navigation and Transport Act 1973*
4. *Road Traffic (Amendment) Act 1973*
5. *Prosecution of Offences Act 1974*

\textsuperscript{319} Annual Reports of the Commissioner of the Garda Síochána 1968 to 1979.

\textsuperscript{320} Ibid.
7. Criminal Law Act 1976
10. Misuse of Drugs Act 1977
11. Road Traffic (Amendment) Act 1978

Extension of Powers – 1968 to 1979

The Road Traffic Act 1968 amended the parent legislation of 1961. The new Act would now allow the Minister to make regulations regarding speed limits that would be enforced by Gardaí.\(^{321}\) A statutory obligation for persons to provide a breath specimen on the roadside to Gardaí for the purposes of grounding an arrest for a drink driving offence was also created.\(^{322}\) The legal blood alcohol requirement was set at 125 milligrammes of alcohol per 100 millilitres of blood\(^{323}\) and there would now be an obligation to provide such a blood specimen consequent to arrest and having been brought to a Garda station. The provision of a sample of urine was also provided for.\(^{324}\) The Medical Bureau of Road Safety was to be set up which would have responsibility to analyse blood and urine specimens sent to it by Gardaí.\(^{325}\) An offence was also created of “driving without reasonable consideration”\(^{326}\) and careless driving.\(^{327}\) It would also be an offence to be found in a public place in such a drunken state that traffic or persons themselves would be endangered.\(^{328}\) The offence of an unauthorised taking of a vehicle was created (i.e. joyriding).\(^{329}\) The legislation would be the backbone of Garda road traffic enforcement for many years although it would be amended repeatedly.

The Offences Against the State (Amendment) Act 1972 empowered Gardaí to question a person found near the commission of a scheduled offence and permitted the admissibility of oral or written evidence of self-incrimination regarding membership of an unlawful organisation.\(^{330}\)

---

321 Section 24 of the Road Traffic Act 1968.
322 Section 28 of the Road Traffic Act 1968.
323 Section 29 of the Road Traffic Act 1968.
324 Section 30 of the Road Traffic Act 1968.
325 Section 37 of the Road Traffic Act 1968.
326 Section 49 of the Road Traffic Act 1968.
327 Section 50 of the Road Traffic Act 1968.
328 Section 59 of the Road Traffic Act 1968.
329 Section 65 of the Road Traffic Act 1968.
330 Section 2 and Section 3 of the Offences Against the State (Amendment) Act 1972.
A Chief Superintendent could now give evidence that he/she believed that a person was a
member of an unlawful organisation and on its own that evidence would be sufficient to convict
on such a charge. This was a massive power as P.I.R.A. members initially refused to
recognise the courts and basically turned their backs on the judges and declined to engage or
defend themselves at trial. The foolhardiness of their approach would be clear over time when
they found themselves behind bars and their policy would subsequently change. The *Air
Navigation and Transport Act 1973* gave Gardaí powers in circumstances where an aircraft is
unlawfully seized. Gardaí could arrest and detain in respect of offences committed under the
Act. The *Road Traffic (Amendment) Act 1973* is a piecemeal change to road traffic legislation
and adjusts procedures that permit a doctor to take blood/urine specimens in drink driving
cases. The *Prosecution of Offences Act 1974* establishes the independent office of the Director
of Public Prosecutions who will direct on criminal proceedings in files submitted to him by the
Gardaí. The *Air Navigation and Transport Act 1975* creates an offence to endanger an aircraft
with power of arrest for Gardaí for persons committing an offence under the Act. It also creates
a period of detention for 48 hours.

The *Criminal Law (Jurisdiction) Act 1976* extended the reach of Irish criminal law for offences
committed in Northern Ireland. It widened the scope of offences of causing explosion by
explosive substances, robbery, burglary and aggravated burglary and created an
offence of possession of firearms and ammunition in suspicious circumstances and carrying
a firearm with criminal intent. It created the offence of hijacking of vehicles. The Gardaí
now have wide powers of arrest and for the purposes of making the arrest have authority to use
force to enter without warrant “any place”. The Act comes complete with a wide schedule
of offences wherein the Gardaí can to invoke these powers.

The *Emergency Powers Act 1976* is no longer in force. It gave the Gardaí substantial power
of arrest but in particular gave a power of detention initially for 48 hours which could be

---

331 Section 3 of the *Offences Against the State (Amendment) Act 1972*.
332 Section 4 of the *Criminal Law (Jurisdiction) Act 1976*.
333 Section 5 of the *Criminal Law (Jurisdiction) Act 1976*.
334 Section 6 of the *Criminal Law (Jurisdiction) Act 1976*.
335 Section 7 of the *Criminal Law (Jurisdiction) Act 1976*.
336 Section 8 of the *Criminal Law (Jurisdiction) Act 1976*.
337 Section 9 of the *Criminal Law (Jurisdiction) Act 1976*.
338 Section 10 of the *Criminal Law (Jurisdiction) Act 1976*.
339 Section 19 of the *Criminal Law (Jurisdiction) Act 1976*.
extended for up to 5 days in total solely on the authority of a member of AGS not below the rank of Chief Superintendent. The header of this legislation that it is an Act “for the purpose of securing public safety and the preservation of the State in time of armed conflict.” At the time, the State believed its authority was under challenge.

The Criminal Law Act 1976 created an offence to assist and escape lawful custody and entrusted Gardaí with powers to search, demand names and addresses, photograph, fingerprint and carry out tests on persons for traces of firearms and explosives. There is also power to seize and detain items considered to be evidence. There is also extensive power to stop and search vehicles and persons found in vehicles including the placing of a barrier to stop a vehicle in the event of a pursuit. It also created an offence to incite or invite a person to join an unlawful organisation. A wide power to seize was given in respect of searches carried out under this particular Act or another statute. Gardaí can simply seize anything which “is believed to be evidence of any offence or suspected offence.” This power of search continues to be used almost daily by Gardaí.

The Misuse of Drugs Act 1977 was the first legislative acknowledgement that Ireland had a serious drugs problem. It defined what were to be controlled drugs and created offences and penalties for simple possession and unlawful supply of these drugs. Again there was a wide power of arrest afforded to Gardaí together with a provision to obtain search warrants and powers to search persons without warrant. The Road Traffic (Amendment) Act 1978 was a further amendment to the road traffic blood/urine drink driving procedure.

---

342 Section 7 of the Criminal Law Act 1976.
343 Section 7 of the Criminal Law Act 1976.
344 Section 8 of the Criminal Law Act 1976.
345 Section 3 of the Criminal Law Act 1976.
348 Section 3 of the Misuse of Drugs Act 1977.
349 Section 15 of the Misuse of Drugs Act 1977.
351 Section 26 of the Misuse of Drugs Act 1977.
352 Section 23 of the Misuse of Drugs Act 1977.
Summary - 1968 – 1979

From 1968 to 1979 recorded crime increased almost three-fold from 23104 crimes in 1968 to 64,057 in 1979. Paramilitary crime was on the increase and illicit drugs were available on Irish streets. More people owned cars and drinking and offences pertaining to driving became an issue. The Irish government responded by expanding Garda powers of arrest, detention and search. All of the statues aside from the Emergency Powers Act 1976 remain law. It is submitted that this is consistent with Garland’s theory as highlighted earlier in this chapter.

In 2007 Campbell wrote that, “liberal notions of the primacy of the individual and of individual rights are eroded by premodern calls for vengeance and a heightened legislative concern has compromised liberty.”353 Similarly Conway notes that “the 1950s and 1960s have been presented as a policeman’s paradise.”354 She goes on to say that:

While one Garda spoke of dealing with little more than thefts of bicycles in his first few years in the force, Gardaí were now dealing with dramatic rise in crime with a particularly large increase in armed robberies occurring, being sent to the border or to prisons and responding to incidents where individuals have been killed. 355

It is contended that there can be no doubt that what was happening in Ireland between 1968 and 1979 and which is highlighted in this chapter is benchmarked by the legislative changes which took effect during the same period. The State in the form of the government and the Gardaí were under pressure because of paramilitary activity and reflects Garland’s theory when he states;

This pervasive sense of failure fuelled by the sharply increasing crime rates of the 1970s and 1980s would eventually lead to questioning of the state’s ability to control crime and a rethinking of the role of criminal justice. It would prompt the emergence of new forms of criminology, a new crime control agenda … the late 1970s became the ground zero for a newly contested field of crime control.356

---

354 C. Brady supra at note 275 at p.240.
356 D. Garland supra at note 2 at p.63.
It is submitted that this is largely true in relation to Ireland in the period under review. As Garland notes “it was the opening phase of a transformative process that has brought about major changes in institutions, ideas and practices across a whole crime control field.” In the 1970s drug abuse was becoming more prevalent. As noted by Williams “since criminals moved into the narcotics trade, dozens have been executed in feuds fed by greed, their names added to ganglands role of dishonour …” The Gardaí were also trying to face down paramilitary violence and an increasing crime rate and as Garland noted “the assault on individualized treatment has been with us ever since.”

The 1980s

Violent crime continued into the 1980s. In January 1980 Phyllis Murphy’s naked body was found in Wicklow. Gardaí established that she was raped and had been choked to death. Later in the same year two Garda detectives were shot at and wounded in the course of an armed robbery in Stillorgan in south county Dublin. Garda Henry Byrne and Detective Garda John Morley lost their lives in a shoot-out with armed raiders when they were intercepted in the aftermath of a robbery at the Bank of Ireland in Ballaghadreen, Co. Roscommon. Two years earlier Garda detectives were balloted on whether or not they wished to be armed. Most voted “no”. In the aftermath of what happened in Ballaghadreen, this would be reversed. At that time very few Gardaí were trained in the use of firearms. On the 13th of October 1980 Wexford Detective James Quaid was shot dead after a shoot-out when he and a colleague Detective Garda Donal Lyttleton intercepted a P.I.R.A. man conveying arms and ammunition. In 1980 the Commissioners Report would declare that 189 firearms were seized and that full time drugs units were now operating in Dublin, Cork and Limerick and that 999 people had been charged with drugs offences. As noted by Brady “within the Garda hierarchy drugs continued to be a low priority and a career backwater.” Somewhat similarly

357 D. Garland supra at note 2 at p.63.
358 P. Williams supra at note 265 at p.10.
359 D. Garland supra at note 2 at p.63.
360 C. Brady supra at note 275 at p.131.
361 C. Brady supra at note 2 at p.133
362 L. Walsh, The Final Beat (Dublin: Gill & Macmillan 2001) at Chapter 5 [hereinafter Walsh]
363 L. Walsh supra at note 362 at p.236.
364 L. Walsh supra at note 362 at Chapter 6.
366 C. Brady supra at note 275 at p.144.
Williams states “during the 1970s and 1980s the slow and inadequate responses of both Gardaí and legislature effectively gave gangland its independence and the godfathers established its borders.”\textsuperscript{367} While the nascent Garda drugs unit had been set up in Dublin in 1970 it would take the Gardaí another fifteen years to make any real effort to address the problem. The \textit{Misuse of Drugs Act} in 1977 was the first indication of change but its provisions were not commenced until 1979 - more delay. It was only the first year into the new decade and the trend from the 1970s continues. Gardaí are being murdered and shot at, a woman is raped and murdered, and her body discarded, plain clothes Gardaí want to be armed full time and the AGS was slowly reacting to the illicit drugs scene. It is contended that these demonstrate what Garland states in that there was a “new and urgent emphasis upon the need for security”\textsuperscript{368} and the” containment of danger”\textsuperscript{369} The public would require protection and crime would continue to dominate the news.

In 1981 many Gardaí and protestors were injured during a riot at the British Embassy in Ballsbridge in Dublin. A protest was organised in support of H-Block prisoners in Northern Ireland who were on hunger strike.\textsuperscript{370} Ben Dunne Junior of the Dunnes Stores Group was kidnapped and a ransom of £500,000 sought for his release. Roughly one week later he was released unharmed and Gardaí suspected that the ransom had been handed over or handed over in part.\textsuperscript{371} The Garda Commissioners Report for this year states that in all 211 firearms were seized\textsuperscript{372} and 1,256 persons were charged with drug offences.\textsuperscript{373}

On the 20\textsuperscript{th} of February 1982 Garda Patrick Reynolds was murdered when he was shot after he confronted several people in a house in Tallaght when they were counting cash from a robbery previously carried out in Limerick. He had only come to Tallaght as a recruit Garda four years previously.\textsuperscript{374} In the same year a nurse was found beaten to death in the Phoenix Park and some days later a farmer was shot dead in Co. Offaly. The Gardaí would arrest Malcolm McArthur, the suspect for these crimes at the home of the Attorney General in Dublin. The

\textsuperscript{367} P. Williams \textit{supra} at note 265 at p.10.  
\textsuperscript{368} D. Garland \textit{supra} at Note 2 at p. 12.  
\textsuperscript{369} \textit{Ibid.}  
\textsuperscript{370} C. Brady \textit{supra} at note 275 at p.148  
\textsuperscript{371} C. Brady \textit{supra} at note 275 at p.151  
\textsuperscript{373} \textit{Annual Report of the Commissioner of the Garda Síochána} 1981 at p.25.  
\textsuperscript{374} C. Brady \textit{supra} at note 275 at p.157-158.
A.G would later resign.\textsuperscript{375} Also, in 1982 Dr. James O’Donovan of the Forensic Laboratory would be seriously injured when a bomb went off in his car outside his home.\textsuperscript{376} Also, in 1982 Peter Matthews died while in Garda custody at Shercock Garda Station, Co. Cavan. Two Gardaí would later be charged in connection with his death.\textsuperscript{377} In 1982 the Commissioner’s Report states that 1,593 people were found in possession of drugs and unusually the Commissioner does not reference the number of indictable offences recorded as detected in his foreword to the report.\textsuperscript{378} The work of AGS was rarely far from the news.

Early in 1983 Commissioner McLaughlin and Deputy Commissioner Ainsworth would resign from the Gardaí in the aftermath of the “bugging scandal” where two journalist’s phones were tapped by Gardaí at the behest of the then Minister for Justice.\textsuperscript{379} The year 1983 would also see the murder of two Gardaí, a prison officer and a member of the defence forces. The prison officer, Brian Stack was murdered while off duty in Dublin.\textsuperscript{380} Sergeant Patrick McLoughlin was shot when he answered a call to the Garda station late at night.\textsuperscript{381} In December of the same year recruit Garda Gary Sheehan and soldier Private Patrick Kelly were murdered while searching for kidnap victim Don Tidey at Derrada Wood, Co. Leitrim.\textsuperscript{382} This year was the year that the racehorse Shergar was kidnapped apparently by a P.I.R.A. unit.\textsuperscript{383} An attempt to kidnap Canadian businessman Galen Weston was foiled by Gardaí after a shoot-out with a P.I.R.A. unit in Co. Wicklow.\textsuperscript{384} Some of the gang were wounded and others got away. No Gardaí were hurt. Martin Cahill also known as “The General” was now probably the most prolific criminal in the country. He was suspect for the attack on Dr. James Donovan\textsuperscript{385} (\textit{supra}) in 1982 and his gang would also be the main suspects for the break-in to Thomas O’Connor and Sons Jewellers near Harold’s Cross in Dublin. They fled with in excess of £2 million in jewellery. The premises had a reputation for being one of the most secure in the country.\textsuperscript{386}

The Commissioners Report for 1983 states:

\textsuperscript{375} C. Brady \textit{supra} at note 275 at p.158.  
\textsuperscript{376} C. Brady \textit{supra} at note 275 at p.146.  
\textsuperscript{377} C. Brady \textit{supra} at note 275 at p.185.  
\textsuperscript{379} C. Brady \textit{supra} at note 275 at p.165.  
\textsuperscript{380} C. Brady \textit{supra} at note 275 at p.170.  
\textsuperscript{381} \textit{Ibid.}  
\textsuperscript{382} C. Brady \textit{supra} at note 275 at p.172.  
\textsuperscript{383} C. Brady \textit{supra} at note 275 at p.171  
\textsuperscript{384} \textit{Ibid.}  
\textsuperscript{385} C. Brady \textit{supra} at note 275 at p.173  
\textsuperscript{386} \textit{Ibid.}
The year saw the emergence of concerned groups of citizens coming together to consider trends and similar problems particularly those related to drugs … of continuing concern is the number of children and young persons who become involved in crime … the continuing inability of social agencies responsible for the welfare of children to cope with this problem is of concern.\(^\text{387}\)

The drug abuse epidemic was taking hold on young people and the Government would eventually legislate to codify drug offences and further empower AGS.

On the 10\(^{\text{th}}\) of August 1984 Detective Garda Frank Hand was murdered and his colleague Detective Garda Michael Dowd injured in a shoot-out with raiders as they escorted monies at Drumree Post Office, Co. Meath.\(^\text{388}\) Dominic McGlinchey was arrested in Newmarket on Fergus, Co. Clare after a gun fight with Gardaí.\(^\text{389}\) He was handed over to the R.U.C. shortly afterwards. He and his wife were also suspect for tying up two Gardaí at Carrigtwohill, Co. Cork some weeks earlier. The Gardaí had called to the home of a local P.I.R.A suspect in the course of a nationwide search for McGlinchey. They found him and his gang at the house. The Gardaí were uniformed and unarmed and easily overpowered. The suspects fled the scene.\(^\text{390}\) In the same year the Irish Naval Service intercepted the “Marita Ann” vessel off the Kerry coastline. The vessel secreted seven tonnes of arms for the P.I.R.A.\(^\text{391}\) Martin Ferris was one of those arrested.\(^\text{392}\) He has been a T.D since 2002.

The Kerry Babies case would come to prominence this year after the stabbed body of a baby was found in White Strand, Co. Kerry. Joanne Hayes who was the suspect in the case would be criminally charged with the crime, but those charges would later be dropped.\(^\text{393}\) Michael Noonan the then Minister for Justice would have one of the most salient pieces of legislation enacted from the point of view of Garda investigative powers. The *Criminal Justice Act 1984* empowered Gardaí to detain people for the purpose of questioning them as well as other
substantial powers. The Gardaí who were charged in connection with the death of Peter Matthews at Shercock Garda Station were acquitted.394 There was much public concern about safety of persons in Garda custody and the Government would introduce Custody Regulations395 in tandem with the Criminal Justice Act 1984. Three Gardaí would be dismissed because of the Shercock case.396 The 1984 Commissioners Report noted “an upsurge in attacks on the elderly” and in his Foreword, he fails to mention a detection rate of 32.2% which is approximately 10% lower than previous years. 397

In 1985 the Kerry Babies Tribunal began hearings. It would sit for 77 days. Joanne Hayes and others were alleging that statements made to Gardaí were coerced and made under duress.398 In the same year Sergeant Patrick Morrissey was shot dead near Ardee, Co. Louth when he intercepted an armed raider subsequent to a robbery at the local labour exchange. The Sergeant in uniform and unarmed in the course of a struggle with raider had fallen helplessly to the ground but the raider shot him to death anyway.399 Prisoners in the new Spike Island prison in Cork Harbour rioted and burned down buildings. A stand- off ensued between rioters, Gardaí and prison officers. The Defence Forces were called in aid to the civil power but when they arrived at the gate of the prison they were sent away again. Gardaí and the prison service would later restore order.400 The 1985 Commissioners Report declared that the “green man (facility) would be installed in unattended Garda Stations.401 In the years 1984 and 1985 Martin Cahill, a prolific criminal, was suspect for carrying out many high-profile robberies.

In 1986 Jennifer Guinness the wife of a Dublin Banker was kidnapped. Gardaí would later rescue her unharmed. Three persons were arrested and charged with the kidnapping.402 Peter Robinson, the then deputy leader of the Democratic Unionist Party in Northern Ireland would lead hundreds of loyalist supporters across the border in a protest concerning the Anglo-Irish

396 G. Kerrigan supra at note 394.
398 G. Kerrigan and P. Brennan supra at note 311.
399 L. Walsh supra at note 362 at Chapter 11.
400 “Gardaí Demand Spike Inquiry” Irish Times (14th September 1985) accessed at www.irishtimes.com on 20th October 2018 at 7.40 p.m.
Agreement which had been signed in 1985. The event was also to highlight the paucity of security on the border on the southern side. The Gardaí responded and the then deputy leader of the Democratic Unionist Party was arrested and charged and later convicted. A schoolboy, Philip Cairns from Rathfarnham in Dublin went missing. Gardaí and civilians conducted searches over a wide area. He has never been found nor has anyone been made amenable for his disappearance. Armed robbers fled with approx. £1 million in cash when they held up a Securicor van in Fairview in Dublin. Also, in 1986 Martin Cahill was suspect for stealing the Beit Art Collection from Russborough House. This would be the second such break-in and theft. All but two would be subsequently located by police across Europe. He was also suspect for breaking into the D.P.P.’s office in this year and stealing a number of sensitive files.

In 1987 the Dublin dentist John O’Grady was kidnapped by Dessie O’Hare and his gang. A shoot-out in Midleton, Co. Cork between the Gardaí and the gang would follow. The gang escaped, and O’Grady was not rescued. When two detectives were later checking out a lead that emanated from the Midleton area at an address at Carnlough Road in Finglas, Dublin it would result in the rescue of O’Grady after a shoot-out between the gang and Gardaí. Detective Garda Martin O’Connor from New Inn, Co. Tipperary would be seriously injured from a gunshot wound but survived. His colleague Detective Garda Henry Spring was slightly injured. The gang remained at large. Dessie O’Hare would later be arrested after being shot in a joint operation by Gardaí and defence forces at Urlingford, Co. Kilkenny. Martin Byran who was O’Hare’s driver on the occasion was shot dead by the security services. The rest of the gang were eventually all arrested (after violent exchanges with Gardaí).

403 Padraig Yeats, “Robinson Faces Four Charges, Gets £10,000 Bail” Irish Times (9th August 1986) at p.1.
404 “Search for Boy Continues” Irish Times (27th October 1986) at p.1. accessed at Irish Times Archive on 20th October 2018.
405 C. Brady supra at note 275 at p.194.
406 C. Brady supra at note 275 at p.222.
407 C. Brady supra at note 275 at p.222.
408 G. Kerrigan supra at note 394 at pp.21-29.
409 G. Kerrigan supra at note 394 at pp.43-53.
410 C. Brady supra at note 275 at p.219.

authorities would find 150 tonnes of guns and explosives on the vessel called the “Eksund” in the Bay of Biscay destined for the P.I.R.A. The seizure was massive, and Gardaí learned that there were four other deliveries that landed in Ireland. If that was the case the P.I.R.A. had arms that could cause serious loss of life and damage to property on both sides of the border. Operation Mallard was executed before Christmas in 1987. A comprehensive search of suspect P.I.R.A. premises and properties were carried out in addition to vacant and/or remote holdings. No significant arms were found but a number of well-constructed bunkers were located.

Martin Cahill continued to dominate the crime scene. Operation Tango was set up by Gardaí to disrupt his activities. Cahill would now be subject of round the clock surveillance by teams of Gardaí and the operation continued into 1988. In retaliation Cahill was suspect for the slashing of his neighbours’ tyres and digging up the greens at the Garda Golf Club in Stackstown Co. Dublin. He still managed to evade Gardaí on occasions and was suspect for a number of other attacks. The Department of Social Welfare stopped his Social Welfare payments. The department official whom Cahill deemed responsible, Brian Purcell, was kidnapped from his home, bound, hooded and gagged and brought to a location where it is alleged that Cahill shot him at point blank range in each leg. The official survived. Many years later the same civil servant as Secretary of the Department of Justice would be sent to Garda Commissioner Martin Callinan’s home by Taoiseach Enda Kenny in controversial circumstances in respect of a serious but unrelated policing matter. The Commissioner would retire from his post the following day amid much contention. Don O’Leary’s house was searched by Gardaí in Cork City and thirty-seven posters were found. The posters depicted a masked I.R.A member brandishing an armalite rifle. The picture was accompanied by the words “I.R.A. Call the Shots”. O’Leary was charged with being a member of the I.R.A and with possession of incriminating documents. The evidence of a Garda Chief Superintendent of his belief that O’Leary was an I.R.A member together with that of the posters was enough to convict O’Leary. The Supreme Court would later endorse the conviction.

---

411 C. Brady supra at note 275 at pp.220-221.
412 C. Brady supra at note 275 at p.221.
413 C. Brady supra at note 275 at pp.222-223.
414 Ibid.
415 Ibid.
416 Conor Lally, “Purcell No Stranger to ‘Interesting Times’” Irish Times (3rd April 2014) at p.9, accessed at Irish Times Archive on 20th October 2018 at 8.28 p.m.
Commissioner’s Report would state that “particular attention is being given to armed and organised crime.”

In 1988 the D.P.P. in the Supreme Court would attempt to have bail restricted if evidence was tendered that persons seeking bail would be likely to commit further serious crime. The Supreme Court was having none of it and indicated that it was for the Oireachtas to legislate for such an occurrence. In 1989 RUC Chief Superintendent Bob Buchanan and Superintendent Harry Breen were murdered by the P.I.R.A. north of the border when returning from a security meeting with Gardaí in Dundalk. There would later be allegations that some members of the Gardaí colluded with the P.I.R.A. in the deaths. The Smithwick Tribunal would be set up many years later to inquire into the matter.

For the ten-year period from 1980 to 1989 the Gardaí recorded the following numbers of indictable offences. There were substantial fluctuations.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Indictable Offences</th>
<th>Detection Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>72,782</td>
<td>39.9%</td>
</tr>
<tr>
<td>1981</td>
<td>89,400</td>
<td>36.6%</td>
</tr>
<tr>
<td>1982</td>
<td>97,626</td>
<td>32.6%</td>
</tr>
<tr>
<td>1983</td>
<td>102,387</td>
<td>32.9%</td>
</tr>
<tr>
<td>1984</td>
<td>99,727</td>
<td>32.2%</td>
</tr>
<tr>
<td>1985</td>
<td>91,285</td>
<td>32.6%</td>
</tr>
<tr>
<td>1986</td>
<td>86,574</td>
<td>31.6%</td>
</tr>
<tr>
<td>1987</td>
<td>85,358</td>
<td>32.6%</td>
</tr>
<tr>
<td>1988</td>
<td>89,544</td>
<td>33.2%</td>
</tr>
<tr>
<td>1989</td>
<td>86,792</td>
<td>33.2%</td>
</tr>
</tbody>
</table>

Table 2.2 Garda Statistics for Indictable Crime and Detection Rates from 1980 to 1989.

It will be noted that the upward trend continued up to 1983 when it peaked more than 102,000 offences. It was around this time that the Gardaí began recording crime on a computer system.

---

420 Tribunal of Inquiry into the Murders of Chief Superintendent Breen and Superintendent Buchanan (Smithwick Report, 2013)
In any event since 1968 recorded indictable crime spiralled by almost 400%. The 1980s would ensure that public protection would continue “to be the dominant theme in public policy.”

**The Legislation**

For this period the following legislation pertained to the Gardaí. Some of them are more prolific than others but all of them substantially increased Garda powers in one way or another:

1. *Casual Trading Act 1980*
2. *Criminal Law Rape Act 1981*
3. *Litter Act 1982*
4. *Criminal Justice Act 1984*
5. *Misuse of Drugs Act 1984*
6. *Control of Dogs Act 1986*
7. *Garda Síochána Complaints Act 1986*
9. *Data Protection Act 1988*
10. *Intoxicating Liquor Act 1988*

**Extension of Powers - 1980 to 1989**

In terms of the amount of legislation passed by the Oireachtas during the 1980s of significance for the Gardaí, it can be said it is consistent with the previous decade. While the 1970s saw the enactment of very draconian legislation, the 1980s also has law which will have profound consequences on how the Gardaí investigate crime. It will be the next decade when there would be an acceleration in the amount of law being passed by law makers and its penetrating effect on the rights of individuals.

The *Casual Trading Act 1980* as the name suggests provides for “the control and regulation of casual trading” and in that regard the Gardaí are given strong powers to seize goods when they are being sold unlawfully and a strong power of arrest when the Act is not complied with.

---

422 D. Garland *supra* at note 2 at p.12.
423 Section 11 and Section 12 of the *Casual Trading Act 1980*. 

82
The powers are useful particularly during the times of big matches and events and assist Garda in monitoring and controlling street trading. The *Criminal Law Rape Act 1981* defines a “rape” and a “rape offence”. It provides that “no evidence will be adduced” in respect of a complainant’s sexual past and allows for the anonymity of complainant and the accused in particular circumstances. The sentence for indecent assault on females was increased to up to ten years imprisonment. The *Litter Act 1982* affords a power of arrest to Garda if a litter warden is obstructed in the course of his duty.

The *Criminal Justice Act 1984* made acute changes to the investigative process. Up to now Garda could only rely on the *Offences Against the State Act 1939* and the *Emergency Powers Act 1976* to detain and question suspects. The essential focus of these Acts was subversive crime. In *D.P.P. –v- Quilligan* (which was known locally as “the Willis Murder” which occurred near Glanmire in Cork in the mid-1980s), the Garda invoked their power under Section 30 of the *Offences Against the State Act 1939* to arrest and question the suspects. The Willis murder was in no way connected with subversive activity and Garda relied on the fact that offences under the *Malicious Damage Act 1861* were listed as schedule offences under the *Offences Against the State Act 1939*. There was no other legislation that would permit them to question suspects other than the 1939 Act. Damage had been caused to the murder victim’s watch and the Garda relied on that fact to use their statutory power under the 1939 Act. The main crime was murder but the lesser offence of damage to the watch was connected to it. Judge Barr in the Central Criminal Court ruled against the Garda’s use of their power in this way. The Supreme would later hold otherwise. Once there was a *bone fide* intention on the part of the Garda to investigate the lesser malicious damage offence then they could legitimately use their power as they did in that particular case.

The *Criminal Justice Act 1984* would now permit Garda to detain persons for non-subversive type crime for a total period of 12 hours. The Garda could also demand a name and address

---

424 Section 1 of the *Criminal Law Rape Act 1981*.
425 Section 2 of the *Criminal Law Rape Act 1981*.
426 Section 3 of the *Criminal Law Rape Act 1981*.
427 Section 7 of the *Criminal Law Rape Act 1981*.
428 Section 8 of the *Criminal Law Rape Act 1981*.
429 Section 10 of the *Criminal Law Rape Act 1981*.
430 Section 6 of the *Litter Act 1982*.
432 Section 4 of the *Criminal Justice Act 1984*. 

and seek fingerprint and palmprints in addition to searching the prisoner.\textsuperscript{433} Other provisions allowed for inferences to be taken from a person’s silence in certain specific circumstances.\textsuperscript{434} An accused person would now have to give notice of his alibi (if any) to Gardaí before trial\textsuperscript{435} and certain proofs could be permitted in court simply by reading a statement into the court record with no appearance by the witness. This power was limited and had to be agreed beforehand with the defence.\textsuperscript{436} The court could now accept a majority verdict of 10/2 and jurors no longer had to be unanimous in their decision.\textsuperscript{437} The electronic recording of questioning was also provided for although Gardaí didn’t equip stations for this purpose for years afterwards. Another significant power is that Gardaí could now take fingerprints or palmprints of convicted persons\textsuperscript{438} in a wide set of circumstances. While these powers would be added to over the years they would form the bedrock of how Gardaí would investigate “crime ordinary” i.e. non-terrorist type crime. Substantial resources at time would be allocated for the training of Gardaí in these new procedures. Week long courses took place which most likely would not happen in more recent times.

The Misuse of Drugs Act 1984 broadens the definitions of cannabis and opium poppy\textsuperscript{439} while certain penalties are also strengthened under the Act.\textsuperscript{440} A certificate from the Forensic Science Laboratory confirming the exhibit is a controlled substance will be sufficient evidence to that effect, dispensing with the need of Laboratory personnel travelling all over the country to give evidence.\textsuperscript{441} Search warrant powers are strengthened\textsuperscript{442} and Garda power that flowed from same were increased.\textsuperscript{443}

The Control of Dogs Act 1986 empowered Gardaí to arrest persons who obstruct dog wardens\textsuperscript{444} and the Garda Síochána Complaints Act 1986 “provided a system of investigation and adjudication of complaints made by the public about the conduct of members of AGS.”

\textsuperscript{433} Section 6 of the Criminal Justice Act 1984.
\textsuperscript{434} Section 18 and Section 19 of the Criminal Justice Act 1984.
\textsuperscript{435} Section 20 of the Criminal Justice Act 1984.
\textsuperscript{436} Section 21 of the Criminal Justice Act 1984.
\textsuperscript{437} Section 25 of the Criminal Justice Act 1984.
\textsuperscript{438} Section 28 of the Criminal Justice Act 1984.
\textsuperscript{439} Section 2 of the Misuse of Drugs Act 1984.
\textsuperscript{440} Section 6 of the Misuse of Drugs Act 1984.
\textsuperscript{441} Section 10 of the Misuse of Drugs Act 1984.
\textsuperscript{442} Section 12 of the Misuse of Drugs Act 1984.
\textsuperscript{443} Section 13 of the Misuse of Drugs Act 1984.
\textsuperscript{444} Section 16 of the Control of Dogs Act 1986.
This legislation was the first of its kind in this jurisdiction. Heretofore the Gardaí would investigate themselves but because of concerns of Garda misconduct in respect of persons in custody, the Act came about in tandem with the *Criminal Justice Act 1984*. Its commencement was delayed for a number of years until this new complaint procedure was set up. In addition, the *Treatment of Persons in Custody in Garda Stations Regulations* came into effect in 1987. These regulations clearly define the Gardai’s duties and responsibilities in respect of an arrested person and both the new regulations and complaints procedures and a number of provisions of the *Criminal Justice Act 1984* addressed what the *O’Briain Report* had recommended in the late 1970s.

The *Extradition (European Convention on the Suppression of Terrorism) Act 1987* was legislation that gave effect to the European Convention on Terrorism done in Strasbourg on the 27th January 1977. The Act defines political offences and in particular what is not a political offence to disallow accused people from walking free from courts by simply arguing that their crimes were “political”.

The *Data Protection Act 1988* would change things for everyone and not just those in the AGS. A duty of care will now be owed by the data controller and data processors who held information of persons on the I.T. systems. The use of computers in AGS at the time was in its infancy but the advent of PULSE had massive ramifications for the organisation. The Gardaí’s later failure to manage their own PULSE system would later haunt and tarnish Gardaí of every rank.

The *Intoxicating Liquor Act 1988* made it an offence to sell alcohol to a person under 18 years of age or to provide alcohol to such a person. It would also be an offence for a person under 18 years of age to consume alcohol. The Gardaí would now have substantial Garda powers in respect of these matters to seize alcoholic drink, arrest and demand names and

---

445 *O’Briain Report of the Committee to Recommend Certain Safeguards for Persons in Custody and for members of An Garda Síochána (Prl 7158 Dublin 1978).*
446 Section 4 of the *Extradition (European Convention on the Suppression of Terrorism) Act 1987*.
447 Section 31 of the *Intoxicating Liquor Act 1988*.
448 Section 32 of the *Intoxicating Liquor Act 1988*.
449 Section 33 of the *Intoxicating Liquor Act 1988*. 
addresses.\textsuperscript{450} The Act also provided for the issuing of Garda Age Cards.\textsuperscript{451} Night Club venues would come to rely on these cards to check if patrons were 18 years or over when endeavouring to gain admittance to such premises. The legislation was in response to what was being highlighted in the 1983 Commissioner’s Report concerning young people being involved in crime and alcohol/substance abuse.\textsuperscript{452} From the point of view of Gardaí it would be legislation that was very fit for purpose and it is submitted that all the legislation highlighted here corroborates Garland’s public protection index.

\textbf{Summary – 1980-1989}

Paramilitary and non-paramilitary violence continued into the 1980s. Three high profile kidnappings were carried out while seven Gardaí were killed in the course of duty. Two RUC Officers were also murdered in Northern Ireland when returning from a meeting with their counterparts in AGS in Dundalk in the Republic of Ireland. An off-duty Prison Officer was shot dead in Dublin and a member of the Defence Forces was shot and killed in a search operation in support of the AGS. Recorded crime increased from 72,782 to 86,792 from 1980 to 1989. A civil servant was seriously injured because of his work for the State in confronting crime. The AGS was controversial in how it dealt with prisoners and there were allegations of abuse and assault. The illicit drug scene was becoming more prevalent and the use of computers was on the increase. The government would respond \textit{inter alia} with ten pieces of legislation as highlighted earlier in this section to address these issues and further empower AGS. However, the empowerment on this occasion came with the \textit{caveat} of other statute and regulation which for the first time codified how AGS dealt with prisoners and how it would be held to account when complaints would be made against members of the organisation.

It is submitted that what is seen from the historical policing narrative and legislative changes in the 1970s and 1980s support an observation by Orange who states:

> Historically the police enjoyed powers that were no greater than the powers enjoyed by ordinary citizens. As the duties of the police expanded the common law tended to gradually extend those powers to enable them to fulfil their duties so that the powers available to the police became greater than those available to others.\textsuperscript{453}

\textsuperscript{450} Section 37 of the \textit{Intoxicating Liquor Act 1988}.
\textsuperscript{451} Section 40 of the \textit{Intoxicating Liquor Act 1988}.
\textsuperscript{452} Annual Report of the Commissioner of the Garda Síochána 1983 at Foreword.
\textsuperscript{453} G. Orange, \textit{Policing Powers in Ireland} (Dublin: Bloomsbury Professional 2014) at p.7. [hereinafter Orange].
Traditionally the Gardaí had wide common law powers of arrest for treason, felony and breach of the peace and they served Gardaí well. Their common law powers were still in use in the 1980s. Orange goes on to state that “in the last forty years the range of powers available to Gardaí have dramatically increased by legislation.”\textsuperscript{454} We now see nascent evidence of this increase in powers throughout the 1970s and 1980s. As will be seen, the trend will continue. As stated by Garland “the state’s impotence in the face of crime has become so well established”\textsuperscript{455} in recent decades. It is submitted that the evidence presented so far in relation to this jurisdiction in the 1970s and 1980s are strong examples of what Garland states are “flourishing penal powers to send law breakers to their death or to impose life cancelling terms of imprisonment.”\textsuperscript{456} Garland compares these “flourishing penal powers” to Michael Foucault’s description “of the execution of Robert Damiens in 1757”\textsuperscript{457} in graphic detail how harsh punishments have long been used to reaffirm the force of law and to reactivate the might of sovereign power.” Some of the legislation highlighted in this chapter only increases Garda powers in minimal ways and of themselves might not seem significant but taken in total with the more substantive criminal legislation they are firm evidence of the state’s “flourishing penal powers”. As will be seen, the State at the conclusion of the 1980s is not yet finished with the empowerment of Gardaí.

Garland refers to the 1970s and 1980s as the “crisis decades”\textsuperscript{458} and notes “what capital markets give so also do they take away”. As noted by Garland the “oil crisis of the 1970s ushered in a period of economic recession.”\textsuperscript{459} The “Troubles” in this country certainly created problems for the Gardaí but the solution to that was always going to be a political one and not a policing one and not all the problems over these two decades were created by paramilitaries. As noted by Williams:

\begin{quote}
Crime is about the gulf between the ‘haves and the have nots’. The vast majority of our criminal population grew up in deprivation on the wrong side of the social and economic boundary wall, behind this wall there exists a sub culture where the norms of middle class mean little.\textsuperscript{460}
\end{quote}

\textsuperscript{454} G. Orange \textit{ibid} at p.9.  
\textsuperscript{455} D. Garland \textit{supra} at note 2 at p108.  
\textsuperscript{456} D. Garland \textit{supra} at note 2 at p.133.  
\textsuperscript{457} D. Garland \textit{supra} at note 2 at p.133.  
\textsuperscript{458} D. Garland \textit{supra} at note 2 at p.81.  
\textsuperscript{459} D. Garland \textit{supra} at note 2 at p.81.  
\textsuperscript{460} P. Williams \textit{supra} at note 265 at p.11.
It is contended that what Williams says ties with Garland’s assertion that:

Politicians have tended to take the easy route here to opt for segregation and punishment rather than try to embed social controls, regulate economic life and develop policies that will enhance social inclusion and integration. If late modern societies are to uphold the ideals of democracy … they will need to ensure that moral regulation and social control are extended to mainstream processes of economic decision making and market allocation.\(^\text{461}\)

It is submitted therefore that insofar as Ireland is concerned by the end of the 1980s Garland’s theory remains strongly valid.

**The 1990s**

In this new decade AGS would continue to confront and face down armed violence and organised crime on a grand scale and the Government would support them by increasing their powers on a grand scale (see *infra*). In 1990 there was another shoot-out between Gardaí and raiders at the Bank of Ireland, Athy, Co. Kildare. Gardaí confronted the raiders having received reliable intelligence. One of the raiders was shot and killed by Gardaí while two raiders were injured. Three Gardaí were also injured as well as two civilians and a bank official hostage was wounded by a Garda bullet. In fact, the raiders didn’t fire any shots at all and Gardaí did all of the shooting.\(^\text{462}\) Another robbery in that year took place at the AIB Bank in Enniscorthy. When the alarm was raised the local Superintendent issued several uniformed Gardaí with firearms from the station firearm store. It was something akin to a Sherriff in the times of America’s “Wild West” breaking open the firearms locker and arming his Deputies. All gang members were apprehended, and one was wounded. There were shots fired. No medals for bravery would follow for Gardaí. They had broken internal regulations relating to the use of firearms (i.e. uniform members carrying firearms).\(^\text{463}\) Two other raiders lost their lives in another shoot-out in the aftermath of a raid on the Bank of Ireland, Leixlip, Co. Kildare. Gardaí would later establish that both men were on bail for previous crimes of violence.\(^\text{464}\) As noted by Brady:

\(^{461}\) D. Garland *supra* at note 2 at p.203.  
\(^{462}\) C. Brady *supra* at note 275 at p.229.  
\(^{463}\) Ibid.  
\(^{464}\) Ibid at p.230.
The struggle against the I.R.A. and other illegal organisations had been the chief preoccupation through the 1970s and 1980s but by the early 1990s it was arguable that urban crime principally armed robbery and drugs was becoming almost as great a threat as subversion … gangland shootings were now common place and were taking a high toll of lives that the paramilitary community … the evidence was there in the rising number of persons engaged in the importation of drugs and the devastation being wrought by the drugs trade in working class communities.\textsuperscript{465}

The \textit{Commissioner’s Report} in 1990 recorded 2,071 persons being charged with drugs offences with 16 AK47 rifles (a favourite with P.I.R.A.) and 4 heavy machine guns seized.\textsuperscript{466} The 1991 report would state that 3,088 persons were charged with drugs offences\textsuperscript{467} and this would increase again to 3,494 in 1992.\textsuperscript{468} Similarly in 1991 in excess of 161 grams of heroin were seized\textsuperscript{469} but in 1992 this increased to an amount in excess of 793 grams.\textsuperscript{470} In 1992 the State Solicitor for Cork City Barry Galvin went on the \textit{Late Late Show} and indicated in his view the country was awash with drugs and people were building criminal empires from the proceeds.\textsuperscript{471} The importation sale and supply of illicit drugs was now arguably out of control and Barry Galvin would later go on to lead the Criminal Assets Bureau in 1996 to dismantle these empires.

In 1992 armed raiders escaped with more than £2 million in a raid in Lisduggan, Co. Waterford\textsuperscript{472} and the trend would continue to 1995 when an armed raid yielded nearly £3 million at the Brinks Allied premises in Clonshaugh, Co. Dublin.\textsuperscript{473} The Downing Street Declaration was signed in 1993\textsuperscript{474} and in 1994 the P.I.R.A. would commence a ceasefire that would last a year and a half.\textsuperscript{475} Before announcing the ceasefire, they would be suspect for assassinating Martin Cahill (The General) outside his home.\textsuperscript{476} Michael Crinnion was shot dead outside the Clannad Bar in Cork City in 1995\textsuperscript{477} and an R.T.E camera crew were attacked

\textsuperscript{465} C. Brady \textit{supra} at note 275 at p.233.
\textsuperscript{466} Annual Report of the Commissioner of the Garda Síochána 1990 at Foreword and pp.22-23.
\textsuperscript{467} Annual Report of the Commissioner of the Garda Síochána 1991 at Foreword.
\textsuperscript{471} Ryle Dwyer, “Time to Put Drug Barons Out of Business” \textit{The Cork Examiner} (5\textsuperscript{th} April 1995) at p.10 accessed at Irish Newspaper Archives on 20\textsuperscript{th} October 2018 at 8.48 p.m.
\textsuperscript{472} C. Brady \textit{supra} at note 275 at p.233.
\textsuperscript{473} \textit{Ibid}.
\textsuperscript{474} \textit{Ibid} at p.234.
\textsuperscript{475} \textit{Ibid}.
\textsuperscript{476} C. Brady \textit{supra} at note 275 at p.224.
\textsuperscript{477} Declan Colley, “Gardaí Close to Crinnion Probe Break but Reject ‘Insider’ Claims” \textit{The Cork Examiner}
while covering his funeral.\textsuperscript{478} At the same time, a number of newsagents in Cork were threatened because they stocked and sold the \textit{Cork Examiner} newspaper which had reported in detail on the murder and its investigation. The Gardaí arrested, charged and convicted persons for the attack on the camera crew and the intimidation of newsagents but the gunman who shot Crinnion remains at large.\textsuperscript{479} In the same year in the northside of Cork City the Gardaí would carry out digs for the bodies of Patrick “Patch” O’Driscoll, Kevin Ball and Cathal O’Brien. Gardaí believed they had been butchered and buried.\textsuperscript{480} The Gardaí narrowly missed locating O’Driscoll’s body at one site and the suspect returned afterwards to excavate the remains and secrete them elsewhere.\textsuperscript{481} Fred Flannery was later charged with the murder of O’Driscoll, but the case would collapse in controversial circumstances in the Central Criminal Court before Judge Robert Barr.\textsuperscript{482} The case \textit{contra} Flannery was dismissed when the Court learned that one of the lead Garda investigators did not initially or earlier disclose material of relevance to the defence or indeed to the D.P.P. The Court would say that the said material in the end had to be “dragged out” of the Gardaí. A subsequent investigation into the matter would clear investigating Gardaí of wrongdoing.\textsuperscript{483} The three leading Garda investigators in the case in the aftermath of the trial were unfairly referred to as “Keystone Cops” on the front page of the Cork’s \textit{Evening Echo}.\textsuperscript{484} Fred Flannery would hang himself years later.\textsuperscript{485} Interestingly, one of the same lead investigators played a prominent lead role in the Willis murder investigation (the \textit{Quilligan case}) which Judge Robert Barr presided over as trial Judge at the Central Criminal Court. In the mid-1990s money laundering was a concern as gangsters sought ways to legitimise their ill-gotten gains. The \textit{Criminal Justice Act 1994 (infra)} ensued and the Garda Fraud Squad was strengthened.

Commissioner Culligan noted in 1996 that:

\begin{itemize}
\item \textsuperscript{478} “Three Jailed for Attack on R.T.E. Crew at Funeral” \textit{Irish Times} (23\textsuperscript{rd} January 1996) accessed at \url{www.irishtimes.com} on 20\textsuperscript{th} October 2018 at 9.05 p.m.
\item \textsuperscript{479} Pat Brosnan, “Decent Citizens Stand Defiant” \textit{Cork Examiner} (17\textsuperscript{th} April 1995) at p.10 accessed at Irish Newspaper Archive on 20\textsuperscript{th} October 2018 at 9.14 p.m.
\item \textsuperscript{480} G. Kerrigan and P. Brennan \textit{supra} at note 311 at pp.127-130.
\item \textsuperscript{481} \textit{Ibid}.
\item \textsuperscript{482} \textit{Ibid}.
\item \textsuperscript{483} \textit{Ibid}.
\item \textsuperscript{484} Writer’s own recollection.
\item \textsuperscript{485} Ralph Riegel, “Suspect in Three Brutal Murders Took Own Life at Farm” \textit{The Irish Independent} (29\textsuperscript{th} October 2003) accessed at \url{www.independent.ie} on 20\textsuperscript{th} October 2018 at 9.33 p.m.
\end{itemize}
I do not share the widely promoted view that we live in an age of urban crisis and moral panic. But the Gardaí must acknowledge that public perceptions and expectations of the force are influenced by this outlook.\textsuperscript{486}

The Garda Commissioner’s view of events at that time are at variance with public perception but the legislature’s vigour in empowering AGS continues. In 1996 Brendan O’Donnell a disturbed local man kidnapped and shot Imelda Riney and her three-year old son in Co. Clare. He also killed Fr. Joe Walsh. Gardaí were strongly criticised at the time for not doing enough to prevent the tragedies.\textsuperscript{487} Detective Garda Gerry McCabe was shot dead during an armed raid as he escorted a Post Office van in Adare. His colleague Detective Garda Ben O’Sullivan was also badly injured.\textsuperscript{488} Some weeks later a prominent journalist Veronica Guerin was ruthlessly executed in her vehicle at Newlands Cross in Dublin while stopped at traffic lights.\textsuperscript{489} A huge public outcry would ensue and the Oireachtas would swiftly pass what many would consider to be draconian legislation in an effort to curb gangland activity.

As the 1990s were coming to a close Brady succinctly notes the following:

It is perhaps ironic that even as the final pieces were being put into place to bring the 1998 Good Friday Agreement to completion the most serious failure of discipline and organisation since the 1920s was in gestation within the Garda Síochána.\textsuperscript{490}

Brady is referring here to Garda conduct and activity that would later be inquired into by the Morris Tribunal.\textsuperscript{491} The events considered by Morris would have commenced in or around the mid-1990s. Brady succinctly states that:

The Garda Síochána had played its role with effectiveness in holding the line for almost 30 years against terrorism and subversion while politicians struggled to find a solution. Now with the prize of peace in sight it seemed that a cohort within the Gardaí had abandoned discipline and standards.\textsuperscript{492}

\textsuperscript{486} John Maher and Catherine Cleary, “Garda Will Need New Ethos Says Culligan” \textit{Irish Times} 18\textsuperscript{th} June 1996 at p.1 accessed on Irish Times Archive at 5.55 p.m. on 11\textsuperscript{th} September 2017. Also referred to by C. Brady \textit{supra} at note 275 at p.237.

\textsuperscript{487} C. Brady \textit{supra} at note 275 at pp.237-238.

\textsuperscript{488} L Walsh \textit{supra} at note 362 at Chapter 12.

\textsuperscript{489} C. Brady \textit{supra} at note 275 at p.246.

\textsuperscript{490} C. Brady \textit{supra} at note 275 at p.239.

\textsuperscript{491} Morris Tribunal. See Chapters 5 and 6 \textit{infra}.

\textsuperscript{492} C. Brady \textit{supra} at note 275 at p.239.
In 1994 the Garda Commissioner would acknowledge that “it is impossible to set up a special squad of Gardaí for every problem arising”\(^{493}\) which may be indicative that Gardaí were feeling the pressure of holding the line on crime. The same year heralded the Garda’s Domestic Violence Intervention Scheme to ensure that Gardaí were more pro-active when dealing with domestic violence matters.\(^{494}\)

The 1996 Commissioner’s Report advised on the establishment of the Criminal Assets Bureau\(^{495}\) and in 1997 the Commissioner’s Report highlighted *Operation Dóchas* which ran from October 1996 to 1997.\(^{496}\) The primary objective of the Operation was to make substantial inroads into the drugs problem in the city (i.e. Dublin). The 1999 Report highlights the advent of Children First – National Guidelines for the Protection and Welfare of Children.\(^{497}\) In 1999 Sergeant Andrew Callanan died after a man entered the public office at Tallaght Garda Station with an amount of petrol to torch the building.\(^{498}\)

Collectively the Commissioner Reports\(^{499}\) for the decade would record indictable crime as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Indictable Offences</th>
<th>Detection Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>87,658</td>
<td>33.1%</td>
</tr>
<tr>
<td>1991</td>
<td>94,406</td>
<td>33.5%</td>
</tr>
<tr>
<td>1992</td>
<td>95,391</td>
<td>33.5%</td>
</tr>
<tr>
<td>1993</td>
<td>98,979</td>
<td>35.7%</td>
</tr>
<tr>
<td>1994</td>
<td>101,036</td>
<td>38.7%</td>
</tr>
<tr>
<td>1995</td>
<td>102,484</td>
<td>37%</td>
</tr>
<tr>
<td>1996</td>
<td>100,785</td>
<td>41%</td>
</tr>
<tr>
<td>1997</td>
<td>90,875</td>
<td>43%</td>
</tr>
<tr>
<td>1998</td>
<td>85,627</td>
<td>44%</td>
</tr>
<tr>
<td>1999</td>
<td>81,274</td>
<td>42%</td>
</tr>
</tbody>
</table>

*Table 2.3 Garda Statistics for Indictable Crime and Detection Rates from 1990 to 1999.*

In 1995 reported crime was the highest ever recorded but the figure reduced significantly by circa 20,000 in 1999. Again, there are significant fluctuations. In the mid-1990s the recorded crime rate peaked similar to the figure for 1983. In 1983 the drugs abuse was taking hold


\(^{494}\) *Ibid.*


\(^{498}\) “Man Denies Capital Murder Charge” *Irish Times* 22\(^{nd}\) June 2001 accessed at Irish Times Archive on 20\(^{th}\) October 2018 at 11.42 p.m.

throughout the country and drugs gangs were beginning to emerge. Up to 1995 the drug gangs had dominated the crime scene but a sharp decrease in crime can be noted in the aftermath of the killing of Detective Garda Gerry McCabe and the journalist Veronica Guerin. It is contended that the legislative programme enacted in 1996 would no doubt have had a positive impact on the incidence of indictable crime and the legislative imperative to protect the public continues.

**The Legislation**

1. *Criminal Justice (Forensic Evidence) Act 1990*
2. *Criminal Law (Rape) Amendment Act 1990*
3. *Criminal Justice Act 1990*
4. *Larceny Act 1990*
5. *Firearm and Offensive Weapons Act 1990*
6. *Criminal Damage Act 1991*
7. *Child Care Act 1991*
8. *Child Abduction and Enforcement of Custody Orders Act 1991*
9. *Criminal Evidence Act 1992*
10. *Criminal Law (Sexual Offences) Act 1993*
11. *Road Act 1993*
12. *Criminal Justice Act 1994*
13. *Road Traffic Act 1994*
15. *Casual Trading Act 1998*
17. *Road Traffic act 1995*
18. *Sex Offences Jurisdiction Act 1996*
19. *Criminal Assets Bureau Act 1996*
20. *Proceeds of Crime Act 1996*
21. *Criminal Justice (Drug Trafficking) Act 1996*
22. *Domestic Violence Act 1996*
23. *Licencing (Combating Drug Abuse) Act 1997*
24. *Prompt Payment of Accounts Act 1997*
25. *Non-Fatal Offences Against the Person Act 1997*
Extension of Powers – 1990 to 1999

It can be clearly seen in the 1990s that in response to what was happening on the crime scene for the period, the Oireachtas had massively increased and accelerated the volume of legislation being passed into law. It is submitted that the Gardaí themselves could hardly keep abreast of the powers they were being given. The Garda powers as highlighted below certainly could be regarded as a robust erosion of civil liberties and as Garland states “the assault on individualized treatment opened the floodgates for a period of change that has been with us ever since.”

The speed of legislation and the increase of powers being given to the Gardaí would continue past the 1990s and well into the new century.

The Criminal Justice (Forensic Evidence) Act 1990 amended the law “to authorise the taking of bodily samples for forensic testing from persons suspected of certain criminal offences.” Inferences could be taken in particular cases if a person refused to provide such samples to Gardaí.

The Criminal Law Rape Amendment Act 1990 created the new offence of Aggravated Sexual Assault, Digital Rape and Sexual Assault. It abolished the marital exemption for rape and facilitated alternative verdicts at court trials. All rape cases would now be heard in the Central Criminal Court. The Criminal Justice Act 1999 would abolish the death penalty. A conviction for treason or murder would now lead to a prison sentence for

---

500 D. Garland supra at note 2 at p.63.
501 Section 3 of the Criminal Justice (Forensic Evidence) Act 1990.
502 Section 3 of the Criminal Law (Rape) Amendment Act 1990.
503 Section 4 of the Criminal Law (Rape) Amendment Act 1990.
504 Section 2 of the Criminal Law (Rape) Amendment Act 1990.
505 Section 5 of the Criminal Law (Rape) Amendment Act 1990.
506 Section 7 of the Criminal Law (Rape) Amendment Act 1990.
507 Section 10 of the Criminal Law (Rape) Amendment Act 1990.
life. If convicted for the murder of a Garda or prison officer then at least 40 years of a life sentence would be served before consideration given for release. The Larceny Act 1990 created a new offence for being in possession of an article in suspicious circumstances when not at home. It also created a new handling stolen property offence. It also provided for alternative verdicts at criminal trials. The Firearm and Offences Weapons Act 1990 widened the scope of the definition of firearms to include crossbows and stun-guns and created a new offence of reckless discharge of a firearm. Possession of knives or other articles with a blade would now become an offence as well as trespassing with a knife or producing an article capable of inflicting injury. The Gardaí had a strong power of arrest under the Act and Gardaí could acquire a search warrant from a District Court Judge in specific cases and there was also a strong power to search persons without warrant if congregated in public and breach of the peace has, is or about to occur. These were potent and useful powers to Gardaí on the street and are used regularly.

The Criminal Damage Act 1991 repealed and modernised the antiquated Malicious Damage Act 1861. Malicious damage would now be criminal damage. Gardaí would have to prove recklessness. It created a new offence of a threat to commit damage and possessing anything with intent to damage property. It provided for compensation orders by the courts and gave the Gardaí a wide power of arrest for offences committed under the Act together with a facility to acquire a search warrant in the District Court in specific instances. It also created a new I.T. offence of unauthorised access of data. Similar to its predecessor (the Act of

---

508 Section 2 of the Criminal Justice Act 1990.
509 Section 3 of the Criminal Justice Act 1990.
510 Section 2 of the Larceny Act 1990.
511 Section 3 of the Larceny Act 1990.
512 Section 8 of the Larceny Act 1990.
513 Section 4 of the Firearms and Offensive Weapons Act 1990.
514 Section 8 of the Firearms and Offensive Weapons Act 1990.
515 Section 9 of the Firearms and Offensive Weapons Act 1990.
516 Section 10 of the Firearms and Offensive Weapons Act 1990.
517 Section 11 of the Firearms and Offensive Weapons Act 1990.
518 Section 14 of the Firearms and Offensive Weapons Act 1990.
519 Section 15 of the Firearms and Offensive Weapons Act 1990.
520 Section 2 of the Criminal Damage Act 1991.
521 Section 3 of the Criminal Damage Act 1991.
522 Section 4 of the Criminal Damage Act 1991.
523 Section 9 of the Criminal Damage Act 1991.
524 Section 12 of the Criminal Damage Act 1991.
525 Section 13 of the Criminal Damage Act 1991.
526 Section 5 of the Criminal Damage Act 1991.
1861) offences committed under the instant legislation would be a scheduled offence for the purposes of Section 30 Offences Against the State Act 1939. Therefore, depending on the context of the case Gardaí could arrest and detain under the provisions of Section 4 of the Criminal Justice Act 1984 or Section 30 Offences Against the State Act 1939.

The Child Care Act 1991 gave Gardaí a substantial power to enter a house without warrant (if need be by force) to remove a child to safety if Gardaí believed there was a serious risk to the health of a child.\textsuperscript{527} The power for a long time appeared uncontroversial until Emily Logan the Ombudsman for Children second guessed the Gardaí’s use of the power in respect of a Roma child in 2013.\textsuperscript{528} The Child Abduction and Enforcement of Custody Orders Act 1991 empowered Gardaí to detain a child who is reasonably suspected to be removed from the state in contravention of certain orders.

The Criminal Evidence Act 1992 would allow for the admissibility of documents in court as proof of facts contained in the document in certain circumstances.\textsuperscript{529} It permitted the giving of evidence by television link\textsuperscript{530} and via intermediary\textsuperscript{531} or from behind a screen in certain cases.\textsuperscript{532} There was also protection afforded against cross examination of a party by an accused person\textsuperscript{533} in specific circumstances. A video recording could now be given as evidence at a trial.\textsuperscript{534} Spouses and former spouses were now compellable to give evidence contra the opposite spouse or former spouse\textsuperscript{535} and were also compellable to give evidence at the instance of the prosecution.\textsuperscript{536} The requirement for the corroboration for the unsworn evidence of a child was abolished.

---

\textsuperscript{527} Section 12 of the Child Care Act 1991.
\textsuperscript{528} Report of Ms. Emily Logan under Garda Síochána Act 2005 (Section 42) Special Inquiries relating to Garda Síochána Orders 2013 (July 2014) supra at note 226.
\textsuperscript{529} Section 5 of the Criminal Evidence Act 1992.
\textsuperscript{530} Section 13 of the Criminal Evidence Act 1992.
\textsuperscript{531} Section 14 of the Criminal Evidence Act 1992.
\textsuperscript{532} Section 14A of the Criminal Evidence Act 1992.
\textsuperscript{533} Section 14C of the Criminal Evidence Act 1992.
\textsuperscript{534} Section 16 of the Criminal Evidence Act 1992.
\textsuperscript{535} Section 20 of the Criminal Evidence Act 1992.
\textsuperscript{536} Section 22 of the Criminal Evidence Act 1992.
The *Criminal Law (Sexual Offences) Act 1993* abolished the offence of buggery between consenting adults but buggery with a person under 17 years would be an offence as would gross indecency with persons of that age group or with a mentally impaired person. Soliciting for prostitution would now be an offence (S.7) and Gardaí would now have formal powers for something they were doing for years i.e. directing loiterers for prostitution to leave an area but now it would be an offence not to comply. Pimping would now be an offence and the Gardaí could now obtain a warrant in court to search a brothel. Force could be used. The Act also gave Gardaí a power of arrest for offences committed in respect of same.

The *Roads Act 1993* gave very strong powers to Gardaí to remove temporary dwellings on national roads or motorways. This would have ramifications for traveller families. The *Criminal Justice Act 1993* permitted the D.P.P. to appeal lenient sentences and for a court to make Compensation Orders in certain cases. The *Criminal Justice Act 1994* was a serious potent piece of legislation aimed at the “recovery of the proceeds of drug trafficking and other offences.” It created the offence “money laundering.” A court could now make confiscation orders in respect of drug trafficking offences and was allowed to assess the proceeds of drug trafficking. Furthermore the D.P.P. could seek a re-assessment if new evidence came to light. Substantial powers of seizure and detention of property were given to Gardaí and customs officers and the Act provided for the transfer of prisoners in the State to give evidence outside the State on the authority of the Minister for Justice and vice versa. Search for material relevant to an investigation could now be permitted outside the State and

---

537 Section 2 of the *Criminal Law (Sexual Offences) Act 1993*.
538 Section 3 of the *Criminal Law (Sexual Offences) Act 1993*.
539 Section 7 of the *Criminal Law (Sexual Offences) Act 1993*.
540 Section 5 of the *Criminal Law (Sexual Offences) Act 1993*.
541 Section 7 of the *Criminal Law (Sexual Offences) Act 1993*.
542 Section 8 of the *Criminal Law (Sexual Offences) Act 1993*.
543 Section 13 of the *Criminal Law (Sexual Offences) Act 1993*.
544 Section 13 of the *Criminal Law (Sexual Offences) Act 1993*.
545 Section 69 of the *Road Act 1993*.
546 Section 2 of the *Criminal Justice Act 1993*.
547 Section 6 of the *Criminal Justice Act 1993*.
548 Section 31 of the *Criminal Justice Act 1994*.
549 Section 4 of the *Criminal Justice Act 1994*.
550 Section 5 of the *Criminal Justice Act 1994*.
551 Section 7 of the *Criminal Justice Act 1994*.
552 Section 38 of the *Criminal Justice Act 1994*.
553 Section 53 of the *Criminal Justice Act 1994*.
554 Section 54 of the *Criminal Justice Act 1994*.
555 Section 55 of the *Criminal Justice Act 1994*. 

97
there was now power to apply to the District Court in a money laundering case to compel a person to hand over or grant access to material that would assist in an investigation. There are also robust powers provided for in respect of the interception and boarding of vessels at sea.

The Road Traffic Act 1994 reduced the drink driving blood/urine alcohol levels and allowed for breath testing for alcohol at stations. It also extended the Gardaí’s road side breath test powers. If the Gardaí are not in possession of a breathalyser then a person could be asked to wait one hour at the scene until the apparatus is acquired. Gardaí could now seek blood/urine specimens in drink driving cases if people are in hospital after say a traffic accident and alcohol is suspected to be involved. Gardaí could now also detain persons for up to six hours if having been arrested for drink driving they were in no condition to be released from custody because of their drunken state. The Gardaí could also now release such a person to the custody of a responsible adult. A driving licence must now be carried if driving a vehicle and disqualifications periods varied for first and second or subsequent offences. Gardaí could also use reasonable force to enter a premises to effect an arrest.

The Criminal Justice (Public Order) Act 1994 updated the area relating to drunkenness and disorderly behaviour and breach of the peace. Drunkenness, Disorderly Behaviour and Breach of the Peace were now all defined. Entering a building with intent to commit a crime would now also be an offence together with trespassing on a building for the purpose of causing fear. Riot, Violent Disorder and Affray were also defined as were blackmail,

---

556 Section 63 of the Criminal Justice Act 1994.
558 Section 10 of the Road Traffic Act 1994.
559 Section 12 of the Road Traffic Act 1994.
561 Section 16 of the Road Traffic Act 1994.
564 Section 26 and Section 27 of the Road Traffic Act 1994.
566 Section 5 of the Criminal Justice (Public Order) Act 1994.
570 Section 14 of the Criminal Justice (Public Order) Act 1994.
extortion and demanding money with menaces.\textsuperscript{573} A separate offence was created for an assault with intent to commit bodily harm. It would be an indictable offence.\textsuperscript{574} Obstruction or assaulting a peace officer\textsuperscript{575} was also an offence and in certain cases was indictable. The Act also gave Gardai power to do what they had been doing for years i.e. controlling access to events\textsuperscript{576} (e.g. the placing of barriers) and the surrender of alcohol or suspicious articles before passing these barriers. If search was declined the person would not be allowed to proceed into the event.\textsuperscript{577}

The Casual Trading Act 1995 strengthened Garda powers of arrest, seizure and removal in casual trading cases while the Criminal Law (Incest Proceedings) Act 1995 provided for the anonymity of the victim and accused persons under the legislation. The Road Traffic Act 1995 linked disqualification limits to blood/urine/breath alcohol levels. The Sexual Offences (Jurisdiction) Act 1996 created the sexual offence to a child outside the state to be an offence within the state\textsuperscript{578} and transport of children for this purpose would also be an offence.\textsuperscript{579} Gardai could obtain a search warrant in court in certain circumstances.\textsuperscript{580}

The Criminal Assets Bureau Act 1996 established the Criminal Assets Bureau (C.A.B.). Its objectives were “to identify assets wherever situated deemed for criminal activity, to legally deprive people from benefitting from these assets and to investigate and follow-up on ill-gotten gains of criminals”.\textsuperscript{581} It would be an offence to obstruct\textsuperscript{582} or intimidate\textsuperscript{583} a Bureau Officer and search warrants could be obtained to search for and seize assets. It would be a separate offence to assault a Bureau Officer\textsuperscript{584} and there was a power of arrest for obstructing or intimidating such an officer.\textsuperscript{585} In tandem with this legislation came the Proceeds of Crime Act 1996 which empowered the High Court “as respect the proceeds of crime to make orders for

\textsuperscript{573} Section 17 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{574} Section 18 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{575} Section 19 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{576} Section 20 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{577} Section 21 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{578} Section 22 of the Criminal Justice (Public Order) Act 1994.
\textsuperscript{579} Section 2 of the Sexual Offences (Jurisdiction) Act 1996.
\textsuperscript{580} Section 3 of the Sexual Offences (Jurisdiction) Act 1996.
\textsuperscript{581} Section 4 of the Sexual Offences (Jurisdiction) Act 1996.
\textsuperscript{582} Section 10 of the Sexual Offences (Jurisdiction) Act 1996.
\textsuperscript{583} Section 12 of the Criminal Assets Bureau Act 1996.
\textsuperscript{584} Section 13 of the Criminal Assets Bureau Act 1996.
\textsuperscript{585} Section 15 of the Criminal Assets Bureau Act 1996.
the preservation and where appropriate the disposal of property.” The High Court could make an Interim Order to prohibit the disposal of suspected criminal assets on an *ex parte* basis on the application of a Bureau Officer. Follow-up interlocutory and disposal orders could later be made by the court. There was also a power to seize property (if being removed from the state) in contravention of a Court Order.

The *Criminal Justice (Drug Trafficking) Act 1996* was a parallel piece of legislation with the previous two. It permitted the arrest of person for committing a drug trafficking offence and subsequent detention for a period of six hours. This could increase to a total of 7 days. The *Licensing (Combating Drug Abuse) Act 1997* made “provision for measures to combat drug abuse in places used for public dancing, licensed premises and other places of entertainment.” Persons could now be disqualified from holding a dance licence if convicted of a drugs offence or have their dance licence revoked if convicted for such an offence. The *Prompt Payment of Accounts Act 1997* applied across the public sector and was enacted to ensure the prompt payment of business accounts by public sector organisations including AGS.

The *Non-Fatal Offences Against the Person Act 1997* abolished the common law offences of assault, battery, kidnapping and false imprisonment and replaced them with new offences i.e. assault, assault causing harm and assault causing serious harm. New offences like threat to kill and offences relating to tainted syringe attack were also created although these could be covered by what was set out in sections 3 & 4. Fresh definitions for coercion and harassment were provided for. New offences for demanding payment of debts so as to

---

586 Section 2 of the *Proceeds of Crime Act 1996*.
587 Section 3 and Section 4 of the *Proceeds of Crime Act 1996*.
588 Section 15 of the *Proceeds of Crime Act 1996*.
589 Section 2 of the *Criminal Justice (Drug Trafficking) Act 1996*.
590 Section 2 of the *Licensing (Combating Drug Abuse) Act 1997*.
591 Section 4 of the *Prompt Payment of Accounts Act 1997*.
592 Section 2 of the *Non-Fatal Offences Against the Person Act 1997*.
593 Section 3 of the *Non-Fatal Offences Against the Person Act 1997*.
594 Section 4 of the *Non-Fatal Offences Against the Person Act 1997*.
595 Section 5 of the *Non-Fatal Offences Against the Person Act 1997*.
596 Section 6, Section 7 and Section 8 of the *Non-Fatal Offences Against the Person Act 1997*.
597 Section 9 of the *Non-Fatal Offences Against the Person Act 1997*.
598 Section 10 of the *Non-Fatal Offences Against the Person Act 1997*. 100
cause alarm, poisoning and endangering someone’s life were created. The Act also provided definition for the justifiable use of force and the justifiable use of force when making an arrest. It abolished the rule where teachers were immune from criminal liability in respect of physical chastisement of pupils and certificate from a doctor would be evidence of any facts contained therein. This provision would free up doctor’s time so that they would not have to be travelling to courts to give evidence.

The Bail Act 1997 permitted the refusal of bail to a person charged with a serious offence if the court was satisfied that such refusal was reasonably necessary to prevent the commission of a further serious offence. The Gardaí would view this legislation as essential in keeping violent people incarcerated and to protect witnesses. The Criminal Law Act 1997 abolished felonies and misdemeanours and in lieu defined an arrestable offence as one where a court on conviction or indictment could sentence an accused to at least 5 years imprisonment or more. The Gardaí were also given a very strong power of arrest for “an arrestable offence” and the provisions of the major detention legislation could be invoked thereafter for the purposes of questioning. Gardaí were also given a robust and wide power of entering a premises including a dwelling without warrant to effect an arrest for “arrestable offences” and anyone who aided, abetted or counsels or procures the commission of an arrestable offence in the State would be liable to be indicted and punished as if the original offender. The Criminal Justice (Miscellaneous Provisions) Act 1997 allowed a person detained under the provisions of Section 4 of the Criminal Justice Act 1984 for a particular offence and if he/she was also suspected of another crime that person could be questioned for other offences as if initially detained for original offence. The detention period would remain the same. In addition, formal evidence of arrest, charge and caution by Gardaí could now be given by

599 Section 11 of the Non-Fatal Offences Against the Person Act 1997.
600 Section 12 of the Non-Fatal Offences Against the Person Act 1997.
601 Section 13 of the Non-Fatal Offences Against the Person Act 1997.
602 Section 18 of the Non-Fatal Offences Against the Person Act 1997.
603 Section 19 of the Non-Fatal Offences Against the Person Act 1997.
604 Section 24 of the Non-Fatal Offences Against the Person Act 1997.
605 Section 25 of the Non-Fatal Offences Against the Person Act 1997.
606 Section 2 of the Bail Act 1997.
609 Section 4 of the Criminal Law Act 1997.
611 Section 7 of the Criminal Law Act 1997.
It would save overtime. The Act also provided for a new search warrant that could be issued by District Court Judges on application by Gardaí when seeking evidence in respect of certain scheduled serious offences which included those of a serious sexual nature, false imprisonment or crime involving death or serious bodily injury. The Act also provides for the Gardaí to electronically record fingerprints and palmprints.

The Offences Against the State Amendment Act 1998 permitted inferences to be drawn in court if a person was charged with being a member of an unlawful organisation declined or failed to answer certain questions when quizzed by the Gardaí. It would now also be an offence to direct an unlawful organisation and the period of detention allowed for under Section 30 of the Offences Against the State Act 1939 could be extended for a further 24 hours by the District Court on the application of at least a Superintendent in AGS. This increased the detention period from 48 to 72 hours. A person could now be re-arrested for the same offence if previously arrested under Section 30 by order of a District Court Judge on the application of at least a Garda Superintendent. Under this Act penalties were strengthened for serious firearms offences.

The Child Trafficking and Pornography Act 1998 “prohibits trafficking in the use of children for the purpose of sexual exploitation and the production and dissemination, handling or possession of child pornography.” It is now an offence to traffic a child for the purposes of sexual exploitation or allow a child to be used for pornography or possessing child pornography or producing, distributing such material. The Act empowers Gardaí to acquire a search warrant from a District Judge when seeking evidence in relation to child pornography.

---

615 Section 2 of the Offences Against the State (Amendment Act) 1998.
616 Section 9 of the Offences Against the State (Amendment Act) 1998.
617 Section 10 of the Offences Against the State (Amendment Act) 1998.
618 Section 11 of the Offences Against the State (Amendment Act) 1998.
619 Section 15 of the Offences Against the State (Amendment Act) 1998.
The *Immigration Act 1999* permits the Minister to allow deportation of non-nationals\(^{624}\) and issue exclusionary orders.\(^{625}\) Gardaí are given powers of arrest in respect of particular breaches of the Act\(^{626}\) and a summary offence of obstructing Gardaí is created.\(^{627}\) There are also powers to take fingerprints of non-nationals if over 14 years of age in certain circumstances.

The *Criminal Justice Act 1999* created a mandatory sentence if convicted of possessing drugs in excess of £10,000 (later €13,000) or more.\(^{628}\) A Court is mandated to hand down a prison sentence of at least 10 years unless it would be unjust in all the circumstances to do so. The Act provides that Court can take into account a plea of guilty in the case and how early that plea was indicated. It must take into account the circumstance of a plea of guilty and to what extent the accused co-operated in the investigation.\(^{629}\) This would assist Garda intelligence in these types of cases.

The Act also provides for witnesses who were subject to intimidation or in fear could give evidence by television link\(^{630}\) and it would now be an offence to make enquiries in respect of relocated witnesses in a trial.\(^{631}\) It would be a crime intimidate witnesses and jurors.\(^{632}\) The Gardaí could now formally arrest someone who was already incarcerated in prison and take them to a Garda station for questioning.\(^{633}\) Up to now if Gardaí wanted to question someone in prison they could not do so if the prisoner refused to meet them at the prison.

**Summary – 1990 - 1999**

There is a total of thirty-two pieces of legislation highlighted for the 1990s period. Each one is a benchmark moment which highlighted transformation in how crime was committed and investigated in Ireland.

---

\(^{624}\) Section 3 of the *Immigration Act 1999*.

\(^{625}\) Section 4 of the *Immigration Act 1999*.

\(^{626}\) Section 5 of the *Immigration Act 1999*.

\(^{627}\) Section 8 of the *Immigration Act 1999*.

\(^{628}\) Section 4 of the *Criminal Justice Act 1999*.

\(^{629}\) Section 5 of the *Criminal Justice Act 1999*.

\(^{630}\) Section 39 of the *Criminal Justice Act 1999*.

\(^{631}\) Section 40 of the *Criminal Justice Act 1999*.

\(^{632}\) Section 41 of the *Criminal Justice Act 1999*.

\(^{633}\) Section 42 of the *Criminal Justice Act 1999*. 

103
Coen states that:

Many would argue in recent years that legislative developments in Ireland represents a move from due process model to a crime control model of criminal justice that is to say a move from the prosecutorial obstacle comes to one in which the repression of crime is the primary focus with maximum efficiency emphasised in the pursuit of pleas of guilty.634

She is talking here in particular about the new mandatory sentences introduced under Section 4 and 5 of the *Criminal Justice Act 1999*. Conway would concur with that view when she states: “It seems clear that there has been a shift in the Irish criminal process model from its due process foundations towards a crime control orientation.”635

This corroborates what Garland says and as highlighted at the start of this chapter that “the risk of unrestrained state authorities of arbitrary power and the violation of civil liberties seem no longer to feature so prominently in public concern.636 The legislators he says have become more “hands on” and “more directive”. Politicians are more concerned to subject penal decision making to the discipline of party politics and short-term political calculation.637 Garland states that crime control theories come “from a much darker vision of the human condition. They assume individuals will be strongly attracted to the self-serving anti-social and criminal conduct unless inhibited from doing so by robust and effective controls.”638

Retired Assistant Commissioner Tony Hickey who led the Veronica Guerin murder investigation recently said in a recent R.T.E. broadcast on the 2nd of August 2017 called “Veronica Guerin: A Legacy”,

I came across a small number of people who are intrinsically evil … some social commentators blame depravation, poverty, lack of opportunity and education but you can’t get away from it that there are some people and they are just evil.639

636 D. Garland *supra* at note 2 at p.12.
637 D. Garland *supra* at note 2 at p.13.
638 D. Garland *supra* at note 2 at p.15.
It is submitted that most members of AGS would concur with the retired high-ranking colleague but in any event his view is consistent with what Garland says about control theory and its dark view of the human condition. The former head of the CAB Chief Superintendent Felix McKenna stated in the same programme that the CAB caused “massive disruption” to organised crime but that the “disruption in itself” does not “dismantle the organisation.” He advocated that certain criminals “needed to be convicted of major crime and sent to prison and kept there.” These are strong words of two highly respected and very experienced Gardaí.

It is submitted that what has happened in Ireland in the 1990s is an apt and strong example of what Garland states:

The 1980s and 1990s have seen a return to restraints, a retrofitting of controls, an attempt to put the lid back on a newly disordered world but despite these efforts the clocks have not been turned back. There has been no return to a world in which all individuals are hemmed in by command controls of local belonging steady work and a tight family.

It is strongly contended that has thus far been presented in this chapter in compelling evidence of Garland’s theory being applicable to this jurisdiction.

**The Noughties 2000 to 2009**

As Brady noted AGS “were now operating in something close to ‘peace time’ conditions vis a vis the Provisional I.R.A. There was no abatement of activity of the Dublin criminal underworld or among the Limerick criminal families.” Gangland crime continued to preoccupy AGS into the new century and the State empowerment of AGS would continue. In addition, there would be further paring back of due process rules. A night club manager Brian Fitzgerald was murdered in Limerick in 2002. Kieran Keane was murdered after being abducted in 2003. Eddie Ryan was also murdered in Limerick in 2000. All were gangland...

641 D. Garland supra at note 2 at p.195.
642 C. Brady supra at note 275 at p.303.
645 Ibid.
members. In 2005 Lusk Post Office was raided and two men were killed in a shoot-out with Gardaí.\textsuperscript{646} The State Solicitor for Limerick called for adjustment to a person’s right to silence. He believed intimidation was inhibiting Garda investigations and criminal prosecutions.\textsuperscript{647} In 2006 there were 21 gangland murders.\textsuperscript{648} Michael McDowell the then Minister for Justice would introduce a hat-trick of potent legislation to stem the gangland violence. (see infra). He famously said that a number of the gangland killings were “the last sting of a dying wasp.”\textsuperscript{649} More Gardaí were to be recruited in 2006 and the age of retirement for some Gardaí was increased so that Garda numbers could be maximised.\textsuperscript{650} The witness protection programme was founded without a monetary ceiling and there was a staff increase at the Forensic Science Laboratory.\textsuperscript{651} These changes reflected a changed landscape, as noted by Brady:

Confessions would no longer be secured by third degree. Criminals had learned how to avoid leaving forensic traces at crime scenes. Witnesses and jurors could be got at. Defence lawyers pounced on the slightest deviation from the rules by Gardaí.\textsuperscript{652}

Minister McDowell’s legislation aimed to address these matters, but he was concerned about their constitutionality. He set-up a “Balance in the Criminal Law Review Group.” The Review Group said that the “traditional fundamental features of the system are necessary and appropriate and would not want to see these elements changed.”\textsuperscript{653}

It is also acknowledged that the individual freedoms were not the monopoly of the defendant. Notwithstanding the view of the Review Group, McDowell’s legislation became the law of the land. In 2007 two children were burned when they were in their parents’ car when it was

\textsuperscript{646} Sarah Stack, “Force Used by Armed Garda in P.O. Raid Proportionate”, \textit{Irish Independent} (19\textsuperscript{th} October 2011) accessed at www.independent.ie on the 20\textsuperscript{th} of October 2018 at 6.55pm.

\textsuperscript{647} “Call for Action on Witness Intimidation” \textit{Irish Times} (14\textsuperscript{th} November 2005) accessed at www.irishtimes.com on 20\textsuperscript{th} October 2018 at 10.09 p.m.

\textsuperscript{648} Information accessed ganglandireland@wordpress.com 20\textsuperscript{th} October 2018 at 10.11 p.m. and C. Brady \textit{supra} at note 275 at p.304.

\textsuperscript{649} C. Brady \textit{supra} at note 275 at p.304.

\textsuperscript{650} \textit{Ibid}.

\textsuperscript{651} \textit{Ibid}.

\textsuperscript{652} C. Brady \textit{supra} at note 275 at p.304.

firebombed,\(^{654}\) and a rugby player Shane Geoghegan was murdered in 2008 when he was mistaken by his assassin for a Limerick gangland figure.\(^{655}\)

In 2009 Roy Collins who for a long time was under Garda protection was killed after the Garda protection was lifted. A family member of his had given prosecution evidence in a previous Limerick gangland court case.\(^{656}\) The Minister for Justice Dermot Aherne would acknowledge clearly in the Dáil in 2009 that the *Criminal Justice Surveillance Bill* he was introducing was influenced in part by anti-racketeering legislation in America.\(^{657}\) In all over twenty-nine pieces of legislation passed through the Oireachtas further empowering the Garda. It is submitted that all legislative activity evinces the Garland theory that “(t)here is a relaxing of concern about the civil liberties of suspects and the rights of prisoners and a new emphasis upon effective enforcement and control.”\(^{658}\) Meanwhile crime statistics\(^{659}\) fluctuated wildly. Whether the figures are grounded in an actual upsurge in crime or simply a matter of the manner Garda were getting to grips with recording data on PULSE in a matter is a matter perhaps for further or other study.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Indictable Offences</th>
<th>Detection Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>73,276</td>
<td>42%</td>
</tr>
<tr>
<td>2001</td>
<td>86,633</td>
<td>41.1%</td>
</tr>
<tr>
<td>2002</td>
<td>106,415</td>
<td>38.5%</td>
</tr>
<tr>
<td>2003</td>
<td>103,360</td>
<td>35.9%</td>
</tr>
<tr>
<td>2004</td>
<td>98,964</td>
<td>35%</td>
</tr>
<tr>
<td>2005</td>
<td>101,659</td>
<td>35.9%</td>
</tr>
<tr>
<td>2006*</td>
<td>103,710</td>
<td>40%</td>
</tr>
<tr>
<td>2007</td>
<td>104,946</td>
<td>41%</td>
</tr>
<tr>
<td>2008</td>
<td>Total indictable crime no longer given in overall figures but broken down in separate headings e.g. 76 homicide offences.</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>As above e.g. 80 homicide offences.</td>
<td></td>
</tr>
</tbody>
</table>

*Table 2.4 Garda Statistics for Indictable Crime and Detection Rates from 2000 to 2009.*

\(^{654}\) C. Brady *supra* at note 275 at p.307.


\(^{656}\) C. Brady *supra* at note 275 at pp.307-308.

\(^{657}\) *Ibid.*

\(^{658}\) D. Garland *supra* at note 2 at p.12.

<table>
<thead>
<tr>
<th>Category</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide Offences</td>
<td>89</td>
<td>88</td>
</tr>
<tr>
<td>Sex Offences</td>
<td>1,406</td>
<td>1,480</td>
</tr>
<tr>
<td>Attempts/Threats to Kill etc.</td>
<td>19,150</td>
<td>18,353</td>
</tr>
<tr>
<td>Robbery</td>
<td>2,299</td>
<td>2,491</td>
</tr>
<tr>
<td>Offences Against Courts and Justice. Organised Crime.</td>
<td>13,255</td>
<td>11,898</td>
</tr>
</tbody>
</table>

Table 2.5  C.S.O. Statistics for Indictable Crimes 2008-2009

The Legislation


**Extension of Garda Powers - 2000 to 2009**

The *Copyright and Related Rights Act 2000* dealt with many copyright issues but made infringing copyright an arrestable offence.\(^{660}\) The Act would give assistance to the Gardaí when policing car booth sales throughout the country where boot-leg DVDs would be sold at stalls in breach of copyright. Gardaí now had power to arrest persons and seize property. In the same year the *Intoxicating Liquor Act 2000* would change prohibited hours\(^{661}\) and permit licensed premises to open for non-licensed business at any time.\(^{662}\) Legislation pertaining to theft was overhauled by the *Criminal Justice (Theft and Fraud Offences) Act* in 2001 creating new offences for handling\(^{663}\) and possession of stolen property.\(^{664}\) It broadened the definition of theft and created offences of active corruption\(^{665}\) withholding information on stolen property\(^{666}\) and passive corruption.\(^{667}\) The offence of money laundering as set out in previous legislation (i.e. Section 31 *Criminal Justice Act 1994*) was updated. It allowed for alternative verdicts in respect of certain offences\(^{668}\) and a robust warrant to search was provided for Gardaí.\(^{669}\) It would also be an offence to obstruct Gardaí when acting under a warrant.

The *Children’s Act 2001* codified the Garda Juvenile Diversion Programme while the *Mental Health Act* of the same year empowered Gardaí to take persons with a mental health disorders into custody in particular circumstances.\(^{670}\) The *Sex Offenders Act 2001* was passed by law makers “in the interest of the common good the notification of information to AGS by persons who have committed certain sexual offences”. Convicted sex offenders would now be required

\(^{660}\) Section 140 of the *Copyright and Related Rights Act 2000*.
\(^{661}\) Section 3 of the *Intoxicating Liquor Act 2000*.
\(^{662}\) Section 4 of the *Intoxicating Liquor Act 2000*.
\(^{663}\) Section 17 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{664}\) Section 18 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{665}\) Section 43 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{666}\) Section 19 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{667}\) Section 44 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{668}\) Section 55 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{669}\) Section 48 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*.
\(^{670}\) Section 12 of the *Mental Health Act 2001*. 

109
to notify Gardaí of their movements in particular circumstances\textsuperscript{671} and there would be penalties for non-compliance.\textsuperscript{672} Sex offenders would now have to notify employers if their work permitted “unsupervised access to or contact with a child”.\textsuperscript{673} A Garda Chief Superintendent in certain circumstances could apply for an Order from a court to have the movements of a sex offender delimited in certain circumstances.\textsuperscript{674} Mr. Brendan Howlin, the Labour Party spokesman on Justice at the time was critical of the legislation because it was “not accompanied by a comprehensive programme of treatment for all sex offenders.”\textsuperscript{675}

The \textit{Road Traffic Act 2002} was nascent legislation on penalty points for road traffic offences. Suspect offenders would no longer have to be brought to court if fines were paid in strict circumstances. The Gardaí were to receive further substantial powers in 2002. It would now be an offence to enter and occupy land without consent\textsuperscript{676} and there would be very potent powers of arrest for suspected breaches of the Act and strong power to remove and store property. This legislation focused on the movement of members of the travelling community onto certain lands. The \textit{European Arrest Warrant Act 2003} created an obligation to surrender persons to the judicial authority of another state in particular circumstances.\textsuperscript{677} A European Arrest Warrant could now be executed here.\textsuperscript{678} The Gardaí were empowered with an emergency power of arrest “in cases of urgency” i.e. warrant issued but not received by Gardaí and the suspect will flee the jurisdiction.\textsuperscript{679} The Garda Commissioner’s Report of the same year highlights the Schengen Agreement which provides “for closer E.U. wide police and custom co-operation in monitoring cross-border movement and tackling serious crime”. Gardai would now have direct access to “a database called the Schengen Information System.”

The \textit{Road Traffic Act 2003} would now permit Gardaí to breathalyse anyone suspected of committing a road traffic offence or being involved in a traffic accident.\textsuperscript{680} Prior to this Gardaí

\textsuperscript{671} Section 10 of the \textit{Sex Offenders Act 2001}.  
\textsuperscript{672} Section 12 of the \textit{Sex Offenders Act 2001}.  
\textsuperscript{673} Section 26 of the \textit{Sex Offenders Act 2001}.  
\textsuperscript{674} Section 16 of the \textit{Sex Offenders Act 2001}.  
\textsuperscript{675} Kevin Rafter and Carol Coulter “Absence of Treatment for Sex Offenders Criticised” \textit{Irish Times} 13\textsuperscript{th} January 2000 at p.8 @ Irish Times Archive.  
\textsuperscript{676} Section 24 of the \textit{Road Traffic Act 2002}.  
\textsuperscript{677} Section 10 of the \textit{European Arrest Warrant Act 2003}.  
\textsuperscript{678} Section 11 of the \textit{European Arrest Warrant Act 2003}.  
\textsuperscript{679} Section 14 of the \textit{European Arrest Warrant Act 2003}.  
\textsuperscript{680} Section 2 of the \textit{Road Traffic Act 2003}.  

could only do so if a driver was suspect of having alcohol and/or drugs taken. The *Intoxicating Liquor Act* of the same year would make it easier for the Gardaí to enforce laws in respect of drunkenness. Drink could no longer be served to drunken persons.\(^{681}\) It would now be an offence to be drunk in licensed premises\(^{682}\) and the licensee now had a duty to preserve order on his premises.\(^{683}\) Disorderly conduct in licensed premises would be a separate offence\(^{684}\) and the law now provided for the temporary closure of a premises by court order\(^{685}\) in certain circumstances. There would be a prohibition of entertainment during drinking up time\(^{686}\) and persons under 18 years of age could no longer be permitted in licensed premises.\(^{687}\) Persons between 18 years and 21 years would now have to produce evidence to that effect on demand by certain persons\(^{688}\) and the Gardaí had a strong power of entry to inspect such premises.\(^{689}\) The law would allow Gardaí to rein in errant publicans whose commitment to keeping order on their premises was questionable.

The *Immigration Act 2003* strengthened Garda powers of entry and arrest in certain circumstances when enforcing the legislation and Gardaí could demand identification in certain circumstances.\(^{690}\) The Garda Commissioner’s Report of 2001 highlighted that 400 people were arrested on foot of deportation orders that year and 365 of them were actually deported.\(^{691}\) In 2003 Gardaí were now empowered to board certain defined ships or vessels outside Irish territorial waters and bring such vessels to an Irish port and persons before the High Court.\(^{692}\) This was for the purpose of detecting offences of illicit traffic at sea i.e. narcotic drugs or psychotropic substances. The *Criminal Justice (Public Order) Act 1994* empowered Gardaí to seek and courts to order areas of exclusion in respect of public order matters\(^{693}\) and in certain circumstances to order closure of certain premises under defined criteria.

---

\(^{681}\) Section 4 and Section 5 of the *Intoxicating Liquor Act 2003*.

\(^{682}\) Section 6 of the *Intoxicating Liquor Act 2003*.

\(^{683}\) Section 7 of the *Intoxicating Liquor Act 2003*.

\(^{684}\) Section 8 of the *Intoxicating Liquor Act 2003*.

\(^{685}\) Section 9 of the *Intoxicating Liquor Act 2003*.

\(^{686}\) Section 12 of the *Intoxicating Liquor Act 2003*.

\(^{687}\) Section 14 of the *Intoxicating Liquor Act 2003*.

\(^{688}\) Section 15 of the *Intoxicating Liquor Act 2003*.

\(^{689}\) Section 18 of the *Intoxicating Liquor Act 2003*.

\(^{690}\) Section 4 of the *Immigration Act 2003*.


\(^{692}\) Section 5 of the *Criminal Justice (Illicit Traffic by Sea) Act 2003*.

\(^{693}\) Section 3 of the *Criminal Justice (Public Order) Act 1994*. 

111
The Road Traffic Act 2004 adjusted speed limits and permitted the electronic evidence of speed in court prosecutions. Garda powers to demand a driving licence were also extended. The Intoxicating Liquor Act 2004 amended a controversial section of the 2003 legislation permitting persons under the age of 18 years of age to be in licenced premises in certain circumstances e.g. family get-togethers and 21st birthdays.

The Criminal Justice (Joint Investigation Teams) Act 2004 permits under specific criteria for police officers of different police forces within the E.U. to form investigation teams for offences committed in the State with connections to other states. Outside police force members would be regarded as members of AGS. Another Immigration Act was passed in 2004 to make “provisions in the interest of the common good for the control of entry into the State, the duration and conditions of stay of non-nationals. A register of non-nationals with permission to land was created and Gardaí were given a power of arrest and power to obtain a search warrant in certain circumstances.

The Garda Síochána Act 2005 had profound implications for accountability within AGS itself but insofar as protecting the public was concerned it provided for the installation of CCTV cameras in public places with the authorisation of the Garda Commissioner “for the primary purpose of securing public order.” The Criminal Justice (Terrorist Offences) Act 2005 is a complex piece of legislation “to enable the State to meet commitments undertaken as part of the international community to amend the Offences Against the State Act 1939 to 1998 and the European Arrest Warrant Act 2003. Definitions for “terrorist group” and “terrorist activity” are set out. New offences for hostage taking, terrorist bombing, financing terrorism are created. The Gardaí were now empowered to seek interlocutory orders in the

---

694 Section 5 of the Road Traffic Act 2004.
696 Section 33 of the Road Traffic Act 2004.
697 Section 1 of the Intoxicating Liquor Act 2004.
698 Section 33 of the Criminal Justice (Joint Investigation Teams) Act 2004.
700 Section 9 of the Immigration Act 2004.
702 Section 5 of the Criminal Justice (Terrorist Offences) Act 2005.
703 Section 6 of the Criminal Justice (Terrorist Offences) Act 2005.
704 Section 9 of the Criminal Justice (Terrorist Offences) Act 2005.
705 Section 10 of the Criminal Justice (Terrorist Offences) Act 2005.
706 Section 13 of the Criminal Justice (Terrorist Offences) Act 2005.
High Court to freeze funds. Previous drug trafficking legislation was amended to include “financing terrorism.” It amended the Section 31 Extradition Act 1965 by broadening the definition of what is not a political offence.

Also, in the same year the Proceeds of Crime (Amendment) Act 2005 was enacted “to make further provision in relation to the recovering of and disposal of proceeds of crime and for that purpose amend the Proceeds of Crime Act 1996, the Criminal Assets Bureau Act 1996 and the Criminal Justice Act 1994. The full header of this legislation is set out to demonstrate that legislation for the period was being enacted, changed, adjusted and repealed in a prompt and piecemeal fashion. It will be submitted later that the Gardaí found it difficult to keep up with the pace of change to their legislative powers.

The Road Traffic Act 2006 created the offence of driving while holding a mobile phone and allowed for Mandatory Alcohol Checkpoints where on the orders of at least a Garda inspector Gardaí could randomly breathalyse people who were suspect of committing any offences or not. For the first time it would be a specific offence to drive while disqualified from doing so and Gardaí could now also seize and detain a vehicle if it had no insurance, tax or certificate of roadworthiness (i.e. NCT cert.). The Criminal Law (Sexual Offences) Act 2006 provided for the defence of “honest belief” in respect of the actual age of a victim in sexual offence cases with persons under 15 years of age and 17 years of age.

The Criminal Law (Insanity) Act 2006 set out the procedure for “the trial and detention of persons suffering from mental disorders who are charged with offences or found not guilty by reason of insanity.”

The Criminal Justice Act 2006 was the most substantive legislation enacted in that year about the extension of Garda powers. It was codified that Gardaí could now designate crime scenes. Again, Gardaí were doing this for years without statutory back up. What was known

---

707 Section 15 of the Criminal Justice (Terrorist Offences) Act 2005.
708 Section 57 of the Criminal Justice (Terrorist Offences) Act 2005.
709 Section 3 of the Road Traffic Act 2006.
710 Section 4 of the Road Traffic Act 2006.
711 Section 12 of the Road Traffic Act 2006.
712 Section 99 of the Road Traffic Act 2006.
713 Section 2 of the Criminal Law (Sexual Offences) Act 2006.
714 Section 3 of the Criminal Law (Sexual Offences) Act 2006.
715 Section 5 of the Criminal Justice Act 2006.
to Gardaí as the “Section 10 warrant” under 1997 legislation\textsuperscript{716} was now extended and strengthened.\textsuperscript{717} Garda powers to secure and retain evidence were extended\textsuperscript{718} while detention periods were further elongated under previous legislation\textsuperscript{719}. A Sergeant could now direct the taking of photographs of a detained person for identification purposes\textsuperscript{720} and witness statements in certain circumstances could now be used in evidence if the witness declined or refused to give evidence at trial.\textsuperscript{721} This was in response to Limerick’s Liam Keane who had been on trial for murder when he gave a defiant “fingered salute” to a cameraman outside the Court.\textsuperscript{722} A witness in his case notwithstanding having made a statement to Gardaí would not give evidence in Court consistent with his statement. The murder trial collapsed. In addition, the D.P.P. could now reference a question of law for the attention of the Supreme Court.\textsuperscript{723} It was Part 7 of the Act that related to Organised Crime. Conspiracy to commit crime would be redefined\textsuperscript{724} while the commission of an offence for a criminal organisation would be a separate crime. Monetary figures were put on what would be considered a drug trafficking offence\textsuperscript{725} and the D.P.P. would not now have to prove that an accused knew that substance(s) being trafficked were actually illicit drugs.\textsuperscript{726} It would also now be a separate offence of supplying drugs into places of detention.\textsuperscript{727} The Act also provided for the of post release from prison supervision\textsuperscript{728} and restriction of movement orders\textsuperscript{729} by the courts in certain circumstances. The electronic monitoring of persons was also provided for.\textsuperscript{730} The legislation was also the advent of the Anti-Social Behaviour Orders.\textsuperscript{731}

\textsuperscript{716} Section 10 of the \textit{Criminal Justice (Miscellaneous Provisions) Act 1997}.
\textsuperscript{717} Section 6 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{718} Section 7 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{719} Section 9 and Section 10 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{720} Section 12 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{721} Section 16 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{722} Writer’s own recollection and
David McKittrick, “Ireland Outraged at Acquitted Youth Signals Contempt” \textit{The Independent Newspaper} dated the 10\textsuperscript{th} November 2003 (date accessed 20\textsuperscript{th} June 2018 at 2.30 p.m.) @www.independent.co.uk
\textsuperscript{723} Section 21 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{724} Section 71 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{725} Section 82 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{726} Section 82 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{727} Section 83 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{728} Section 92 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{729} Section 100 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{730} Section 102 of the \textit{Criminal Justice Act 2006}.
\textsuperscript{731} Section 114 of the \textit{Criminal Justice Act 2006}.
There is follow up and complimentary legislation in the *Criminal Justice Act 2007*. Certain statements in writing would now have to be submitted by bail applicants unless waived by the D.P.P. A Chief Superintendent’s evidence of his/her belief that a person would commit further serious crime if released on bail would now be given substantial weight by court. Inferences that could be drawn by a court in certain circumstances were strengthened and in addition a negative inference could be drawn where an accused fails to mention particular facts that he subsequently relies on his defence. Minimum terms of imprisonment were set for particular firearms offences and a new set of fingerprints or photographs or palmprints could be taken by Gardaí on a second occasion if the first set were lost or damaged.

The *Intoxicating Liquor Act 2008* makes it an offence to send a young person (at 15 years but under 18 years of age) to licensed premises to purchase alcoholic drink. The *Criminal Law (Human Trafficking) Act 2008* makes it an offence under the Act, an arrestable offence, and a scheduled offence for the purposes of bail.

Surveillance was codified in 2009 and could be authorised by a Judge or a Garda superior officer in specified circumstances. An application could be made in the District Court on an *ex-parte* basis and *in camera*. A Garda superior officer could authorise surveillance limited to a 72-hour period and the legislation also provided for the installation of tracking devices on a high ranking officer’s authorisation in defined circumstances. The *Criminal Justice (Miscellaneous Provisions) Act 2009* had an international policing perspective. It allowed for “alerts” to issue for European Arrest Warrant purposes. Gardaí would now have a power

---

732 Section 6 of the *Criminal Justice Act 2007*.
733 Section 7 of the *Criminal Justice Act 2007*.
734 Section 28 and Section 29 of the *Criminal Justice Act 2007*.
735 Section 30 of the *Criminal Justice Act 2007*.
736 Section 35, Section 36 and Section 37 of the *Criminal Justice Act 2007*.
737 Section 48 of the *Criminal Justice Act 2007*.
738 Section 4 of the *Intoxicating Liquor Act 2008*.
739 Section 14 of the *Criminal Law (Human Trafficking) Act 2008*.
740 Section 4 of the *Criminal Justice (Surveillance) Act 2009*.
741 Section 4 of the *Criminal Justice (Surveillance) Act 2009*.
742 Section 7 of the *Criminal Justice (Surveillance) Act 2009*.
743 Section 8 of the *Criminal Justice (Surveillance) Act 2009*.
744 Section 4 of the *Criminal Justice (Miscellaneous Provisions) Act 2009*. 

115
of arrest for persons subject to these “alerts”\textsuperscript{745} and would have powers to fingerprint, palmprint and photograph people arrested under this legislation.\textsuperscript{746}

Also, in 2009\textsuperscript{747} several amendments were made to the \textit{Criminal Justice Act 2006}. It would now be an offence to direct a criminal organisation\textsuperscript{748} or to participate or contribute in organised criminal activities.\textsuperscript{749} It would also be an aggravating factor in terms of sentencing if a serious offence was committed for the benefit of a criminal organisation.\textsuperscript{750} Inferences from silence were also strengthened.\textsuperscript{751} Organised crime type offences could be heard in the Special Criminal Court.\textsuperscript{752} The header of the Act stated that the legislation would provide “for additional measures to combat organised crime.”

\textbf{Summary – 2000 - 2009}

A total of 29 pieces of legislation have been highlighted in this part for the ten-year period 2000 to 2009. Singularly and collectively they gave substantial further empowerment to AGS. It was becoming more difficult to secure solid convictions in court against gangland members for their crimes. The traditional pillars of a prosecution case such as witness, forensic and confession evidence were harder to come by. Witnesses were fearful of coming forward, and criminals were more experienced in dealing with Gardai. Recorded crime went from 73,276 in 2000 to 104,946 in 2007. This was the highest recorded crime figure ever. The reported crime for 2000 was almost similar to that of 1980 which stood at 72,782. In 2006 the Central Statistics Office (CSO) took over the compilation of crime figures and changed the manner in which they were set out. The enacted legislation for the decade covered a plethora of criminal activity ranging from theft and sexual crime to immigration, extradition and organised crime matters. It is submitted that the legislative and Garda history for the period support Garland’s thesis.

\textsuperscript{745} Section 10 of the \textit{Criminal Justice (Miscellaneous Provisions) Act 2009}.  
\textsuperscript{746} Section 20 of the \textit{Criminal Justice (Miscellaneous Provisions) Act 2009}.  
\textsuperscript{747} \textit{Criminal Justice (Amendment) Act 2009}.  
\textsuperscript{748} Section 71A of the \textit{Criminal Justice Act 2006}.  
\textsuperscript{749} Section 72 of the \textit{Criminal Justice Act 2006}.  
\textsuperscript{750} Section 74A of the \textit{Criminal Justice Act 2006}.  
\textsuperscript{751} Section 72 of the \textit{Criminal Justice Act 2006}.  
\textsuperscript{752} Section 8 of the \textit{Criminal Justice (Amendment) Act 2009}.  

116
Kilcommins states that:

Ireland’s criminal justice system is showing some signs of drift in the direction of an ‘assembly line’ model of justice in which the state – individual balance is increasingly tipped in favour of the former.\textsuperscript{753}

It is contended that this is correct and that what has been outlined so far in this chapter is convincing evidence of the legal “tooling up of the Irish State”\textsuperscript{754} to tackle serious crime. “Judicial territory is being ceded to the police”\textsuperscript{755} by a “hyper active legislature”\textsuperscript{756} and as noted by Garland “politicians are more concerned to subject penal decision making to the discipline of party politics and short-term political calculation”.\textsuperscript{757} Conway et al would concur when they state that:

“statutes altering aspects of the criminal process have seemed to come hot on one another’s heels particularly in the past fifteen years … substantive reforms to the investigation, prosecution and sentencing for serious crimes … forced new concepts on the criminal process and have replaced old rules.”\textsuperscript{758}

They go on to state that all this activity “raises concerns about the protections of important individual rights of the citizens of the state”\textsuperscript{759} and like Garland and Kilcommins they conclude that “it seems clear that there has been a shift in the Irish criminal process from its due process foundations towards a crime control orientation.”\textsuperscript{760}

It is submitted that never has there been a time when the Gardaí have not sought more powers, nor have they ever stated they had enough powers. It is contended that they do not do this because they want to be the ‘bad guys’ and in fact Gardaí are very sensitive to being portrayed in that way. This is evidenced from Commissioner McLaughlin’s remarks cited earlier in this chapter. Walsh explains that:

\textsuperscript{753} S. Kilcommins, The International Journal of Evidence and Proof, IJEP 20.4 (326) 1\textsuperscript{st} October 2016.
\textsuperscript{754} Ibid.
\textsuperscript{755} Ibid.
\textsuperscript{756} Ibid.
\textsuperscript{757} D. Garland supra at note 2 at p.13.
\textsuperscript{758} Conway et al supra at note 635 at pp. 5-7.
\textsuperscript{759} Ibid.
\textsuperscript{760} Ibid.
“the Garda Síochána’s preoccupation with crime control is reflected by the fact that a substantial portion of the of the Garda Síochána Code is devoted to the prevention and detection of crime and related matters. This is further supplemented by more details in the “Crime Reporting and Recording Systems Manual”. The Crime Investigation Techniques Manual and the Charging and Summons Application Manual.”

It can be said that these materials have been revised and updated since Walsh wrote about them, but it is submitted that these themes still exist and remain valid insofar as the Garda PULSE system is concerned. Walsh concludes that they are proof that “the principal function of all (Garda) members is to prevent and detect crime and offences. Garland argues that the crime control model assumes a darker view of the human condition. It is submitted that any fresh-faced idealism or “sacred cows” that a young Garda has when he or she first passes the threshold of the Garda College are soon dismantled or “slaughtered” after a few years front line policing experience. In the end it is being strongly contended that Garland’s theory holds true for the first decade in the new century.

2010 to 2017

The second decade of this century thus far shows no sign of a deceleration in legislative activity in the further empowerment of Gardaí. While the terrorist threat may have receded, there remains the menace of organised crime and dissident republicanism. Gangland murder continues. In addition, Gardaí are having to investigate cyber-crime. In 2013 Detective Garda Adrian Donoghue was assassinated while escorting money. The last such assassination was that of Detective Garda Jerry McCabe in 1996. Detective McCabe was also escorting money at the time he was killed. By 2013 the “virtually all” gang leaders who had been creating

762 D. Garland supra at note 2 at p.15.
763 Mark Baker, Cops: Their Lives in Their Own Words, (London Sphere Books Ltd. 1987) [hereinafter Baker] at p.244. “You come into the job with a lot of preconceived notions. No matter how worldly you are or knowledgeable you are, your body of experiences have expanded exponentially because of the job. What-ever sacred cows you may have been feeding all those years are usually slaughtered after a very little while. That’s probably the greatest single tragedy that every cop faces. You find out that nothing is on the level. You find out that people die for nothing ... police officers are face to face with the evil in humankind. They see daily the worst impulses of men and women driven by blind passion as well as the broad spectrum of brutality that human intellect can concoct.”
764 Ryan Nugent, “Man (27) charged with the Murder of Detective Garda Adrian O’Donogue” Irish Independent (5th March 2018) accessed on 20th October 2018 at 11.05 p.m.
difficulties in Limerick were all “behind bars”. In 2010 CAB would collect €4 million in tax in respect of income from criminal activity and GoSafe speed cameras were introduced throughout the country. A total of 1,241 persons were risk assessed by Gardaí under the Sex Offenders Act 2001 and 1,117 persons were recorded and subject to the legislation. There were 79 homicides offences for the year. The following years would see the rate drop to 63 homicide offences and Charlie Taylor in the Irish Times would report “a big rise in speeding arrests as cameras deployed.” He reported that there had been a six-fold increase in the number of people arrested for speeding over the St. Patrick’s Day period. In 2013 the Forensic Science Laboratory reported the total value of drugs forwarded to them amounted to €64,872,695. There were 157 grow houses detected. In the same year the Criminal Assets Bureau and the Garda Bureau of Fraud investigation served 639 production and freezing orders in respect of criminal assets and 27 tax assessments were raised by the CAB. They would issue 847 Adult Behaviour Warnings. James Smith would report in the Irish Times in 2011 the Gardaí arrested 177 persons under new so called “anti-begging” legislation. The Gardaí now had power to move beggars on from shop fronts and bank machines. The Irish Times would report that new laws would “take effect to help Gardaí tackle white collar crime.” In addition in 2013 the Gardaí had to increase Vetting Unit staff to comply with the Garda obligations under the National Vetting Bureau (Children and Vulnerable Person) Act 2012.

765 C. Brady supra at note 275 at p.317.
767 Ibid.
768 Ibid.
769 Ibid.
770 Ibid.
772 Charlie Taylor, “Big Rise in Speeding Arrests as Cameras Deployed” Irish Times 24th March 2011 at p.3 @ Irish Times Archive.
774 Ibid at p.40.
775 Ibid at p.40.
776 Ibid at p.40.
777 Ibid at p.42.
778 Criminal Justice (Public Order) Act 2011.
779 James Smith, “Gardaí Arrested 177 Under Aggressive Begging Law” Irish Times, 1st April 2011 at p.5 @ Irish Times Archive.
In 2014 €358 million in cocaine was seized off the coast of Cork (Operation Valsa)\(^{782}\) and there were a number of other similar successful operations concerning international drug trafficking carried out by Gardaí in assisting their counterparts abroad.\(^{783}\) The Gardaí were now handling 323,032 vetting applications a year\(^{784}\) and invoked their authority under Section 12 of the Child Care Act 1991 in a total of 1,345 incidents.\(^{785}\) Garda successes in detecting drug trafficking offences continued in 2015 with 204 persons arrested for such offences\(^{786}\) and €46.7 seized in controlled drugs.\(^{787}\) On 11\(^{th}\) October, 2015 Garda Anthony Golden was murdered in Omeath, Co. Louth when attending a domestic dispute.\(^{788}\) The Commissioner’s Report would declare that 88 members of AGS at that point had lost their lives in the line of duty.\(^{789}\) A total of 16 people were charged with I.R.A. membership\(^{790}\) and 2 with assisting an unlawful organisation.\(^{791}\) Crime statistics for the period are as set out hereunder under selected headings.\(^{792}\) In 2016 David Byrne was shot and killed “when four men opened fire at a boxing weigh-in that was open to the public” at the Regency Hotel in Dublin. Byrne was reported to be a “member of an Irish led crime cartel based in southern Spain.” Two of the raiders were described as wearing Garda style type uniforms and were in possession of automatic weapons while the other two were said to have handguns. The Taoiseach Enda Kenny would describe the event as an “extreme case of criminal activity … and that it was the work of rival gangs in the Dublin area.”\(^{793}\) In the same year, Aiden O’Driscoll who was reported to be the former Chief of Staff of the Real I.R.A. was murdered after being shot three times by what appeared to be two gunmen in Cork City. O’Driscoll was also believed to be a victim of a punishment by dissident republicans in 2013.\(^{794}\) In October 2018 two men were charged in respect of the murder.\(^{795}\) In 2017 Garda only seizures of illicit drugs amounted to €71,859,695.\(^{796}\)


\(^{783}\) Ibid.

\(^{784}\) Ibid at p.14.

\(^{785}\) Ibid.


\(^{787}\) Ibid.

\(^{788}\) Conor Lally, “Garda Among Two Dead in Louth Shooting,” Irish Times (12\(^{th}\) October 2015) at p.1.

\(^{789}\) Ibid.

\(^{790}\) Ibid.

\(^{791}\) Ibid.

\(^{792}\) Selected recorded Garda Crime Statistics 2010 to 2016 inclusive at www.cso.ie.

\(^{793}\) Conor Lally, “Regency Hotel Shooting: Man Killed in Gangland Attack Named” Irish Times 5\(^{th}\) February 2016 @ Irish Times Archive accessed at 12.05 p.m. on the 12\(^{th}\) September 2017.

\(^{794}\) Barry Roche, “Former Chief of Staff in Real I.R.A. Shot and Killed in Cork City” Irish Times 7\(^{th}\) December 2016 @ Irish Times Archive accessed at 13.10 hours on the 12\(^{th}\) September 2017.

\(^{795}\) Michelle Devane, “Pair Charged in Connection with Aidan O’Driscoll Murder” @www.independent.ie accessed on 22\(^{nd}\) January 2019.

### The Legislation

1. **Road Traffic Act 2010.**
2. **Criminal Procedure Act 2010.**
3. **Criminal Justice (Psychoactive Substances) Act 2010.**
4. **Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.**
5. **Criminal Law (Defence of Dwelling) Act 2011.**
6. **Road Traffic Act 2011.**
7. **Road Traffic (No. 2) Act 2011.**
8. **Criminal Justice Act 2011.**
9. **Criminal Justice (Public Order) Act 2011.**
10. **The Criminal Justice (Search Warrants) Act 2012.**
11. **Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012.**
12. **Criminal Law (Human Trafficking) (Amendment) Act 2013.**
13. **Criminal Justice Act 2013.**
14. **Protection of Children’s Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.**
15. **Road Traffic Act 2014.**
16. **Road Traffic (No. 2) Act 2014.**
17. **Criminal Justice (Forensic Evidence and DNA Data Based System) Act 2014.**
18. **Criminal Justice (Burglary of Dwellings) Act 2015.**
19. **Criminal Justice (Terrorist Offences) (Amendment) Act 2015.**
20. **Children First Act 2015.**
21. **Road Traffic Act 2016.**

### Table 2.6 C.S.O. Statistics for Indictable Crimes 2010 to 2016

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide Offences</td>
<td>89</td>
<td>66</td>
<td>79</td>
<td>83</td>
<td>80</td>
<td>63</td>
<td>71</td>
</tr>
<tr>
<td>Sex Offences</td>
<td>2,366</td>
<td>2,014</td>
<td>2,116</td>
<td>2,009</td>
<td>2,053</td>
<td>2,348</td>
<td>2,549</td>
</tr>
<tr>
<td>Attempts &amp; Threats to Murder, Harassment, &amp; Related Offences</td>
<td>17,703</td>
<td>17,062</td>
<td>15,710</td>
<td>14,502</td>
<td>15,164</td>
<td>16,976</td>
<td>16,360</td>
</tr>
<tr>
<td>Robbery</td>
<td>3,196</td>
<td>2,931</td>
<td>2,817</td>
<td>2,806</td>
<td>2,647</td>
<td>2,577</td>
<td>2,096</td>
</tr>
<tr>
<td>Offences Against Government, Justice &amp; Organised Crime</td>
<td>11,396</td>
<td>10,172</td>
<td>9,445</td>
<td>9,187</td>
<td>9,765</td>
<td>11,438</td>
<td>11,688</td>
</tr>
</tbody>
</table>

Table 2.6 C.S.O. Statistics for Indictable Crimes 2010 to 2016

Extension of Powers - 2010 to 2017

In 2010 blood alcohol levels in drink driving cases were further revised downwards\(^{797}\) and Gardaí were empowered to enter the curtilage of a dwelling to make an arrest. Reasonable force could be used.\(^{798}\) The Gardaí could perform impairment tests on suspected drink drivers on the side of the road\(^{799}\) and demand blood/urine specimens in hospital\(^{800}\) and could still detain drunken drivers for safety reasons for up to six hours.\(^{801}\) In 2010 the exceptions to the double jeopardy rule were codified and evidence in court by a child or person with a mental disorder could now be given by TV link.\(^{802}\) The D.P.P. could now seek a retrial in cases where “new and compelling evidence” came to light\(^{803}\) or where a person acquitted becomes tainted.\(^{804}\) In the same year it would become an offence to sell or supply psychoactive substances\(^{805}\) and Gardaí received ancillary powers to enforce legislation with an extended power to search without warrant.\(^{806}\) The law provided for warrants to be acquired by Gardaí from the court in respect of dwellings. Money laundering would now be an offence if it occurred within or outside the state\(^{807}\) and not reporting suspicions of financial transactions would now be an offence.\(^{808}\) Money laundering type offences would now be offences under the drug trafficking legislation and theft legislation which both gave massive powers to Gardaí of arrest,

\(^{797}\) Section 4 of the Road Traffic Act 2010.
\(^{798}\) Section 7 of the Road Traffic Act 2010.
\(^{799}\) Section 11 of the Road Traffic Act 2010.
\(^{800}\) Section 14 of the Road Traffic Act 2010.
\(^{801}\) Section 16 of the Road Traffic Act 2010.
\(^{802}\) Section 5 of the Criminal Procedure Act 2010.
\(^{803}\) Section 8 of the Criminal Procedure Act 2010.
\(^{804}\) Section 9 of the Criminal Procedure Act 2010.
\(^{805}\) Section 3 of the Criminal Justice (Psychoactive Substances) Act 2010.
\(^{806}\) Section 12 of the Criminal Justice (Psychoactive Substances) Act 2010.
\(^{807}\) Section 7 and Section 8 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.
\(^{808}\) Section 42 and Section 43 of the Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.
questioning and detention.\textsuperscript{809} Justifiable use of force in defence on a dwelling was defined in 2011 and a person would not be liable in tort if reasonable force was used in defence of a dwelling.\textsuperscript{810}

Preliminary breath test powers were widened in the \textit{Road Traffic Act 2011} and Garda powers of arrest were further strengthened in the \textit{Road Traffic (No. 2) Act 2011}.\textsuperscript{811} It was now on the statute books in the same year to provide detention periods in questioning to be suspended on not more than two occasions but not exceeding 4 months from the period of the first suspension.\textsuperscript{812} New anti-begging laws permitted Gardaí to move beggars on from shop fronts and bank machines with ancillary Garda powers of arrest.\textsuperscript{813} The following year would see the creation of offences in respect of the withholding of certain information in respect of children and vulnerable adults.\textsuperscript{814} The penalties for these crimes would make them arrestable offences with ancillary and supporting periods of detention.

Historically Garda Chief Superintendents could issue warrants under Section 29 of the \textit{Offences Against the State Act 1939} to members of Sergeant rank to search for evidence pertaining to offences under that legislation. In 2006, Morris was concerned that a local Chief Superintendent may not have the “measure of objectivity”\textsuperscript{815} necessary to independently exercise his reason. In such cases he may give “greater weight to the needs of the Garda investigation … than to the right of the citizen under Article 46.5 of the Constitution and Article 8 of the European Court of Human Rights concerning the protection of a residence.”\textsuperscript{816}

In \textit{Damache v. D.P.P.} in 2012 the Supreme Court struck down the Section 29 warrant because it was not issued by an independent person.\textsuperscript{817} This led to the \textit{Criminal Justice (Search

\textsuperscript{809} Section 117 and Section 119 of the \textit{Criminal Justice (Money Laundering & Terrorist Financing) Act 2010}.  
\textsuperscript{810} Section 3 and Section 5 of the \textit{Criminal Law (Defensive Dwelling) Act 2011}.  
\textsuperscript{811} Section 107 of the \textit{Road Traffic Act 2011}.  
\textsuperscript{812} Section 7 of the \textit{Criminal Justice Act 2011}.  
\textsuperscript{813} The \textit{Criminal Justice (Public Order) Act 2011}.  
\textsuperscript{814} Section 2 and Section 3 of the \textit{Criminal Justice (Withholding of Information of Offences Against Children and Vulnerable Persons) Act 2012}.  
\textsuperscript{816} \textit{Ibid.}  
Warrants) Act 2012 which reintroduced the Section 29 warrant only on this occasion it had to be issued by a Judge of the District Court. It allowed for a Superintendent to issue such a warrant in emergency circumstances but reduced its period of validity in those cases from seven to two days.

In 2009 the Law Reform Commission acknowledged that a “small number of Acts enable a Peace Commissioner to issue search warrants” but that it was “notable” that a 1990 Act “was the most recent Act where power to grant a search warrant is afforded to a Peace Commissioner.” This Commission suggested that this “may indicate an unwillingness by the Oireachtas to extend the role of Peace Commissioners in the issuing of warrants.” The Commission goes on to suggest that “some of this reluctance may have arisen from a number of cases where warrants issued by Peace Commissioners were challenged in respect of their constitutional validity.” In 1990 in People (D.P.P.) v. Kenny the Supreme Court was asked to determine whether the forced entry into a person’s home by the Gardaí on foot of an invalid search warrant (which had been issued by a Peace Commissioner) was deliberate and conscious violation of an individual’s constitutional rights. If that was held to be the case was the evidence obtained by Gardaí inadmissible contra the accused. Finlay C.J. gave a Judgment for the majority on that occasion. He held:

To exclude only evidence by a person who knows or ought reasonably to know that he is invading a constitutional right is to impose a negative deterrent … To apply on the other hand the absolute protection rule of exclusion whilst providing also the negative deterrent incorporates as well a positive encouragement to those in authority over the crime prevention and detection services of the State to consider in detail the personal rights of citizens as set out in the Constitution and the effect of their powers of arrest, detention, search and questioning in relation to such rights. [emphasis added]

The words of Finlay C.J. in the Irish Supreme Court are clear. They appeared at least to be an erosion of trust in AGS. Especially so when this decision is compared to the decision in 1965

---

820 Ibid.
822 Ibid at p.578.
in the case *People (Attorney General) v. O’Brien*\(^{823}\) where a search warrant issued by a Peace Commissioner was flawed but held to be constitutionally valid notwithstanding errors in its issue. As noted by the Law Reform Commission, the Oireachtas did not enact any fresh legislation giving fresh powers to Peace Commissioners since 1990. The *Kenny*\(^{824}\) decision was handed down by the Supreme Court in that year. It is arguable that the Oireachtas will in future adopt the view as cited by *O’Malley* that warrants “should always be issued by a Judge.”\(^{825}\) In fairness to AGS it is asserted that its members would always prefer to seek out a Judge to issue a warrant. However, as things stand it remains difficult to acquire the services of a District Court Clerk and a Judge out of hours at short notice. Coonan and O’Toole\(^{826}\) highlight the case *People (D.P.P.) v. Mallon*\(^{827}\) and a Judgment by O’Donnell J. in 2011 and state, “it is now clear that a mere error will not invalidate a warrant especially one which is not calculated to mislead or perhaps just as importantly does not mislead.”\(^{828}\) However up to 2015 the *Kenny* decision remained the overarching precedent in these matters. In that year O’Donnell J.in a majority decision in the Supreme Court would dilute the *Kenny* decision. He said, “… where cogent and compelling evidence of guilt is found but not admitted on the basis of a trivial technical breach the administration of justice far from being served may be brought into disrepute.”\(^{829}\) The *Kenny* decision in 1990 arguably “flew in the face” of Garland’s theory but the O’Donnell judgment in *J.C*\(^{830}\) now does a *volte face* on the decision in *Kenny*. Garland’s theory continues to hold true notwithstanding the criticism of Morris in 2006 in respect of the Section 29 warrant did not fully remove that particular power away from the Gardaí but did revise it to ensure that there was an element of objectivity by the senior Garda officer who would apply for the warrant.

In 2013 the definitions of “exploitation”, and “pornography” were widened and if committed by an official would lead to a stronger sentence on conviction.\(^{831}\) Earlier money laundering legislation was amended in 2013. The definition of money laundering is widened, and mobile

---


\(^{825}\) T. O’Malley, “*The Criminal Process*” (Dublin: Round Hall 2009) at p.353 [hereinafter *O’Malley*].

\(^{826}\) G. Coonan and K. O’Toole, “*Criminal Procedure in the District Court*” (Dublin: Round Hall 2011) at p.485. [hereinafter Coonan and O’Toole].


\(^{828}\) *Ibid* at pp. 40-41.

\(^{829}\) *DPP –v. J. C.* [2015] IESC 31 at para 97. [hereinafter J.C.].

\(^{830}\) *Ibid*.

\(^{831}\) Section 1, Section 2 and Section 3 of the *Criminal Law (Human Trafficking) (Amendment) Act 2013*. 125
communication systems could be stood down by the Minister for Justice in certain circumstances.\textsuperscript{832}

In 2014 smoking in a vehicle with a child present would be an offence and Gardaí could demand names and addresses and issue a FCPS notice to the offender.\textsuperscript{833} There were further amendments to road traffic legislation\textsuperscript{834} and Gardaí could now take blood in certain cases from an unconscious driver.\textsuperscript{835} It would also now be permitted to take bodily samples in the course of investigations\textsuperscript{836} and have details recorded on a Garda DNA database system which generated DNA profiles. A power of arrest was afforded of a person where there was a “match” on the DNA database.\textsuperscript{837}

In 2015 it would now be more difficult to get bail if before the court on a burglary offence\textsuperscript{838} and a consecutive sentence would follow if on conviction it was shown that a person was convicted for burglary within the past 5 years.\textsuperscript{839} Public provocation to commit a terrorist offence and recruitment and training for terrorism\textsuperscript{840} would now be criminal offences and also in 2015 a member of AGS would be a “mandated person” with obligations to report wrongdoing (in respect of suspect offences perpetrated on children) to the Child and Family Agency.\textsuperscript{841} The best interest of the child was now to be of “paramount” consideration.\textsuperscript{842}

In 2016 drugs driving was made a criminal offence\textsuperscript{843} and Gardaí were given the power to demand fluid specimen from a person’s mouth when investigating a drug driving offence.\textsuperscript{844} The Minister ordered that further substances be deemed to be controlled substances for the

\begin{itemize}
\item Section 19, Section 20 and Section 21 of the \textit{Criminal Justice Act 2013.}\textsuperscript{832}
\item Section 2 and Section 3 of the \textit{Protection of Children’s Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.}\textsuperscript{833}
\item \textit{Road Traffic (No.2) Act 2014.}\textsuperscript{834}
\item Section 12 of the \textit{Road Traffic Act 2014.}\textsuperscript{835}
\item Section 2 of the \textit{Criminal Justice (Forensic Evidence & DNA Data Based System) Act 2014.}\textsuperscript{836}
\item Section 166 of the \textit{Criminal Justice (Forensic Evidence & DNA Data Based System) Act 2014, Criminal Justice (Forensic Evidence) Act 1990 now repealed.}\textsuperscript{837}
\item Section 1 of the \textit{Criminal Justice (Burglary of Dwellings) Act 2015.}\textsuperscript{838}
\item Section 2 of the \textit{Criminal Justice (Burglary of Dwellings) Act 2015.}\textsuperscript{839}
\item Section 4, Section 5 and Section 6 of the \textit{Criminal Justice (Terrorist Offences) (Amendment) Act 2015.}\textsuperscript{840}
\item Section 14 of the \textit{Children First Act 2015.}\textsuperscript{841}
\item Section 7 of the \textit{Children First Act 2015.}\textsuperscript{842}
\item Section 8 of the \textit{Road Traffic Act 2016.}\textsuperscript{843}
\item Section 10 of the \textit{Road Traffic Act 2016.}\textsuperscript{844}
\end{itemize}
purpose of anti-drug legislation. CAB powers were strengthened in the seizure and detention of property.

In 2017 the detention for a period of up to six hours of persons arrested for breach of the peace type of offences (for their own safety) was provided for. Courts were given the power to direct an accused to keep away from certain people while on bail or limit their access to motor vehicles. There was power of arrest for Gardaí where an accused would breach his/her bail in certain circumstances. The court was vested with the power to hear complaint evidence in particular circumstances and was obliged to give reasons to grant or refuse bail. Historically courts were doing these things anyway but they were now codified in statute. It is expected that the power of arrest for breach of bail offences would be very helpful. Heretofore Gardaí would have to acquire a warrant from a District Court Judge before such an arrest could be made.

Accessing information on computer without lawful authority was made an offence as was interfering with information systems without the said authority. On the application of the Gardaí the court could grant a search warrant when evidence was being sought in relation to the commission of these type of offences. In addition, suspended sentences could in future be invoked if a convicted person is convicted again within the period of the first suspension.

**Summary – 2010 -2017**

AGS continued its purge against gangland crime and increased its visibility on Irish roads in an effort to protect life. The government continued to strengthen legislation in respect of organised crime and road traffic matters. Homicides offences reduced from 89 in 2010 to 71

---

845 Misuse of Drugs (Amendment) Act 2016.  
846 Section 3 of the Proceeds of Crime (Amendment) Act 2016.  
847 Section 3 of the Criminal Justice Act 2017.  
850 Section 8 of the Criminal Justice Act 2017.  
855 Section 2 of the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017. This legislation amends Section 99 of the Criminal Justice Act 2006 but at the time of writing it has not yet commenced.
in 2016 while the incidents of robbery were also down. Offences against government, justice and organised crime increased from 2010 from 11,396 to 11,688 in 2017. AGS aided and abetted by government legislative support was making a positive impact on gangland crime. Much as in previous decades, legislative vigour in dealing with criminal matters continues. Legislation in certain cases is being amended and adjusted over and over again. The almost incessant morphing of the road traffic legislation has been more than problematic for the Gardaí and has seen the organisation scandalised in respect of fixed charge penalty matters as the Gardaí were unable to keep up with complex statutory changes.\textsuperscript{856} The second decade of the new century is not yet complete and potent legislation continues to emanate from the Oireachtas encapsulating all areas of criminal law. It is clear that what has happened in these most recent years (as in the previous decades covered in this chapter) are excellent examples of what Garland says are “dramatic developments that have occurred in our social response to crime during the last thirty years and about the social culture and political codes that gave rise to them.”\textsuperscript{857} These words came from Garland in 2001 and they remain relevant to the present day.

**Conclusion**

This chapter has reviewed more than one hundred pieces of criminal legislation over just short of a fifty-year period and given a snap shot of the Irish policing history that grounded them. Over five decades, Gardaí received many of the powers that they have sought. So much so that in the end it could be said that they failed to keep up with the velocity of change in respect of their own empowerment. Internal continuous professional development within the Gardaí has failed to keep up with that change. To instruct, train and update members of the organisation with advancements of their power is a substantial task that has not been met by the organisation’s management.\textsuperscript{858} AGS is scandalised in part because of this failure. Continuous


\textsuperscript{857} D. Garland *supra* at note 2 at preface at vii.

\textsuperscript{858} Elaine Loughlin, “Concerns over Lack of Training as Half of Gardaí can’t give chase or use Siren” *The Irish Examiner* (14\textsuperscript{th} May 2018) (date accessed 20\textsuperscript{th} June 2018 at 12.40 p.m. @ www.irishexaminer.ie.)

Conor Lally, “Gardaí concerned at Shortage of Specialist Investigators” *The Irish Times* (14\textsuperscript{th} May 2018) (date accessed 20\textsuperscript{th} June 2018 at 12.42 p.m.) @www.irishtimes.ie.

“Garda Delay in “Giving Special Rapporteur on Child Protection Details of Training” *The Irish Examiner* (24\textsuperscript{th} May 2018) (date accessed 20\textsuperscript{th} June 2018 at 12.45 p.m. @ www.irishexaminer.ie.)

48% of Drivers not Tested for Drink or Drugs Following Serious Collisions (Dated 11\textsuperscript{th} June 2018) (date accessed 20\textsuperscript{th} June 2018 @ www.irishtimes.ie.)
Professional Development training sessions (C.P.D.) are now short and very much abridged. Members receive little or no handouts or explanations on their new powers – only what’s shown in class or on overhead projectors. Management need to keep their respective policing shows on the road. There is insufficient time, inadequate resources to be sending members on week long or lengthy training courses. The internal Garda website is used to post new legislation and the membership is more or less expected to study it up for themselves. As noted by the Commission on the Future of Policing in Ireland in 2018 in their examination AGS and policing in Ireland: “An Garda Síochána however has not treated training as a critical function … but a disposable one when a choice had to be made”\textsuperscript{859} regarding resources.

Rebecca Coen, a barrister who acts for the D.P.P. has described Garda power in legislation as “unwieldly”\textsuperscript{860} and she adds that:

> The practice of continuing amendment section by section by deletion and substitution complicates rather than clarifies and there are a number of consequences – citizens cannot have any degree of certainty as to the law and as to their rights interacting with the Gardaí … from the perspective of the Gardaí it makes training difficult, it provides more scope for errors and complicates matters such as detention periods and search procedures.\textsuperscript{861}

The Director of Public Prosecutions, Claire Loftus, herself notes that:

> The increase in Garda powers has not been matched by a streamlining or simplification of their application. The current fragmented state of the law constitutes a daily challenge to investigators.\textsuperscript{862}

In the last thirty years legislation has been amended numerous times. Sometimes amendment came in the same year as the parent legislation or indeed in the same year as previous amended legislation and while Gardaí may have received their wish list in respect of powers, they struggle to keep up with their complexity. As noted by Coen:

\textsuperscript{860}F. Gartland, “Opaque Laws on Policing Highlighted”, \textit{Irish Times} \textit{26th} June 2014 at p.34.
\textsuperscript{861}Ibid.
\textsuperscript{862}Ibid.
As policing has become increasingly sophisticated and professionalised layer upon layer of law has been introduced which legislatives changes are piecemeal rather than by consolidation. Important legal principles are teased out case by case while the Constitution and human rights instruments provide the backdrop. The result is a patchwork quilt of powers neither easily identifiable nor readily accessible.\textsuperscript{863}

It is submitted that Garland’s theory is strongly evidenced in what occurred in AGS over the last fifty years in terms of policing history, legislation and the public’s willingness to seek more and more protection by the state rather than from the state and that trend continues unabated. As stated by Garland in 2001 “The new culture of crime control born of the fears and anxieties of the late twentieth century could well continue long after its originating conditions have ceased to exist.”\textsuperscript{864}

Garland’s theory it is submitted has and will remain relevant to AGS for some time to come. Until AGS comes to grips with its substantial powers, its own PULSE system and public expectation and accountability the organisation may be vulnerable to further scandal at least into the medium-term future. However, it is strongly contended that if the recommendations set out in the report from the Commission of the Future of Policing in Ireland in September 2018 are fully implemented then much of the issues that caused AGS to be scandalised in the last number of decades would dissipate.

\textsuperscript{863} R. Coen supra at note 634 at p.ix, Preface.  
\textsuperscript{864} D. Garland supra at note 2 at p.204.
CHAPTER THREE

From Policing of the Community to Policing with the Community

The Dunnes did for smack what Henry Ford did for the motor car: made it available to the working man and woman even the kids on the dole, even the kids at school.

Introduction

This chapter examines another of Garland’s ‘Indices of Change’ which he refers to as the “expanding infrastructure of crime prevention and community safety.” While Garland’s theory relates the transformation of the criminal justice system generally this chapter will apply his hypothesis as it pertains to An Garda Síochána. Garland states the following about this “index of change”

Over the past two decades, while national crime debate in Britain and America have focused upon punishment, prisons and criminal justice, a whole new infrastructure has been assembled at the local level that addresses crime and disorder. Developed under the tutelage of the Home Office in Britain and largely by private enterprise and local government in the U.S.A. this network of partnership arrangements and inter agency working agreements is designed to foster crime prevention and to enhance community safety, primarily through the cultivation of community involvement and the dissemination of crime prevention ideas and practices.

So, while the Garland’s thesis refers to the jurisdictions of the U.S.A. and Britain, this chapter will explore the relevance of his thesis to policing in the Republic of Ireland. It is contended that what is presented in this section will strongly evince Garland’s theory in respect of this index and its relevance to transformation in An Garda Síochána. It is proposed to robustly corroborate Garland’s work by focusing on the history of the organisation over the last five decades. The Gardaí’s own reports over the period will be heavily referenced and the work of other commentators together with this writer’s own Garda experience will be used to give

---

865 Spotlight, Issue No. 7 of 2012. Community Policing in Ireland, Oireachtas Library and Research Service at p.2 accessed at oireachtas.ie on the 16th January 2019 at 10.25 p.m.
867 D. Garland supra at note 2 at p.16.
868 D. Garland supra at note 2 at p.6.
869 D. Garland supra at note 2 at p.16.
context. It will be seen that the words of the Gardaí and that of Garland have strong parallels. It can be said that the watershed period for community policing in this jurisdiction occurred in the early 1980s. As noted by Williams “in the space of five years from 1980 to 1985 seven Gardaí were shot dead by various subversive groups during armed robberies.”

However, the cold-blooded murder of Gardaí was not the only danger that the organisation was endeavouring to face down. The advent of illicit drugs had brought about a more insidious difficulty for Gardaí in confronting crime. It was a difficulty which AGS would view as surreptitiously usurping its own functions and authority. The advent of the drugs epidemic in this jurisdiction would be the catalyst for AGS fully embracing the concept of community policing not only as an instrument to reduce crime but to maintain public support for the organisation itself. Therefore, it is being contended here that the advent of the drugs epidemic was the genesis in this country of Garland’s index regarding “the expanding infrastructure and community safety.”

This chapter will be set out in three parts. The first part will deal with the period from the late 1960s to the early 1980s. The second part will demonstrate what occurred during what has been referred to here as the “watershed” period over the early 1980s. The final part will consider what evolved thereafter. In conclusion it will be asserted that the sea of change in AGS over a fifty-year period will provide convincing corroboration of Garland’s theory in respect of community policing.

Pre-Watershed Period – 1968 to 1979

In 1968 the Gardaí reported that there were 3,314 prosecutions against persons for being “found on” licensed premises during prohibited hours while there were 2,954 proceedings contra persons for having their dogs unlicensed. It is suggested these figures are indicative of quieter times for the Gardaí and would not be found in more modern reports from AGS. The sale, supply and use of illicit drugs had not yet become a problem for the Gardaí or anyone else. However, the Gardaí were still mindful of their crime prevention remit. The Garda Commissioner Michael Wymes reported 625 free crime prevention lectures given to the

---

870 P. Williams supra at note 866 at p.2.
871 D. Garland supra at note 2 at p.16.
public\textsuperscript{874} and the crime prevention exhibits room at Dublin Castle was being transferred to a larger space at Ship Street.\textsuperscript{875} The Gardaí had crime prevention stalls at the RDS Spring Show and the Munster Agricultural Show in Cork.\textsuperscript{876} The television programme “Garda Patrol” had “52 editions” with “491 crime items” and “65 special inserts”.\textsuperscript{877} The Commissioner advised that viewing time was reduced from 15 minutes to 10 minutes since 1967\textsuperscript{878} and the amount of burglar alarms installed continued to increase.\textsuperscript{879} The nascent “fetish for the quantifiable”\textsuperscript{880} was beginning to emerge in the organisation but even in 1968 the Gardaí believed it important to highlight and measure what it was doing in respect of crime prevention. What was heralded in the 1968 report might appear simplistic in comparison with what the Gardaí would be doing fifty years later but it does demonstrate the import that the Gardaí have always attached to their crime prevention role.\textsuperscript{881} History now shows that AGS would be challenged to do more over the decades to maintain and enhance its crime prevention and community policing commitments.

In 1969 the Commissioner Wymes furnished similar information in respect of crime prevention. He would add that “crime prevention materials were fed to daily newspapers and magazines”.\textsuperscript{882} In 1971 the same Garda Commissioner would state:

The following circumstances are regarded as having contributed to the increase in crime during the year under review.

1. The commission of further crime by criminals while on bail awaiting trial. A total of 383 persons while on bail committed 1570 crimes against property …
2. The lack of proper security sense by some members of the general public …

\textsuperscript{874} Report of the Commissioner of the Garda Síochána 1968 at p.11.
\textsuperscript{875} Ibid.
\textsuperscript{876} Ibid.
\textsuperscript{877} Ibid.
\textsuperscript{878} Ibid.
\textsuperscript{880} S. Kilcommins, et al supra at note 120 at p.32.
\textsuperscript{881} The Garda Inspectorate in 2007 would strongly recognise and acknowledge the organisation’s commitment to community policing in its report “Policing In Ireland: Looking Forward”. (August 2007) at p.10

The Inspectorate believes that community policing should be at the head of policing in Ireland and that there is a strong foundation for it when the Irish State emerged long before the term ‘community policing’ was in vogue a commitment was made to establish a routinely unarmed community backed police service. For decades local Gardaí maintained a relatively peaceful environment in Ireland’s cities, towns and country areas. The majority of the people of Ireland remember those times and indeed in some rural areas not much has changed.

3. The growth of urbanisation and industrialisation with increased affluence in sections of the community.
4. Increased mobility of criminals.  

Some thirty years later in 2001 Garland would write:

Late modernity’s impact on crime rates was a multi-dimensional one that involved: i) increased opportunities for crime, ii) reduced situational constraints, iii) an increase in the population ‘at risk’ and iv) a reduction in the efficacy of social and self-controls as a consequence of shifts in social ecology and changing cultural norms. The consumer boom of the post war decades put into circulation a mass of portable, high value goods that presented attractive new targets for theft … densely populated neighbourhoods were replaced by sprawling urban tracts … more and more well stocked houses were left empty during the day while both wives and husbands went out to work. The coming of the motor car- which helped bring about this more spread out, more mobile society- was itself a prime instance of its criminogenic properties.

It is worth placing the Garda Commissioner’s assessment in 1971 side by side with Garland’s thesis in 2001. It is contended that they are saying the same thing and the Commissioner’s view some thirty years ago is indeed a profound corroboration of Garland’s theory.

The Commissioners’ Reports throughout the 1970s would continue to enumerate security surveys, crime prevention lectures and exhibitions. In 1971 the Commissioner Wymes would acknowledge that “the present mobility and daring of criminals also places greater strain on the crime prevention services of An Garda Síochána.” The Commissioner however was optimistic. He stated:

Nevertheless, with increased public awareness of security needs and greater acceptance by business people of crime prevention advice it is confidently expected that our crime prevention service will prove effective in reducing opportunities to commit crime.

By 1973 the Commissioner’s optimism in this regard would appear to have dissipated. Commissioner Patrick Malone would now state:

---

884 D. Garland supra at note 2 at pp.90-91.
886 Ibid.
At a time when police resources are under severe pressure the ordinary citizen is presented with an opportunity to make a more significant contribution in an effort to prevent crime.\textsuperscript{887}

He goes on to advise that a “Good Neighbour” scheme\textsuperscript{888} introduced in the Dublin area during the year “aims to involve people in looking after each other’s property during absence from home or business.”\textsuperscript{889} The Commissioner’s optimism appears to return. He says, “the scheme has made a promising start.”\textsuperscript{890}

In 1974 Commissioner Edmund Garvey laments the overall increase in crime over the previous year. He succinctly states that it “is not great.”\textsuperscript{891} As highlighted in other chapters the Gardaí were under serious pressure during that period. The Northern Troubles were spilling into the Republic and the Gardaí were confronting very serious crime and dangerous criminals. The Commissioner states that he “should like to see more attention given to aspects of policing which relate to the prevention of crime and offences. This is difficult to achieve in prevailing conditions when so many members of the force have to be employed on duties of a security nature.”\textsuperscript{892}

Garland states that:

\begin{quote}
From the 1980s onwards, it has become increasingly common for government policy documents, Chief Constable and Policing Commissioners’ reports even political party manifestos to emphasize that government agencies cannot by themselves succeed in controlling crime.\textsuperscript{893}
\end{quote}

What Garland states is strongly evidenced in Garda Commissioner Garvey’s words in 1975:

\begin{quote}
Going forward the problem of ameliorating social conditions which tend to generate crime is one for the community as a whole; and is not one that can be solved with the parameters of the criminal justice system \textit{per se}. The growing awareness on the part of the public of the significance of its own role in law enforcement, the rising sense of individual civic responsibility in security matters and the increasingly constructive co-
\end{quote}

\textsuperscript{889} \textit{Ibid.}
\textsuperscript{890} \textit{Ibid.}
\textsuperscript{891} \textit{Ibid.}
\textsuperscript{893} \textit{Ibid.}
\textsuperscript{894} D. Garland \textit{supra} at note 2 at p.109.
operation which the Gardaí receive from the public constitute grounds for the hope that criminality in our midst has passed its peak.\footnote{Report of the Commissioner of the Garda Síochána 1974 at Foreword.}

Again, the Garda Commissioner remains hopeful. However, in 1977 Commissioner Patrick McLaughlin would lament that, “(t)he continual upward trend in cases of burglary and larceny from unattended vehicles again demonstrated the necessity for the public to take greater protections to safeguard their property.”\footnote{Report of the Commissioner of the Garda Síochána 1977 at Foreword.}

The \textit{Misuse of Drugs Act 1977} was enacted but its provisions would not become effective until some years later. In that year there were 381 people charged with drugs offences\footnote{Report of the Commissioner of the Garda Síochána 1977 at p.27.} but interestingly the Commissioner in his foreword doesn’t mention drugs. In 1978 total crime came down by “1.5% on the 1977 figure.”\footnote{Report of the Commissioner of the Garda Síochána 1978 at Foreword.} Commissioner McLaughlin said this was “in part attributable to the greater awareness among the public of safeguarding property.”\footnote{Ibid.} However, the optimism was again short-lived because in 1979 the same Commissioner would almost appear to admonish the public when he complains that, “it is emphasised time and time again that people should not leave their property in parked cars. Commercial vehicle owners can also play their part here by providing adequate security.”\footnote{Report of the Commissioner of the Garda Síochána 1979 at Foreword.}

It is submitted that there was an element of “ground-hog day”\footnote{\textit{Ground-Hog Day.} Columbia Pictures 1993. Weather man caught in time warp is doomed to live the same day over and over again until he gets it right.} about Garda reports relating to crime prevention at this time. Almost the same material and vocabulary were being used every year. Crime continues to rise for most of the 1970s. However, the Garda reports are a good demonstration of nascent themes of partnership, neighbourhood watch and community policing within the Garda organisation. The reports also manifest the apparent lack of urgency in respect of the drugs and organised crime problem that “was thriving”\footnote{P. Williams \textit{supra} at note 866 at p.2.} and as noted by Williams: “Garda Headquarters tended to adopt an ostrich approach to an unfolding crisis – they stuck their heads in the sand hoping it would all go away.”\footnote{\textit{Ibid.}}
The Watershed Years 1980 to 1985

In 2004 Kilcommins et al would say, “It might seem that ‘zero tolerance’ and community policing lie at opposite ends of the spectrum and are therefore difficult for any police force to encompass in a consistent fashion. Yet it appears that the Gardaí has tried to do this.” As the then Chief Superintendent Catherine Clancy and head of the Garda Community Relations Section would explain: “(t)he Garda Síochána Community Relations and Juvenile Liaison Section was established in 1979 though official notice of its establishment was not announced until the 19th May, 1980.” She would further note that the “drug abuse endemic was spreading and drug users became involved in thefts and other crimes to support an expensive drug habit.” In the early eighties the Garda Commissioner Lawrence Wren admitted “that in some large urban centres it is becoming clear that the Gardaí need to start building bridges back to the community unless we are to find ourselves in trouble.”

It is contended therefore that the advent of Community Policing to AGS is concomitant with Garland’s view. He states:

So, while the most prominent measures of crime control policing are increasingly orientated towards punitive segregation and expressive justice there is at the same time a new commitment especially at local level to a quite different strategy one might call preventative partnership. Today’s’ most visible crime control strategies may work by expulsion and exclusion, but they are accompanied by patient ongoing low-key efforts to build up the internal controls of neighbourhoods and encourage communities to police themselves.

Clancy states that the terms of reference of the new Garda Community Relations Section included:

1. Establish ways and means of cultivating and fostering good relations with AGS and the community.
2. Inculcate in young people respect for authority …

---

903 Kilcommins et al supra at note 120 at p.217.
905 Ibid.
907 D. Garland supra at note 2 at p.17.
3. Obtain and maintain greater co-operation from the community.
4. Liaise with interested agencies ...
5. Advise the community on the best means to protect themselves.
6. To co-ordinate policy.\textsuperscript{908}

It is being suggested that these are examples of the “low key efforts”,\textsuperscript{909} highlighted by Garland and are evidence of what he calls “the responsibilization strategy.”\textsuperscript{910} He says the “key phrases”\textsuperscript{911} of the “new strategy”\textsuperscript{912} are terms such as, ‘partnership’\textsuperscript{913}, ‘public private alliance’\textsuperscript{914}, ‘inter agency co-operation’\textsuperscript{915}, ‘the multi-agency approach’\textsuperscript{916}, ‘activating communities’\textsuperscript{917}, creating ‘active citizens’\textsuperscript{918}, ‘help for self-help’\textsuperscript{919} and the ‘co-production of security’\textsuperscript{920}. It is contended that all these phrases are reflected in the terms of reference of the Garda Community Relations Section as highlighted by Clancy. Garland’s theory is that “the primary objective is to spread responsibility for crime control onto agencies, organisations and individuals that operate outside the criminal justice state and to persuade them to act appropriately.”\textsuperscript{921} He says all this is done to avoid “an image of the police as a hostile army of occupation.”\textsuperscript{922} It would seem that Commissioner Wren quoted previously in this section also saw it that way. Clancy cites Commissioner Wren who in 1981 stated:

Neither the Gardaí nor the public can act in isolation in the prevention and detection of crime. One of the most effective measures to be taken to contain the spiralling crime rate and vandalism trends would be to encourage the community to accept its responsibility through becoming more deeply involved in law and order matters.\textsuperscript{923}

While the Gardaí were concerned about spiralling crime rates being fuelled by illicit drug habits there was something far more insidious afoot at that time. The Concerned Parents Against

\textsuperscript{908} C. Clancy \textit{supra} at note 904 at p.28.
\textsuperscript{909} D. Garland \textit{supra} at note 2 at p.17.
\textsuperscript{910} D. Garland \textit{supra} at note 2 at p.124.
\textsuperscript{911} \textit{Ibid}
\textsuperscript{912} \textit{Ibid.}
\textsuperscript{913} \textit{Ibid.}
\textsuperscript{914} \textit{Ibid.}
\textsuperscript{915} \textit{Ibid}
\textsuperscript{916} \textit{Ibid}
\textsuperscript{917} \textit{Ibid.}
\textsuperscript{918} \textit{Ibid.}
\textsuperscript{919} \textit{Ibid.}
\textsuperscript{920} \textit{Ibid.}
\textsuperscript{921} D. Garland \textit{supra} at note 2 at pp. 124-125.
\textsuperscript{922} D. Garland \textit{supra} at note 2 at p 124.
\textsuperscript{923} C. Clancy \textit{supra} at note 904 at p.28.
Drugs Group (CPAD) emanated from the perception of some members of the public that the Gardaí were either unwilling or unable to deal with the escalating drug epidemic.  

The Garda response to the drug problem has been described as “lethargic” and the crisis was salient in less well-off working-class communities with high unemployment and other social issues. The modus operandi for CPAD was to publicly name alleged drug pusher(s) at their meetings and give them an opportunity to defend themselves or to desist in their illegal practices. They would march in their hundreds to the home of alleged drug dealers to highlight their opposition to their behaviour. The Gardaí had to supervise these marches in numbers and the tension in the air was always palpable. This writer as a young serving Garda witnessed these scenes. There was a latent hostility about them but for the most part they passed peacefully. Young Gardaí would watch their grim-faced bosses and supervisors engage and converse with CPAD march organisers. The genuine protester was not the problem. There were others who it was feared by Gardaí would use the event for their own nefarious and self-serving agendas and if violence would assist that agenda then so be it. The Minister for Health at the time Mr. Barry Desmond believed that CPAD were a “front for Sinn Fein”. Commissioner Wren’s “building bridges back to the community”, cited earlier, it is submitted is a strong sign of his concern at CPAD’s influence. He would state in the AGS Report of 1983 that:

This year saw the emergence of concerned groups of citizens coming together to consider trends and similar problems particularly those related to drugs. The groups need to be very alert in maintaining their independence and integrity in the interest of community welfare and in avoiding the encouragement of political ideologies.

It is submitted that the Commissioner’s vocabulary here is a good model of diplomatic language. The Gardaí were facing down paramilitary violence and their members were being murdered as they did so. Any insidious Sinn Fein influence at the time to undermine police authority could not be tolerated by the Gardaí. Indeed, some of the problems may have been

---

925 Ibid.
926 Ibid.
927 C. McCullagh supra at note 924 at p.170.
of the organisation’s own making. As noted by Williams “during the 1980s Garda management policy was to refuse to even acknowledge the term “organised crime … (t)he gangsters soon realised that one good drug deal could earn them a lot more money, with a lot less risk than a bank heist.”

Community policing was belatedly embraced by AGS in an effort to reassert itself in the face of the CPAD movement whose practices were gradually becoming more effective and popular in disrupting the nefarious activities of drug dealers in Dublin. Ireland is not alone in its watershed period where community policing emerged as a possible solution to a crime crisis. A very similar situation occurred in New York City in the late 1980s and early 1990s.

In 1984 Commissioner Wren would optimistically opine that “there are some indications that the drug menace has been brought under control” and that “the increase in patrolling of uniformed members in urban areas have helped to reduce the crime rate.” In 1985 the same Commissioner would report “at year end 29,600 households were members of a Neighbourhood Watch Scheme and 175 Community Alert Schemes had been set up.” As noted by Garland “the state monopoly has begun to give way.”

**Post Watershed Period - 1986 to 2017**

In 1987 the Garda Commissioner Eamonn Doherty reported that there were 527 Neighbourhood Watch Schemes consisting of 135,528 households. In 1988 this would increase to 702 schemes involving 160,800 households. Perhaps an early example of a “cutting and pasting” exercise can be seen in the Commissioner’s Foreword in each of these

---

930 P. Williams *supra* at note 866 at pp.2-3.
932 *Ibid*.
933 J. Lardner and T. Repetto, *NYPD: A City and its Police* (New York: Henry Holt and Co. 2000) at p. 297 [hereinafter Lardner & Repetto]. In New York “crime had been a political hot potato for a quarter of a century”. The “crack epidemic was peaking and so was the violence that went with it”. Mayor David Dinkins was forced to act as the peoples’ perception of crime changed from “it’s bad we should do something about it” to “it’s out of control and nothing is being done about it.”
935 *Ibid*.
937 D. Garland *supra* at note 2 at p.126.

140
reports. After setting out the aforementioned figures in respect of each, both say word for word: “We are grateful for the assistance received from so many members of the public in this matter and also from our friends in Muinter na Tíre.”\textsuperscript{940} It is interesting to note that a different Commissioner signed off on each report i.e. in 1987 it was Commissioner Doherty while in 1988 it was Commissioner Eugene Crowley.

While the acknowledgement in each report may be authentic, it is submitted that the replication would not fortify public perception in the real commitment of AGS to Community Policing at that point. In 1990 Commissioner Patrick Culligan announced that the Community Relations Section “continues to investigate various anti-crime measures that will involve further citizen participation in crime prevention.”\textsuperscript{941} He also noted in the same year that “Certificates of Appreciation”\textsuperscript{942} were awarded to Dublin Neighbourhood Watch Representatives by the Commissioner himself on the 31\textsuperscript{st} March,1990.\textsuperscript{943} In 1991 the Gardaí extended their “Schools Programme.”\textsuperscript{944} The Gardaí will visit local 5\textsuperscript{th} class students in primary schools in their area and speak on the following topics:

1. Role of the Garda
2. Vandalism
3. Child Safety
4. Road Safety
5. Safe Cycling\textsuperscript{945}

In 1992 Commissioner Culligan would declare that “partnership between the Gardaí, government departments and business community and public representatives was vital.”\textsuperscript{946} It was notable from the 1992 report that the Community Policing Section was moved to the front of the report. Traditionally it was more to the rear. In 1993 the Commissioner announced that the “mission” of AGS was \textit{inter alia}: “to encourage and advise the community on how best to protect their persons and property from criminal behaviour … to provide services within a legal framework, available resources and community support.”\textsuperscript{947}

\textsuperscript{941}Report of the Commissioner of the Garda Síochána 1990 at p.32.
\textsuperscript{942}Report of the Commissioner of the Garda Síochána 1990 at p.32.
\textsuperscript{943}Ibid.
\textsuperscript{945}Ibid.
In 1995 the Commissioner acknowledges that: “detection itself cannot provide the full answer to crime and related social problems. This fact is becoming broadly recognised and is reflected in the endeavours of the many agencies combining to address these issues.” It is contended that this is a significant admission from the Commissioner. Garda detection rates will not in themselves solve the crime problem. The issue is greater than AGS. This was the year preceding the death of journalist Veronica Guerin and Detective Garda Jerry McCabe. In 1994 the previous year, Martin Cahill also known as ‘The General’ was shot dead. In 1995 itself Michael Crinnion was gunned down and killed in Cork in a gangland feud. In 1994 Treacy Gilligan, daughter of John Gilligan was interviewed by officials from the Department of Welfare “to discuss her allowance.” Social Welfare staff had been “tipped off” by Gardaí in respect of the “rise and rise of the Gilligan family fortunes.” She was quizzed about “her new car” which she said was a “present from her dad.” The official wanted proof. John Gilligan when he heard of the matter was enraged. He made several phone calls to the Social Welfare Officer dealing with his daughter’s case stating that the civil servant was a marked man.

The Revenue Commissioners on a Garda report pursued Gilligan writing to him and “asking him to furnish a tax return.” He wrote “Fuck Off on the back of the letter and returned it.” “The civil servants backed off.” Gilligan did not hear from the Social Welfare or Revenue Commissioners again. It would be another two years before the “infrastructure” and “inter agency working agreements” would be in place to “foster crime prevention” and address organised “crime and disorder.”

---

949 P. Williams supra at note 866 at p.33.
950 Ibid.
951 Ibid.
952 Ibid.
953 Ibid.
954 Ibid.
955 Ibid.
956 Ibid.
957 Ibid.
958 Ibid.
959 Ibid.
960 Ibid.
961 Ibid.
In 1995 therefore, partnership with AGS by these State Agencies was now more or less at nought insofar as organised crime was concerned. The Commissioner would also announce in the 1995 report that: “one member attended a seminar on ‘Approach to Designing out Crime’. This was an invaluable opportunity to acquire insight into the concept of architectural liaison practices which utilise the principles to design out crime.”962 In addition, Crimeline TAM ratings were up963 and Garda Síochána “special projects funded by the Department of Justice” are “providing services for young people at risk in a defined community.”964 Two more projects were added in 1995 making a total of seven.965 It is submitted that all these are examples of “the beginnings of a new crime control establishment that draws upon the new criminology’s of everyday life to guide its actions and mould its techniques.”966

In 1997 a Ministerial Committee was established to see what could be done to reduce the demand for drugs.967 Eleven Drugs Task Forces were set up involving the Health Board, the Probation and Welfare Service, Local Authorities, voluntary drug agencies, community representatives and a Garda Inspector.968 Their remit was to explore and find ways to reduce the demand for illicit drugs.969 In 1998 there would be “training for civilian participants for Neighbourhood Watch for the first time”970 while 1999 Crime Prevention Officers were “playing a significant role for new Town Centre CCTV System.”971

By the end of the Millennium therefore we can see that community policing in all its forms remains part of the Garda agenda very much. However, in 1999 organised crime remains in the ascendency. A good example of partnership of government agencies in tackling organised crime was the establishment of the Criminal Assets Bureau (CAB). Garda, Revenue and Social Welfare Officers collaborated to investigate and seize the assets of organised crime. It is an example of the “inter agency working agreements”972 and “infrastructure”973 being put in place

963 Ibid.
964 Ibid.
965 Ibid.
966 D. Garland supra at note 2 at p.17
968 Ibid.
969 Ibid.
972 D. Garland supra at note 2 at p.16
973 Ibid.
to tackle serious crime. The CAB is codified in statute by means of the *Criminal Assets Bureau Act 1996* following murders of Veronica Guerin and Detective Jerry McCabe which caused public revulsion. It is submitted that what has been so far set out here is strong evidence of what Garland states:

The predicament for government authorities today then, is that they see the need to withdraw their claim to be the primary and effective provider of security and crime control, but they also see just as clearly that political costs of such withdrawal are liable to be disastrous. The consequence then in recent years we have witnessed a remarkably volatile and ambivalent pattern of policy development – one that has become increasingly febrile in the urgency with each policy initiative succeeds the one before.  

The Gardaí’s annual reports over the decades would consistently enumerate the number of neighbourhood watch and community alert schemes that had been set up. The reports would also spell out the number of crime prevention lectures and exhibitions that took place including the number of security surveys carried out on different premises. It would quote the number of Gardaí employed in the Community Relations Section. In 2001 Clancy would state:

The Policing Plan 1998-1999 asks us to “Produce results which are measurable and open to evaluation. What gets measured gets done.” Herein may lie the difficulty with the strategic fit of the Garda Community Relations Section. Performance measurement of community relations and crime prevention initiatives are a necessary ingredient for success. Performance indicators have been established at corporate level, but at local level these need specific focus on the issues which are more difficult to measure. For example, expanding the various ‘watch’ schemes demonstrate quantitative rather than qualitative measurement criteria.

Managerialism in AGS is to the fore again, measuring “outputs rather than outcomes”. It submitted that what Clancy is saying here is that the real benefit(s) of community policing cannot always be measured by numbers. As noted by Garland “there is also a new and all-pervasive managerialism that affects every aspect of criminal justice.” Kilcommins *et al* refer to it as a “fetish for the quantifiable.” It is submitted that this is a good example of one Garland Index overlapping with another. AGS was measuring its “output” in terms of crime

---

974 D. Garland *supra* at note 2 at p.110.
975 C. Clancy *supra* at note 904 at p.32.
976 D. Garland *supra* at note 3 at p.119.
977 D. Garland *supra* at note 2 at p.18.
prevention and community policing. As can be seen, Clancy enumerates the output and the responsibilities of the Community Relations Section under three headings to measure and highlight what AGS was doing in this area.  

<table>
<thead>
<tr>
<th>Community Relations (General) Office</th>
<th>National Juvenile Office</th>
<th>National Crime Prevention Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Coastal Watch</td>
<td>5. Integrated Services Projects</td>
<td>5. Crime Prevention Design Advisor</td>
</tr>
<tr>
<td>7. Victim Support</td>
<td>7. Children Bill / Family Conferences</td>
<td>7. Fraud Seminars</td>
</tr>
<tr>
<td>8. Tourist Victim Support</td>
<td>8. Age Cards</td>
<td>8. Crimeline Programme</td>
</tr>
<tr>
<td>10. Hospital Watch (Pilot Prog.)</td>
<td>10. City/County Development Boards</td>
<td>10. Other tasks</td>
</tr>
<tr>
<td>11. Policing Forum</td>
<td>11. Other Tasks</td>
<td></td>
</tr>
<tr>
<td>12. Liaison – Minority/ Ethnic Groups (include. Gay and Lesbian Communities)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Literature/Trophies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Exhibitions, Meetings/ Initiative Launches</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Focus Groups – incl. Elderly</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Racial &amp; Intercultural Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Other Tasks</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.1 List of Responsibilities of Community Relations Section

The list shows Gardaí had substantially expanded their activities in respect of Community Policing up to the beginning of the new millennium. The Garda output can be measured at thirty-eight items in total.

In 2002 the Gardaí “in conjunction with the petrol retail industry developed an initiative that resulted in a reduction in forecourt crime by up to 50% in certain cases.”  

---

979 C. Clancy supra at note 904 at p.30.
marginalised areas of the country.”  RAPID was an acronym for Revitalised Areas by Planning Investment and Development. There would be a “Garda representative on each implementation team comprising of representatives from statutory agencies working in that area.”  It is submitted this is a good example of “preventative partnerships” that Garland speaks of.

It was 2005 when community and partnership policing would be codified in the Garda Síochána Act. The legislation providing for Garda-public engagement in the form of Joint Policing Committees (J.P.C.s) and a voluntary Garda Reserve would be recruited to support local Gardaí. Local Authorities also had their crime prevention role codified and were given extended powers in respect of tenants and occupiers involved in crime and anti-social behaviour. The “principle of public empowerment” was now set in statute in the form of Joint Policing Committees. Under the legislation J.P.C.s are empowered to:

1. Serve as a forum for consultations, discussions and recommendations on matters affecting policing of the local authorities’ administrative areas.
2. Keep under review the levels of crime disorder and anti-social behaviours as well as the factors underlying and contributing to levels of crime disorder and anti-social behaviour.
3. Organise and host public meetings to discuss problems.

This writer has experience of sitting on a J.P.C. They are effective and workmanlike and good relationships and rapport are built up with those involved and those who are invited to participate. Generally speaking, there is excellent co-operation between all those involved, and Gardaí do account for themselves and constructive ideas are acted upon. The same legislation established local Policing Fora at street or neighbourhood level. The intention is that these

982 Ibid.
983 D. Garland supra at note 2 at p.17.
987 Section 37 of the Garda Síochána Act 2005 extended a Local Authority’s powers under the Housing (Miscellaneous Provisions) Act 1997 in respect of anti-social behaviour matters.
988 Ibid.
989 Spotlight, Issue No. 7 2012, supra at note 865 at pp.9-10
990 Ibid.
991 Ibid.
Fora would operate more informally than the J.P.C. model. These Fora commenced in 2009 in the six local authority areas where the local Drug Task Forces operate which were essentially in Dublin and Cork. The J.P.C.’s began to establish themselves in 2006 in 29 local authority areas but are nowadays nationwide. It was in 2007 that the Gardaí set up their Joint Policing Committee Office.

The Gardaí escalated their Community Policing effort in 2009 launching the National Model of Community Policing. Commissioner Fachtna Murphy would write: “the positive meaningful partnerships which we foster with our community stakeholders are the life blood of effective policing in Ireland.” The strategic objectives of the National Model of Community Policing were to:

- Provide a dedicated … Garda service to the community.
- To establish effective engagement processes.
- To devise problem solving initiatives with partners and stakeholders.
- To reduce the fear of crime.
- To engage meaningfully with young people.
- To develop a participative management style within AGS.

In addition, in 2009 the Gardaí would set up their “SMS short messaging service to issue crime prevention advice and information on suspicious activity to the Community Alert Group quickly and efficiently.” It is an effective system and works well. The cover page of the Commissioner’s Report of this year declared front and centre that “The Mission of An Garda Síochána is working with Communities to Protect and Serve.”

In December 2011 the Gardaí would issue their first public version of an e-newsletter “Community Times” on the Garda website to inform the public of community based initiatives while in 2014 the Gardaí would report that there were 100,000 subscribers to their
text alert scheme.\textsuperscript{1000} The report would also advise that each J.P.C. was to develop a 6 year and annual strategic plans.\textsuperscript{1001} In 2016 Community Gardaí in Cork would engage “with local agencies, schools and creches to develop early intervention programmes for children and parents.”\textsuperscript{1002} Cork Gardaí in a particular area “were experiencing adverse behaviour among young children.”\textsuperscript{1003} These efforts included:

- Training for teachers in schools
- Funding for volunteers for various agencies “Peers Early Education Partnership programme.”\textsuperscript{1004}

This is a good example of different agencies co-operating with each other in order to remedy the problem.

As noted by Garland:

Alongside policing and penalty there has grown up a third ‘governmental’ sector – the new apparatus of prevention and security … these preventative concerns have come to be felt across the whole field … the field of organised crime control has thus been extended even if the institutional architecture of the criminal justice state remains largely in place.\textsuperscript{1005}

**Conclusion**

This chapter has traced what Garland refers to as “the expanding infrastructure of crime prevention and community safety”\textsuperscript{1006} from 1968 to 2017. This infrastructure was examined via the transformation in the practices of AGS as it confronted escalating crime rates, the advent of the illicit drugs trade and organised crime. In the early 1980s the Gardaí perceived their own function as being usurped by CPAD whom Gardaí had suspected to be a front for Sinn Fein. At the same time the Gardaí were involved in a violent and dangerous showdown with paramilitaries. As noted by Williams “Garda management reckoned that the only way to catch

\textsuperscript{1003} Ibid.
\textsuperscript{1004} Ibid.
\textsuperscript{1005} D. Garland supra at note 2 at pp.170-171.
\textsuperscript{1006} D. Garland supra at note 2 at p.16.
criminals was to nab them in the act of breaking the law.” However, the insidious drugs trade and the opaque motivations(s) of the CPAD instigated a Garda response to “start building bridges back to the community.”

This chapter is not intended to carry out an assessment of the value of community policing. McCullagh would say in 1996 that “many claims have been made for the success of these schemes but they are not based on any systematic evaluation.” Some eleven years previously the Commissioner would state that “(n)eighbourhood (w)atch is a community based crime prevention programme by which the local community act as ‘the eyes and ears’ of the Garda.” McCullagh would complain that “while the Gardai may be prepared to allow the public to be the eyes and ears they are not prepared to allow them to be the brain.” This criticism it is submitted is blunted somewhat by the advent of J.P.C.’s and Policing Fora which the Gardai are accountable to.

In any event it is being submitted here that this particular Garland index is strongly evidenced in the transformation and practices of AGS in the period under review. It is strongly contended that what happened in the AGS in the last half a century or so is compelling and convincing evidence of this aspect of Garland’s thesis and strongly supports his view that:

Preventative partnerships involve a whole new infrastructure of arrangements whereby state and non-state agencies co-ordinate their practices in order to prevent crime and enhance community safety through the reduction of opportunities and the extension of crime-consciousness.

The Gardai’s own words in their own reports over fifty years have been deliberately set out alongside the words of Garland in 2002. It is contended that it is clear that they are saying the same thing.

---

1007 P. Williams supra at note 866 at p.10.
1009 C. McCullagh supra at note 924 at p.107.
1011 C. McCullagh supra at note 924 at p.165.
1012 D. Garland supra at note 2 at p.141.
CHAPTER FOUR

Police Force to Police Service – Who Pays the Watchman?

Introduction

An installation has been recently marketed by a commercial company which is fitted in business or other premises and is designed to give warning to the presence of thieves.\footnote{Report of the Commissioner of An Garda Síochána on Crime for the Year 1947.}

The above quote comes from the Report of the Commissioner of An Garda Síochána on Crime for the Year 1947. It was used in an article by the then Garda Inspector Eamonn Lynch\footnote{E. Lynch, Crime and 1947. Chocolates, Sweats, Irish Women. Communiqué, June 1997 at p.19.} about crime that year in Ireland. It is submitted that extract from the Commissioner’s Report of the time is a nascent example of the commercialisation of policing in this jurisdiction. Alarms were being introduced to protect business and private property. The Gardaí could not be everywhere but could respond to alarm activations.

This chapter will examine Garland’s theory on what he calls the “commercialisation of crime control”\footnote{D. Garland supra at note 2 at p.17.} in this jurisdiction and in particular how his thesis relates to AGS and policing. He says that policing “has become a mixed economy of public and private provision and more and more routine security functions are undertaken by private police and more businesses and households invest in the hardware and protective services offered by the commercial security industry”\footnote{D. Garland supra at note 2 at p.17 and p.18.}. This chapter will highlight a transformation in the how policing is carried out in this country and it will be contended that what has occurred is convincing evidence in support of Garland’s theory. The Gardaí indeed have ceded ground to private security interests.

Background

While the Commissioner’s Crime Report of 1947 highlights the early advent of alarm systems in Ireland it is suggested that dramatic change in commercialisation did not take off until the early 1980s and beyond. It was from this period that Garland argues that “these clear lines
between the public and private have now become blurred” and commercial interests have come to play a role in the development and delivery of penal policy that would have been unthinkable twenty years ago.\textsuperscript{1017} What he is saying is evidenced in changes in the policing practices and obligations of AGS.

In the past Gardaí walked the beat and Gardaí stations were open for business. The Gardaí enforced dog licences\textsuperscript{1018} and noxious weed legislation.\textsuperscript{1019} They performed cycle patrols. The Garda roster pre- Conroy Commission\textsuperscript{1020} only allowed very limited time off for Gardaí. Gardaí were more on duty than off duty and consequently more visible and available to the public when on patrol and when manning Garda stations. Post Conroy Commission\textsuperscript{1021} Garda rosters changed. They now worked eight hours a day on a four-unit system. They had rest days and annual leave. Any hours worked over and above this roster was overtime with a cost factor to Garda management. Over time, Garda station opening times became more limited and perhaps Gardaí were less visible on the beat. They no longer enforced noxious weed legislation or compiled the agricultural statistics. They now rarely enforce dog licence legislation and while Gardaí in urban areas can be seen on bicycles the same cannot be said for the rural areas.

**Transformation**

A number of factors occurred over the last half century which impacted on policing. As noted by Lynch the ownership of consumer goods and individual property substantially increased in the 1960s.\textsuperscript{1022} Supermarkets and large department stores came to the fore and the “physical barrier of the shop counter” was removed which made shoplifting a substantial crime issue for store management. The number of mechanically propelled vehicles on the road has increased in the last number of decades resulting in a heavy burden on Garda resources to enforce road traffic legislation which would not have existed heretofore.\textsuperscript{1023} Commercial and private vehicles were easy targets for crime. The Gardaí could not be everywhere to protect personal property, supermarket and department store inventories and cars. It is submitted that a vacuum

\textsuperscript{1017} Ibid.
\textsuperscript{1018} Section 37 Finance Act 1925 and the Control of Dogs Act 1996.
\textsuperscript{1019} Sections 4, 5 6 & 7 of the Noxious Weeds Act 1936.
\textsuperscript{1021} Ibid.
\textsuperscript{1022} E. Lynch supra at note 1014 at pp. 25-29.
\textsuperscript{1023} Ibid.
was created that was filled by private security interests who for profit could install or provide security alarm systems, surveillance and static security. As noted by Garland:

The State’s new strategy is not to command and control but rather to persuade and align, to organise to ensure that other actors play their part. Property owners, residents, retailers, manufacturers, town planners, school authorities, transport managers, employers, parents, individual citizens … the list is endless … must all be made to recognise that they have a responsibility in this regard.\(^{1024}\)

It is submitted that this transformation robustly corroborates Garland’s assertion that the police “have begun to admit their failings, emphasize the constraints that affect the system and point to the limits of their capacity to control crime.”\(^{1025}\) Garland readily acknowledges that the,

“police still claim success in solving serious crimes and bringing the worst offenders to justice … but hold out lower expectations for the control of what they now refer to as ‘random’ or opportunistic offending which in fact constitutes the great majority of criminal behaviour.”\(^{1026}\)

It is strongly contended that what Garland says is strongly corroborative of what AGS was confronted with in Ireland. Business premises and public and private areas are monitored by CCTV, static security and alarm systems. Even Garda stations have commercially installed private security systems in place. The judiciary at the highest level have highlighted the importance of Gardaí seeking and maintaining CCTV footage in the investigation of crime.\(^{1027}\) Fast food premises and licenced premises hire security to police the premises. Health and Safety legislation mandates business owners to provide their own security to deal with crime and public order issues.\(^{1028}\) Failing to do so leaves them vulnerable to civil action if someone is hurt during a criminal or public order episode. Nightclubs and licenced drinking pubs have security staff. The extension of the liquor licencing hours to allow for late night drinking and dancing on a grand scale has necessitated static security and CCTV facilities at these premises. Garda response times in turning out to criminal or public order incidents at these types of premises may not be sufficient to prevent serious injury, loss of life or damage to property. Garland refers to what he calls ‘supply side criminology’. He says:

\(^{1025}\) D. Garland *supra* at note 2 at p.119.
\(^{1026}\) *Ibid*.
\(^{1027}\) *Braddish v. D.P.P.* [2001] 3IR 127.

152
Rather than rely upon … the dubious ability of the police to catch villains (supply side criminology) sets in place a more mundane set of reforms designed not to change people but to redesign things and reshape situations. A thousand small adjustments are required.\textsuperscript{1029}

He goes on to elaborate further and what he asserts it is submitted is corroborated in what is being depicted in this chapter. He states that crime can be controlled in replacing cash with credit cards and elaborates that crime can be reduced if one can,

… build locks into steering columns of automobiles. Employ attendants at parking lots and use close circuit TV cameras to monitor city centre streets. Co-ordinate the closing times of rival clubs and discos. Lay on late night buses and special routes to and from football games. Advise retailers about security. Encourage local authorities to co-ordinate the various agencies that deal with crime. Remind citizens of the need to safeguard their property and supervise their neighbourhoods.\textsuperscript{1030}

In the Garda context it is easy to parse what Garland says line by line and find evidence to support his view. Some of the evidence is obvious. There exists Gardaí Neighbourhood Watch schemes. Gardaí have CCTV systems in major cities and Joint Policing Committees\textsuperscript{1031} which are grounded in statute facilitate the collaboration of the Gardaí and local authority to deal with mutual stakeholder interests. Any visit to any commercial urban centre will find ample evidence of private uniformed security personnel at work.

It is contended that it is clear the Gardaí (whether they like to admit it or not) have been ceding policing functions to the private sector and other stakeholders since the late 1970’s and early 1980’s. It is reasonable to argue that while Gardai may have ceded these functions to other stakeholders and while this change has impacted on how the Gardaí carry out their duties it certainly hasn’t corroded their responsibilities in the investigation of crime.

\textbf{Transformation and Duties}

In the writers experience the following hypothetical narrative is an example of what the Gardai might have to face when working night duty. The Garda communications room will dispatch a call to the appropriate unit or mobile or foot patrol. The radio controller’s words are succinct
“Disturbance in Progress” at a particular location. Depending on the information gleaned by the Garda dispatcher who takes the 999 call he will decide how many units attend the locus. The Gardaí arrive. The situation is fluid. It can be violent. The public police intervene to restore order. If necessary, the public police on site request further assistance and backup. The private police are also present. Violent disorder has broken out on licenced premises. The private police are holding two men and they advise the public police that the men are responsible for a serious assault and damage to property. One other suspect has fled the scene. A victim lies bloodied and unconscious on the pathway. The private and public police deal with these situations all the time. The private police will hand over the men they have held to the public police who will make and secure their arrest. The private police may presumably know the suspect who has fled the scene. These details will be furnished to their public counterparts. The public officers find an independent witness who can identify the fleeing suspect. He is conveyed in the official patrol car on a tour or patrol of the vicinity in an effort to locate the third suspect. A short distance away the witness points out the suspect. He is arrested after a struggle. All suspects are brought to the local Gardaí station. They are searched, and illicit drugs may be found. Garda station CCTV footage will be downloaded and secured. It has substantial probative value in any criminal or civil proceedings thereafter. The public and private police have restored order, but the public police must pursue the investigation. The public and private police will liaise again for the purpose of acquiring and making witness statements. The evidence of the private police can be compelling and crucial to any prosecution case. The public and private officers watch the private CCTV footage. The private police download it and furnish it to their publicly paid colleagues. The victim is conveyed to hospital. Whether the victim lives or dies the public police must procure the medical evidence. They must engage with the victim’s family and if necessary deliver grave news. In the following hours and days, the Gardaí will canvas other premises for CCTV footage and witnesses to build a prosecution case.

Private business people maintain their own CCTV systems. They download material at a cost to themselves. The public police do not reimburse them for the use of their private policing systems. These private systems can provide crucial evidence in criminal cases. Generally speaking in a case like this the public and private police won’t liaise again until criminal charges are being heard in court, but it is the public police who must get the case there. It is contended that this scenario highlights Garland’s view that “(t)hese clear lines between the
public and the private have now become blurred”¹⁰³² and that “policing has become a mixed economy of public and private provision as more and more routine security functions are undertaken by private police…”¹⁰³³ The public police have come to rely on their private counterparts to detect crime and restore order.

The advent of alarm systems can be said to have a preventative effect on crime, but the public police will turn out for alarm activations the vast majority of which will be false. An alert night watchman may come across a break-in on some premises or find intruders actually on the premises, but the public police will be called to provide the follow up. Most shoplifting cases for obvious reasons are solved by private store detectives. The suspects are handed over to the public police who will process them for a court hearing.

The public and private police interact in a routine way every day. In many cases private police provide essential evidence in criminal court cases. It is submitted that these proofs secure convictions that the public police would otherwise not be able to secure. Store detectives can detain people. So too can bouncers at licenced premises if a crime is committed. They can search patrons (if parties’ consent) or prevent their access to a premises in lieu of co-operation. It is contended that all of what is stated here is evidence of what Garland says:

In these private settings (many of which are mass public spaces such as shopping malls that happen to be privately owned and administered) individuals may be required to submit to searches or be monitored and filmed and they may be subject to exclusion without cause shown. There is here rough justice if exclusion and full force surveillance that has become more and more routine in our experience and which is increasingly viewed as a necessary condition for securing the safety and pleasure of consumers and decent citizens – ‘wicked people exist’.¹⁰³⁴

A landmark event in the rise of private security in this jurisdiction goes back to 1972 when the Irish Security Industry Association (ISIA) was established.¹⁰³⁵ It was set up to ensure that proper standards and accountability were maintained within the security industry in this country. At the time the Association boasted many large and well-known security companies.

¹⁰³² D. Garland supra at note 2 at p.18
¹⁰³³ D. Garland supra at note 2 at p.18
¹⁰³⁴ D. Garland supra at note 2 at p.160.
Some of them could now be said to be household names such as Chubb Ireland, Securicor, Group 4 and ADT. These companies it was said provided a whole range of services such as central monitoring stations, static guards, technical service and manufacturing and distribution services.\textsuperscript{1036} In 2004 Kilcommins \textit{et al} noted that the Irish Security Industry Association comprised of 62 firms with a turnover of 250 annually with a workforce as large as AGS.\textsuperscript{1037} It is submitted that it was no coincidence that Garda reports at the time lamented “the growth in industrialisation”\textsuperscript{1038} and the fact that there were “more opportunities for planned as well as casual crime.”\textsuperscript{1039} The Gardaí attributed the increase in crime to “increasing affluence in the community” and “a distressing lack of security sense on behalf of many members of the public.”\textsuperscript{1040} It also stated that criminals were committing crime while on bail awaiting trial. It cited “1,784 crimes against property committed by 462 persons while on bail.”\textsuperscript{1041} It said that the techniques employed by criminals were becoming more sophisticated and there was an increase in the use of motor vehicles in the commission of crime.\textsuperscript{1042} AGS were beginning to struggle with the increase in crime and acknowledging that they could not be omnipresent on every street and corner. Private security firms were more and more beginning to fill the vacuum. In 1973 the Gardaí Commissioner stated that “a time when police are under severe pressure the ordinary citizen is presented with the opportunity to make a more significant effort in the prevention of crime.” The Commissioner acknowledged “the continuing trouble in the North of Ireland makes heavy demands on manpower for border duty.”\textsuperscript{1043} All the while private security interests continue to increase. Standards and accountability within the security industry have since been codified in the \textit{Private Security Services Act 2004}.\textsuperscript{1044} As at the 30th November, 2016 the industry reached 26,028 individual licence holders while contract licence holders reached the number of 1,125.\textsuperscript{1045} This was well in excess of sworn and unsworn members of AGS which at the time stood at 16,272 (comprising of 12,816 regular members, 1,124 reserves and 2,332 civilian staff).\textsuperscript{1046}

\textsuperscript{1036} \textit{Ibid.}.
\textsuperscript{1037} S. Kilcommins \textit{et al supra} at note 120 at p.223.
\textsuperscript{1038} Report of the Garda Commissioner on Crime 1972 at pp. 2-3
\textsuperscript{1039} Report of the Garda Commissioner on Crime 1972 at pp.2-3
\textsuperscript{1040} Report of the Garda Commissioner on Crime 1972 at pp.2-3
\textsuperscript{1041} Report of the Garda Commissioner on Crime 1972 at pp.2-3
\textsuperscript{1044} \textit{Private Security Services Act 2004} as amended by Part 4 of the \textit{Civil Law (Miscellaneous Provisions) Act 2011}.\textsuperscript{1045} \texttt{www.psa.gov.ie} \textit{accessed on the 30th November 2016 at 11 a.m.}
\textsuperscript{1046} Annual Report of An Garda Síochána 2015 at p.2.

\textbf{156}
It is submitted that all of the above is compelling evidence of what Garland says:

At the same time we have seen the remarkable expansion of the private security industry that originally grew up in the shadow of the state but which is increasingly recognised by government as a partner in the production of security and crime control policy has become a mixed economy of public and private provision as more and more routine security functions are undertaken by private police and more and more businesses and households invest in the hardware and protective services offered by the commercial security industry.\footnote{1047 \textit{D. Garland supra} at note 2 at p.17.}

Garland goes on to ask why this is so and in answering his own questions he says, “because the old-fashioned sovereign state can deliver punishment but not security.”\footnote{1048 \textit{D. Garland supra} at note 2 at p.200.}

\textbf{Commercialisation and Codification}

It is submitted that one of the most salient pieces of legislation introduced in this jurisdiction which is corroborative of Garland’s thesis is the \textit{Private Security Services Act 2004} (as amended) under that legislation the Private Security Authority (P.S.A.) is mandated to regulate the following industry sectors.

- Door Supervisor
- Installer of Electronic Security Equipment
- Security Guard
- Providers of Protected forms of Transport.
- Locksmiths
- Suppliers and Installers of Safes
- Private Investigations
- Security Consultants
- Event Security
- CCTV Equipment
- Monitoring of Alarms\footnote{1049 \textit{Section 2 of the Private Security Services Act 2004}.}

The PSA has its own mission statement which states:
The mission of the PSA is … to regulate the activities of those involved in the private security industry to ensure that the interests of consumers are fully protected through the establishment promotion monitory and enforcement of appropriate standards.\textsuperscript{1050}

It is submitted that the codification of controls and regulations and supervision for the security industry in Ireland is a compelling example of what Garland asserts when he states:

(t)he state now operates in a mixed economy of security provision and crime control and its agencies here to accommodate the private security arrangements that have grown up over the last thirty years.\textsuperscript{1051}

However, Garland warns that:

Today’s governmental authorities may be obliged to operate alongside this private sector and in conjunction with it, but they are not obliged to stand back and allow its unregulated consequences fall where they may.\textsuperscript{1052}

Hence therefore the introduction of the Private Security Services Act 2004 (as amended).

Another piece of legislation that brought profound change in how the Garda Síochána carries out its functions is the Garda Síochána Act 2005. It is submitted that this and other pieces of legislation in this sector are good examples of what Garland says:

(t)he modern field of crime control is being rapidly reconfigured in ways that decentre not only the states specialist institutions but also the political and criminological rationalities that sustain them.\textsuperscript{1053}

In that regard AGS may have had to cede ground to the private security interests over time but so too did the organisation have to change internally to be more commercially minded. Inevitably there is some overlap here with Garda managerialism, but these statutory examples demonstrate diverse ways in how Garda managers could now generate an income for providing a specific policing service or outsource to a private commercial interest a previous Garda

\textsuperscript{1050} P.S.A. supra at note 1045.
\textsuperscript{1051} D. Garland supra at note 2 at p.173.
\textsuperscript{1052} D. Garland supra at note 2 at p.203.
\textsuperscript{1053} D. Garland supra at note 2 at p.18.
function. Similarly changes to statute empowered Gardaí to bring cost savings to criminal due process.

Section 15 of the *Garda Síochána Act 2005* provides for the establishment of a Garda Reserve with limited training and powers. They are strictly supervised and are a very cost-effective way on the face of it at least of propping up Garda numbers. They permit Garda managers to provide a more visible presence on the street particularly during concerts and events. However, the power of Garda Reserves is limited, and they can only act in the presence of a full time Garda. Their presence it may be said, has only a “scarecrow effect”. Section 29 of the same legislation empowers the Garda Commissioner to enter into contracts with other persons or bodies who can assist with policing functions. Traditionally Gardaí have had their own fleet of tow wagons particularly in the Dublin area but also on a lesser scale in urban areas outside ‘The Pale’. Garda tow truck/wagon crews dealt with obstructions to traffic flow and transported vehicles to pounds. All this work has now been contracted out to private companies who also provide detention facilities for vehicles on a 24-hour basis. Garda station yards around the country have been freed up as a result. They are excellent arrangements. In addition, the Garda Commissioner had entered into contracts with private contractors with the *Go Safe* anti speeding vans which are regularly seen on Irish roads. It is expected that any legislation introducing electronic tagging of repeat offenders will be monitored by a private security company and not AGS.¹⁰⁵⁴

Section 30 permits the Garda Commissioner to charge for policing services in certain circumstances. The Commissioner is also empowered to recover monies in simple contracts if these services are not paid for. Organisers of sports events, concerts, festivals, exhibitions, meetings, conferences, film/television programme makers and advertisers must pay the Garda Commissioner *pro rata* fees for Garda services. In certain circumstances the Commissioner can charge for Garda escorts. Section 37 states that Local Authorities must take account of crime disorder and anti-social behaviour when carrying out their functions and arguably the provision is an example of the State’s endeavour “to spread out the crime control effort beyond the specialist state organizations.”¹⁰⁵⁵ It is also perhaps an example of the overlap between Garland’s indices on “community policing” and “commercialisation.” Similarly, section 38

¹⁰⁵⁵ D. Garland *supra* at note 2 at p.17.
permits the Commissioner to give not just Gardaí but civilian and third parties such as Local Authorities permission to set up CCTV facilities areas subject to the caveat that the Gardaí would have access and supervision of same.

Section 131 sets out special powers given to civilian security officers employed by the Court Service, a Department of Government, House of the Oireachtas, the Attorney General’s Office, National Gallery and National Museum. Civilian personnel have powers of search, seizure and removal from a premises and can use reasonable force if necessary. Local Authorities also use traffic, dog and litter wardens. Other examples of cost effectiveness codified in statute include the Criminal Justice Miscellaneous Provision Act 1997. Section 3 permits the Gardaí to release and arrested person on station bail to a court sitting held within thirty days following the next scheduled court sitting. Previously an arrested person could only be bailed to the following morning. A Gardaí making such an arrest on night duty would at least cost the State three hours overtime to be in court the next day. The new provision facilitates a court appearance on a rostered working day with little or no overtime expense. Notwithstanding the Section 3 provision, Section 6 allows for evidence of arrest, charge and caution to be given by means of certificate to the court. Again, the attendance of Gardaí would not be required for this initial hearing and the potential extra cost to the exchequer would be spared. Section 5 permits a District Judge to make remands of an arrested person to a court area where the arrested person is being detained in prison. This is a basic procedure to negate the cost of a Prison Officer or Garda escort travelling long distances from the prison to the court for straightforward remand purposes. It is submitted that these provisions are an example of Garland’s view that “(p)ublic sector agencies …are now being remodelled in ways that emulate the values and working practices of private industry.” AGS is endeavouring to reduce its costs and traditional evidentiary rules are being modified to facilitate such savings. AGS has become very commercially minded.

Similarly, Section 21 of the Criminal Justice Act 1984 permits the reading of witness statements into evidence in criminal trials in certain circumstances if the defence and prosecution so agree. This obviates the necessity for Garda and civilian witnesses to attend trials with savings to the Exchequer of the witness subsistence and travelling expenses and loss

\[1056\text{Ibid.}\]
of earnings from work. It is a good provision that saves expenses and expedites the trial process.

It can also be argued that the examples cited would also be relevant under Garland’s “outputs over outcomes” index which is examined within the next chapter.

For many years AGS processed firearm fees. It was an annual undertaking requiring painstaking attention to detail in every station to ensure that all firearm certificates were properly renewed and accurate. The Gardaí would ensure that all fees were paid and in order. While Gardaí still vet all applications for firearms, since 2009 the processing of the fees has been outsourced to An Post. There is no doubt this was an ease to the Gardaí personnel tasked with the processing of these records and fees, but it also results in a loss of contact between Gardaí and members of the public. Traditionally every August local Gardaí as they progress through their substantial firearms holder list were engaging with the public at all times. This has now been lost but it is submitted not many Gardaí would lament the demise of this particular duty.\textsuperscript{1057}

**Conclusion**

Since the late 1960s AGS has transformed from being the almost sole provider of public protection and policing to being a key partner with other private security interests and these public/private partners have come to rely on each other in their endeavour to prevent and detect crime. In 2004 Kilcommins et al wrote that:

\begin{quote}

The greatest hindrance to accepting Garland’s thesis is that the Gardaí do not believe themselves to be confronting the predicaments that allegedly face all criminal justice organisations. They have not acknowledged that they face an insuperable obstacle in the face of rising crime rates and consequently they need to devolve responsibility for crime prevention throughout society.\textsuperscript{1058}
\end{quote}

This chapter has shown that the Gardaí have outsourced road traffic enforcement functions and rely heavily on private security to bring criminal, public order and drugs offences to their notice. Private security companies and insurance companies now provide home and personal security information on a grand scale. Crime Prevention Officers still exist in AGS but even

\textsuperscript{1057} SI No. 311/2009 Firearms Act 1925 (Prescribed Firearm Certificates) Regulations 2009.

\textsuperscript{1058} Kilcommins et al (2004) supra at note 120 at p.223.
they rely on having an up-to-date knowledge on what is available from the private security industry when they meet with the public or carry out security assessments. Every day the Gardaí rely on the produce of the private security industry to solve crime. Even statutory provisions were introduced that gave effect to more commercial and economic practice with AGS. It is submitted that since the words of Kilcommins et al in 2004\textsuperscript{1059} AGS has transformed almost unrecognisably in the past thirteen years. In 2006 Jones and Newburn said that these types of developments,

> Are affecting the vast majority of western societies but predictably they are doing so in different ways and at different speeds depending on the nature of the social, political and cultural circumstances in which they are taking place.\textsuperscript{1060}

It is contended that the evidence presented in this chapter is a compelling corroboration of Garland’s theory who says:

> We have seen a remarkable expansion of the private security industry that originally grew up in the shadow of the State, but which is increasingly recognised by government a partner in the production of security and crime control.\textsuperscript{1061}

Or as noted by Newburn and Reiner in 2007:

> It is arguably only in the last two decades that the police service’s dominant position in the public mind as the ‘thin blue line’ protecting the public from crime and lawlessness has come under successful challenge from the private security industry.\textsuperscript{1062}

It is submitted that AGS now depends on private security to assist them in the prevention and detection of crime.

\textsuperscript{1059} Kilcommins et al (2004) supra at note 120.

\textsuperscript{1060} T. Jones and T. Newburn, Plural Policing a Comparative Perspective edited by T. Jones and T. Newburn (London and New York Routeledge 2006) at p.5.

\textsuperscript{1061} D. Garland supra at note 2 at pp.17-18.

CHAPTER FIVE

Outputs Over Outcomes
From Charge Sheets to Spread Sheets

The Commissioner’s role is analogous to that of a Chief Executive. Normal practice and procedure would then be that the Chief Executive would in turn delegate authority to senior management by defining their roles and responsibilities and setting them objectives including benchmark against which performance would be assessed.\textsuperscript{1063}

Introduction

This chapter is about how AGS manages and has managed itself over a period of approximately five decades. The cornerstone years will be the early 1990s because that is the period that managerialism emerged in AGS. It is suggested that the management style within the organisation before that time had not changed much since the 1920s. However, that is not to say that many improvements had not been made within the organisation before that era in areas such as equipment, rostering, work conditions and facilities.

This chapter examines how and why management within AGS had morphed substantially in the last fifty years. The transformation is looked at from the context of Garland’s thesis on how agencies within the criminal justice system in the USA and UK:

(h)ad developed a managerialist business like ethos that emphasized economy, efficiency and effectiveness in the use of resources … as well as an emphasis upon strategic planning, line management, devolved budgets and financial responsibility within agencies. In time these new practices affected not just the management of the organization but also their mission … [P]olice Chiefs found that their budgetary responsibilities and financial regulatory duties made a difference to how they responded to their staffs, the police and clients.\textsuperscript{1064}

Therefore, this section specifically examines this “managerialist business like ethos” from the perspective of one of Garland’s “indices of change” that he calls “new management styles and working practices”. Transformation in AGS is viewed through the prism of this index and the


\textsuperscript{1064}D. Garland supra at note 2 at pp.116-117.
evidence adduced in this part demonstrates that Garland’s thesis is on point with what occurred in AGS over the last half century. Managerialism visited AGS circa the mid-1990s and has remained with the organisation ever since that period. For the purposes of this chapter the “managerialist business-like ethos” is explored by analysing transformation in AGS under the following benchmarks:

1. Language Change
2. Economy and Efficiency
3. Strategic Planning.
4. Staffing.
5. Resources.
6. Performance measurement and counting.

It is inevitable that there will be some overlap between these criteria, but the author’s insight as a retired Garda will be offered into how AGS organised itself during the period under review and to explain how Garda practice and procedure metastasized, as Rowe said of other police organisations into “a perpetual incitement for the incessant improvement of systems, generation of more knowledge, invention of more techniques, all driven by the technological imperative to tame uncertainty and master hazard.”

Since 2013 AGS was rocked by a series of high-profile scandals which culminated in the Guerin Report, the O’Higgins and Charleton Inquiries, the F.C.P.S. controversy and the Fennelly Commission not to mention the Garda Inspectorate’s report in 2014 on how AGS investigates crime. AGS was criticised in how it managed and recorded information on its P.U.L.S.E. database (Police Using Leading Systems Effectively). It is submitted that these scandals have had a massive negative effect on Garda morale and it is argued in this chapter that the way AGS has embraced the practices of the corporate world has played a significant part in this proud organisation’s difficulties.

---

Garland says “(p)ublic sector agencies are now being remodelled in ways that emulate the values and working practices of private industry.”1066 However, Garda “speak” permeates AGS and has remained the same for decades. Gardai do not refer to themselves as “guards” or “Gardai” or “policemen”. They refer to themselves as “members” or “polis”. Gardai are either “on duty” or “off duty”. They do not have days off, they have “rest days”. They do not have holidays or vacations. They have “leave”. The vocabulary of each “member” is grounded in their work. Gardai never “go” when they can “proceed”, and they will never “see” when they can “observe”. They will never “get” when they can “acquire”, and they certainly will never “give” when they can “furnish”. When Gardai are socialising, they refer to themselves with some self-deprecation as “mules”. This is probably an acknowledgement by Gardai of their perception of themselves as incredibly loyal but sometimes incredibly stubborn.

The list of Garda ‘speak’ is endless. It must do with their training experience and the legal world in which they work. Perhaps Garda “speak” is more reflective of what is asserted by Newburn and Reiner that “police officers have a sense of mission concerning their work masked by a veneer of cynicism.”1067 In an episode of the fictional R.T.E. series “Love Hate” there is a scene where two Garda detectives drive into a housing estate/apartment complex. They observe many uniformed Gardai searching several youngsters. The younger detective looks to his more senior colleague and queries what’s going on? His senior colleague replies, “This is ‘bacon and cabbage’’s new thing. Stop and search all the young fellas. Input into PULSE and draw up a bar chart. Never gets the serious ‘gow’ but looks good on power point.”1068 First, a word again on language. “Bacon and cabbage” is the nickname the detectives have for their Chief Superintendent. Members of AGS use them a lot. Nicknames are not synonymous with any rank. A lot of members have them. The word “gow” means “gouger” i.e. a criminal. The script in the scene brings to the fore the language of managerialism with words like “bar charts” and “power point” and “looks good on power point”. It is a straightforward example of how managerialism has pervaded AGS and arguably reflects that Garda management and rank and file members do not always see eye to eye on how policing is managed. Once policy is set few managers are likely ‘rock the boat’ lest it

1066 D. Garland supra at note 2 at p.18.
1067 T. Newburn and R. Reiner supra at 1062 at p.918.
1068 RTE Series “Love /Hate” Season 5 Episode 2, Frames 11.13-11.27.
undermine his or her promotion prospects. The language of the Morris Reports was sometimes scathing but always straightforward. Walsh reviewed the different reports of the different Garda working groups set up in response to Morris. He noted that, “Overall the reports of the Working Groups focus heavily on the internal organisational structures, processes, and training and management issues. Some of them are heavily weighted down by management jargon.”

Similarly Conway noted that “the reform process which emerged centred on a discourse of managerialism and performance indicators, not of moral or ethical issues nor of a return to core fundamental policing basics.” However, while Garda ‘speak’ may always be the same, the language of Garda management in how it manages controls and effects change in AGS has evolved over time. The language of the corporate world has been fully embraced by Garda management and is vividly evidenced in different reports emanating from AGS over recent decades.

As noted by Breathnach in 1974, the “principal function of all members” according to the Garda Code at Section 3.10 was “to prevent and detect crimes, to protect life and property and to maintain public peace and good order.” Many years later this straightforward language was codified under Section 7 of the Garda Síochána Act 2005 which sets out the functions of AGS as follows:

- Preserving peace and public order.
- Protecting life and property.
- Vindicating the human rights of each individual.
- Protecting the property of the State.
- Preventing crime.
- Bringing criminals to justice including by detecting and investigating crime.
- Regulating and controlling road traffic and improving road safety … and carrying out such other functions conferred by law including those relating to immigration.

---

1069 D. Walsh *supra* at note 134 at p.308.
1071 S. Breathnach *supra* at note 172 at p.137.
What was contained in the Garda Code in 1974 is now enshrined in law some 31 years later with little change in vocabulary. However, note the change in discourse in the early 1990s. In 1993 the Gardaí had their mission statement and their Corporate Strategy Document effective from 1993 to 1997. In 1995 coloured graphs were set out in the annual Garda report to emphasise output and statistics. In 1998 the annual Garda report and the crime statistics came in separate publications. In 2000 there was an Evaluation of the Garda Policing Plan of that year. There was a total of 35 “performance indicators” set out as key policy priorities to achieve the organisation’s “six corporate goals” which were:

1. Enforcing the laws relating to drugs.
2. Investigating crime.
3. Ensuring immediate response to emergencies.
4. Providing help and support to victims of crime.
5. Contributing to improving road safety and the reduction of casualties.

Later the AGS Policing Plan of 2009 cites the “Vision” of the organisation as “[e]xcellent people delivering policing excellence” and its “Mission” is “[t]o achieve the highest attainable level of [p]ersonal [p]rotection, [c]ommunity [c]ommitment and State security.” The difference in expression in outlining how Garda functions are defined in statute in 2005 and in the organisation’s own policing reports and plans is stark and is evidence of - what Garland is saying. It is also indicative of his other “indices of change.” However, for the moment the focus will remain on Garda parlance.

---

1077 Ibid at pp.7-8.
1078 Ibid.
1079 An Garda Síochána Policing Plan 2009 at p.2.
1081 An Garda Síochána Policing Plan 2009 at p.2.
1082 Ibid at p.2.
1083 D. Garland supra at note 2 at pp.8-20.
Garland states that “[t]he continuing effort to ‘re-invent government’ led to the development of clearly specified ‘performance indicators’ against which an organisation’s activities might be measured.”\textsuperscript{1084} These indicators Garland argues are themselves indicators of what he refers to as the “commercialization of justice.”\textsuperscript{1085} He says that “(w)ithin specific agencies and organizations performance indicators and management measures have narrowed professional discretion and tightly regulated working practices.”\textsuperscript{1086}

The Garda Evaluation Report in 2000 goes into these “performance indicators”\textsuperscript{1087} under each “strategic goal” giving details on how the organisation performed under each heading. The language is much different from the Garda Code in 1974 in outlining Garda functions. It is also fundamentally different to how Michael Staines the first Garda Commissioner eloquently articulated the organisations mission back in 1922 when he said “(t)he Civic Guard will succeed not by force of arms or numbers but on their moral authority as guardians of the people.”\textsuperscript{1088} Some eighty years later 2002 Tyler and Huo who studied and researched moral authority and procedural justice in the U.S.A. stated “people are more willing to consent to the directions of legal authorities when police and court procedures are in accord with peoples sense of fair process... and when people believe that the motives of the authorities are trustworthy.” The views of Staines and the work of Tyler would appear to be in complete accord notwithstanding the passage of eight decades between them.\textsuperscript{1089} Nonetheless, this gradual change in the terminology of Garda management can be traced via other reports of AGS over the decades. As noted by Rose, “privatization, marketization and consumerziation have been accompanied by the increased use of techniques of accountability such as continually set but locally managed budgets and the practices of evaluation and auditing.”\textsuperscript{1090}

In the 1970s and 1980s the language of managerialism in AGS did not exist. For example, the 1973 Garda Report notes “the continuing trouble in the North of Ireland makes heavy demands

\textsuperscript{1084} D. Garland supra at note 2 at p.116
\textsuperscript{1085} Ibid.
\textsuperscript{1086} D. Garland supra at note 2 at p.18 and An Garda Síochána Annual Report 2011 at pp.28-36
\textsuperscript{1087} D. Garland supra at note 2 p.116
\textsuperscript{1090} N. Rose supra at note 1065 at p.324.
on manpower for border duty.”

The same report further notes that “the Force greatly appreciates the support and wholehearted co-operation which at all times it received from newspapermen and radio television people.”

How things have changed. The Garda Traffic Corps was established in 1973 “aimed at improving the behaviour of road users and to reduce accidents and saving of lives. The Traffic Corps in its early days had a membership of 300 on full time traffic duties with units in each division operating in specially marked cars.”

The membership of the Traffic Corps in 2009 swelled to 1,200 members but slipped back to 750 in 2015.

The 1975 report notes that “criminals are becoming more vicious and mean.” The 1976 report again has almost fawning praise for the media. The Commissioner states:

I gratefully acknowledge the support and co-operation received from the press; the fair minded, and responsible reportage of current events is indeed essential to the preservations of those free institutions which are the hallmark of the democratic state and among which the Press itself occupies an honoured place.

It is submitted a Garda Commissioner nowadays is unlikely to make such a statement in a Garda Report. In each Annual Report from 1970 to 1980 the statistics for indictable crime and detection rates are faithfully recorded. The reports are interesting, and matter of fact and the use language is straight forward. Drugs seizures are recorded and there is a breakdown of the type of drugs seized. The 1983 report records “the coming on stream of the Neighbourhood Watch Scheme this year should be effective in curbing lawlessness and vandalism. The scheme ultimately belongs to the people.”

The same report announces that “1,540 members of the Force are now fully trained in drug abuse.”

The 1985 report states that 29,600 households are part of Neighbourhood Watch Schemes and 175 Community Alert Schemes have been set up in rural areas. The “Green Man” has also been installed in unmanned rural Garda stations so that those who call to stations that are closed make contact with Gardaí in the 24 hour

1093 Ibid
1094 Ibid
1097 Ibid
1099 Ibid
headquarter station some miles away. Time would show that these apparatus were wholly ineffective insofar as the public were concerned and were later stood down. The 1986 report announces that a new “Command & Control System for the Dublin area would be completed by the Autumn.” This new system was arguably the tentative genesis of the audit function in AGS and would determine how Gardaí would be dispatched to emergency and other calls.

The 1986 report highlights the successful rescue of Jennifer Guinness after her kidnap by a Dublin criminal gang and acknowledges the advent of the “Report on Garda Probationer Training” issued by the Committee under the Chairmanship of Dr. J. Walsh. It says that it is an “excellent and well researched document.” The 1991 Commissioner’s Report is an acknowledgement by the Garda Commissioner that the detection of crime was a partnership issue. The Commissioner states, “If success is to be achieved in the prevention and detection of crime and in other policy objectives all agencies, government departments and public generally have a vital contribution to make.”

This is an early indication from the Garda Commissioner that the detection and prevention of crime is not solely a Garda function and that other agencies need to be involved. Garland refers to this as the “expanding infrastructure of crime prevention and community safety” or “preventative partnerships. It is suggested that the Commissioner’s words are the commencement of what Garland states are the “patient ongoing low-key efforts to build up internal controls of neighbourhoods and to encourage communities to police themselves.”

This area is explored previously in Chapter 3.

As the 1990s progressed the garda vocabulary would begin to change. In the 1997 report, corporate language is evidenced with the mention of “purchasing policy,” “stock control,” “budgets” and “net expenditure.” In 1998 the Commissioner acknowledges “it is difficult to ensure consistency in the way crime is recorded”. We learn of “Garda Corporate

\[1099\] Ibid.
\[1101\] Ibid.
\[1103\] D. Garland supra at note 2 at p.16.
\[1104\] D. Garland supra at note 2 at p.17.
\[1105\] An Garda Síochána Annual Report 1997 at Foreword.
\[1106\] An Garda Síochána Annual Report 1998 at Foreword.
Strategy” which states that “excellence in the organisation is to be reached through the development of effective quality management.”\textsuperscript{1107} The process would assist Garda management “to achieve and evaluate goals and targets.”\textsuperscript{1108}

The Quality Service Bureau was heralded in the 1998 report “as a consequence of the Strategic Management Initiative”\textsuperscript{1109} and in fulfilment of AGS Policing Plan 1998. By 1998 Policing Plans have arrived in the organisation. To reinforce the arrival of managerialism in the organisation in AGS an approved NCEA Degree Programme in Police Management was instituted. It was a two-and-a-half-year modular programme for those who held Superintendent or higher rank. Also, in the 1998 report the Commissioner states that “the S.M.I. (Strategic Management Initiative) process is a fundamental review into the operation of AGS and will present many interesting challenges in the immediate future.” The S.M.I is discussed \textit{infra} in this chapter. By the noughties the language of managerialism was well embedded in AGS. Not only did AGS have its annual Commissioner Reports it now has its policing plans, corporate strategy documents, mission and policy statements.

\textbf{Managerialism – Economy and Efficiency}

While the move to managerialism in AGS can easily be tracked through the Commissioner’s various reports from the 1970s to the noughties, the real language of managerialism in the job occurred in the early 1990s. How then did this shift in the way the organisation managed itself and spoke of managing itself manifest itself to the members who operated the front line?

AGS divides the country into 25 policing divisions. A Chief Superintendent oversees each division. Each Division is sub-divided into districts. A Superintendent takes charge of each of the 109 districts. Each district is further divided into sub-districts. A Sergeant oversees each sub-district.

Traditionally in the writer’s own experience, each Garda sub-district which had a Sergeant at helm was almost autonomous from every other sub-district. The local Sergeant was responsible for the running of his/her station and sub-district and the detailing of his/her

\textsuperscript{1107} An Garda Síochána Annual Report 1998 at p.3.
\textsuperscript{1108} An Garda Síochána Annual Report 1998 at pp.3-4.
\textsuperscript{1109} \textit{Ibid.}
personnel. He/She was seen to be the local ‘sheriff’. In the larger stations there existed more than one Sergeant to assist with those responsibilities. Each station in areas outside Dublin, had what was known as a Sergeant in Charge. The person who held this role was the main administrator in a station who was ultimately responsible for its efficient policing operation. The other Sergeants were known as Duty Sergeants who had immediate responsibility for the respective shifts or units. In Dublin generally, there was no Sergeant in Charge. Instead there was what is known as a Station House Officer (SHO) of Sergeant rank attached to each shift. Each Station House Officer had what was known as a Gaoler and between them they had responsibility for the safe custody of prisoners in the station and the SHO had responsibility for the efficient running of his shift.

While there was much co-operation and interaction between station parties they were essentially run autonomously from each other by their local Sergeant. Each Sergeant was answerable to the local Superintendent also known within the job as the District Officer and the District Officer was accountable to the Chief Superintendent also known as the Divisional Officer. In a rural district in the 1980s and 1990s there was probably only one patrol car attached to the District Headquarter Station. This had to serve the needs of the whole district. Some districts were geographically peculiar. In the 1980’s the town of Cobh, Co. Cork was a Headquarter station on the east side of Cork Harbour. At that time part of its district included the town of Crosshaven which was located on the west side of the harbour approximately 30 miles away. To travel to Crosshaven to attend to a call the Cobh patrol car would have to leave Cobh and travel around the harbour to Cork City and make its way down through other garda districts to the western side of the harbour to Crosshaven. The journey time was problematic especially in traffic.

Crime was investigated by local Gardaí. District Headquarter stations outside Dublin had a detective branch unit allocated to them. These plain clothes and armed personnel were responsible for the investigation of crime in their own sub-district but also assisted local Gardaí in other sub-districts within the district. Sometimes members of the detective branch had access to their own unmarked patrol car but in the 70s and 80s and often they had to rely on the uniform district patrol car. In the bigger cities like Cork, Limerick and Galway there were large detective branch units broken into difference sections. There were units that would deal with ‘Crime Special’ and would monitor subversives and perform protection and cash escort duties. There were units that dealt with ‘Crime Ordinary’ i.e. all crimes not connected with
subversive activity. In the 1970s and 1980s in the Dublin Metropolitan Area (now known as the Dublin Metropolitan Region) each station for the most part had its own District Detective Unit (DDU). The Central Detective Unit (CDU) was based at Harcourt Square and dealt with organised crime and serious aggravated crime and supported local District Detective Units. Also housed at Harcourt Square was the Special Detective Unit (SDU). This unit, like country areas, monitored subversives and performed protection and cash escort duties. All these branches were later amalgamated into what is now known as the ‘National Bureau of Crime Investigation’ (NBCI). All are based at Harcourt Square and in serious cases traversed the country to assist local detectives and Gardaí with the more serious investigations. It was the local sergeant who was responsible to ensure that criminal enquiries were followed up to a conclusion. The local district officer was proactive in ensuring that this was done.

Similarly, it was the writers experience that the local Superintendent paid regular visits to the stations in his/her district and station records were inspected. These were known as formal and informal inspections. In a formal inspection the District Officer set a date for the local sergeant to have his/her books and records in order. The informal inspection was more random, and Gardaí did not have notice of the Superintendent’s intention to visit. The Superintendent examined the warrants register to ensure all warrants were being recorded and executed and attended to and monies properly accounted for. He/She inspected the cash records to ensure all cash coming into the station for firearm fees and such like were being properly transmitted to his/her office in accordance with regulations. He/She inspected the drugs register to ensure all detections were accounted for and drugs exhibits were transmitted for analysis in Dublin. He/She inspected the summons register to ensure summonses were being served and the crime register to ensure crime was being recorded and investigated. He/She inspected the property book and property coming into the possession of the Gardaí to see that it was being properly accounted for. He/She also checked prisoner and drink driving records and examined the accommodation generally and the cell areas. He/She also checked the patrol cars and their log books which showed mileage dates and times and signatures of patrol car crews. The Superintendent discussed crime and local issues with the station party. He/She recorded and certified his/her inspections with his/her signature and date and would also complete the Inspection Book in which he/she summarised his/her inspection and findings. The Chief Superintendent for his/her part also called to each Garda Station and carried out a similar

---

1110 L. McNiffe *infra* at note 1158 at pp.104-112
inspection. Garda officers knew their Gardaí and Gardaí were known to their officers. At the end of each calendar year each Sergeant in Charge was tasked with checking all these records for the purpose of preparing his/her sub-districts crime statistics which were then submitted to his/her District Officer for onward transmission Headquarters so that the annual Commissioners report on crime could be put together. It was a task that was straight forward but could take some time depending on the workload of the station. Official correspondence between stations was transmitted by ordinary post. In the 1970s details of crimes were circulated by teleprinter between stations when one was allocated, otherwise it was by post or perhaps via patrol car in cases of urgency.1111

In the mid 1990’s things began to change. District Officers began to manage their districts as a single entity, rather than as different “satellite” type areas. If staff was short in the District Headquarter Station the staff from the outer stations were called in to make up the shortfall. Sergeants in outer stations were called in to replace Sergeants in the District Station if need arose. It was rare for Sergeants in the larger stations to be sent to the outer one if the local Sergeant was on leave. The Superintendent was managing his resources. It is not that this process did not happen prior to the 1990s – it did but not to such a regular extent at least that is the writers view. Superintendents began to focus on the overtime budget and they moved their staff around to remain within budgetary limits, but it was not always possible to do so. This was the beginning of the end for smaller stations insofar as their opening hours were concerned. The hours local Gardaí were at these stations and available to the local public was very much restricted. The other side of the coin was that the Superintendent was seen by authority as effectively managing his/her District. Earlier in 1978 the organisation to address issues arising because of restricted opening hours at smaller garda stations AGS had installed what was known as the Green Man communication system in rural Garda Stations. A caller to garda station when it was closed could avail of this facility to speak with a garda in the District headquarter station some miles away. By the mid-1980s this was a failure as the public had no interest in using it. When they could not communicate face to face with a Garda at a garda station they simply went away.

This is in stark contrast to earlier years. As noted in Brady:

1111 S. Breathnach supra at note 172 at pp.137-139 and L. McNiffe infra at note 1158.
(t)he early Commissioners understood the importance of keeping the police close to the people. Bonds of trust developed in the villages and indeed in the larger towns where the Gardaí were part of the community. This was key to successful crime detection and above all to good intelligence.\textsuperscript{1112}

He goes on to state that:

\begin{quote}

c(onversely the community looked to the Gardaí for security and often as a point of contact for other state services. There was an understanding that with a Garda presence in the town or village there was a connection into the system. A friendly Garda could solve problems; a prosecution for speeding, a passport needed in a hurry, a cautionary word with an aggressive neighbour or an overcharging shopkeeper.\textsuperscript{1113}
\end{quote}

It is submitted that all what Brady states has been lost to financial expediency. A good example of the value smaller stations occurred in the Graham Dwyer murder trial 2015. In the course of the trial evidence was given by three witnesses of strange objects located in a reservoir in Co. Wicklow. One of the witnesses thought the objects were suspicious enough to bring to the local Garda Station. It was a small station in the village of Roundwood in Co. Wicklow. The station was open for business notwithstanding it was not a 24 hour one. The objects were received by a local Garda who immediately put them into evidence bags and was troubled and disturbed enough to visit the reservoir himself to make further enquiries. He located further objects all of which became exhibits in one of the most controversial murder trials in the history of the State. Paul Williams a journalist, who covered the trial would pen an article in the Irish Independent on the 28th March 2015 entitled “All in a day’s work says tenacious young Garda” commending the member’s efforts. It is contended that it is simply not possible to quantify what AGS have lost as a policing service by the closure of these smaller stations. However, savings could easily be measured. It is submitted that managerialism tended to make Garda managers - who are committed police officers by vocation and training – sensitive to the cost of everything but myopic to the intrinsic or real value of anything. In 1950 there were 785 stations. In 2012 there were 664 stations and in 2013 there were 564 stations. In the Sunday Independent on the 22nd October 2017 Philip Ryan wrote an article with the headline “Gardaí want freedom to criticise government decision.”\textsuperscript{1114} He reported that, “(s)enior Gardaí are tired of being forced to defend government decisions and budget cuts. They want a distinction drawn

\textsuperscript{1112} C. Brady supra at note 275 at p.212.
\textsuperscript{1113} Ibid.
between the work of the guards and the work of the government.“ It is submitted that it is true to say that a Garda Commissioner rarely if ever criticises government policy or budget cuts insofar as they affect AGS. The closest a Garda Commissioner came to do so in recent times was Commissioner Patrick Byrne. At the time of the Garda ‘Blue Flue’ on the 1st May 1998 the government wanted Commissioner Byrne to invoke disciplinary regulations in respect of ‘striking’ Gardaí. He refused to do so stating that it was an industrial relations matter. Aside from this exception, Garda Commissioners are not known to publicly criticise the government on budget or policy issues. Philip Ryan’s report goes further – it says, “Senior Officers were less likely to speak up under the Commissioner over fears it would stymie their career progression.” Morris years earlier would say “no-one should serve as Superintendent without having the training, the expertise, the commitment to duty and the front-line experience that will enable them to make real judgements on matters relating to criminal investigation.”

Morris would also say that “what An Garda Síochána needs is a combination of experience, dynamism and honesty.” As noted by Garland:

The relations between the organization and its political masters routinely involve conflict over budgets and resources … it can also entail more substantive conflicts particularly when measures are proposed that clash with the organizations view of its mission and the most effective methods of pursuing it. However, it was not just in investigative and policing matters that Garda managers had to be mindful of their budgets. They also had to be mindful of economies and efficiencies on more business and commercial matters.

As noted by Dodd in 2006:

Procurement is a complicated area and the Garda Organisation has to adhere to the E.U. Directives and thresholds. Procurement guidelines have to be added to and proper structure put in place to monitor compliance … in order for the Commissioner to fulfil

---

1115 Ibid.
1116 Ibid.
1117 F. Morris supra at note 138 at p.53.
1119 D. Garland supra at note 2 at p.111.
the role of Accounting Officer the implication and impact of not complying with procurement rules has to be understood by the whole organisation.\textsuperscript{1120}

Some years earlier AGS was scandalised in how it purchased tyres for the Garda fleet of patrol vehicles. The Comptroller and Auditor General carried out a review of the allegations at the time and his report in 2001 found:

The management and control of systems in place in 1998-2000 in relation to purchasing was completely inadequate. In effect the Garda Síochána ceded control of key aspects of the supply of tyres to Advance Pit Stop and allowed themselves in crucial respects to become captive to their supplier.\textsuperscript{1121}

It is submitted that it was unusual at the time for AGS to be scandalised on these types of issues and it was something new to account for matters that pertained to how the organisation conducted and managed its procurement business.

Similarly, in 2000 the Comptroller and Auditor General published another report concerning how AGS collected fines. It concluded:

Overall the fines system is not working as intended. Apart from the on-the-spot speeding offences where there are high rates of voluntary payment of fixed penalties, very many of the cases detected resulted in offences not being punished mainly because of the administration and management of the fines system procedure.\textsuperscript{1122}

Over a decade later in 2012 the Comptroller and Auditor General again reported that:

A member of AGS contacted the office of the Comptroller and Auditor General seeking a meeting to discuss concerns that a member had about the operation of the Fixed Charge Notice System.\textsuperscript{1123}

\begin{flushleft}
\textsuperscript{1121} The Report of the Comptroller and Auditor General on the Purchase of Tyres by An Garda Síochána 9th November 2001 at para 4.49 at p.44.
\textsuperscript{1123} The Report of the Comptroller and Auditor General on the Account of the Public Service 2012 at p.87.
\end{flushleft}
It was alleged that there were circa 4,000 cancellations of notices by senior members of AGS. Another report emanated from the Comptroller and Auditor General because of an investigation in these matters and he concluded that:

… because of significant weaknesses in aspects of the operation of the Fixed Charge Notice System a substantial portion of offenders – up to one in five – are able to avoid penalties and do not end up in court. These operational weaknesses need to be addressed urgently by AGS.\textsuperscript{1124}

The conclusion in the 2012 Auditor’s Report is almost the same as his finding in 2000. He found that the Exchequer received €21.5 million in receipts for the F.C.P.S. system. Seventy-One per cent of fines were paid, 22\% went to court, 5\% were terminated and there was 2\% not paid for “other” reasons.\textsuperscript{1125} AGs was now in difficulty in how it operated fines and a collection of monies system.

As indicated in the Comptroller and Auditor General’s 2012 report it was allegations of two Garda whistle blowers that highlighted irregularities in how Superintendents and Inspectors were cancelling F.C.P.S. notices. Consequently, the Garda Inspectorate investigated these matters and, in its report, published in February 2014 it found:

… in its analysis of the reports of the Assistant Commissioner and the Controller and Auditor General that there are consistent and widespread breaches of policy by those charged with the administration of the F.C.P.S. With few exceptions the Inspectorate found no meaningful evidence of consistent quality management supervision of the cancellation process either at Garda Headquarters, Regional, Divisional, District or at any level that would have detected and rectified these problems.\textsuperscript{1126}

The Inspectorate reported that in 2012 a total of 114,507 FCPS notices were issued by Gardaí. The Central FCPS Office sent back 15,408 such notices to detecting Gardaí because they were not completed properly. These are known as “sendbacks” and it was the detecting Garda’s duty to return the “sendback” to the Central FCPS office clarifying the issue(s) that had been raised. The Inspectorate found that 10,701 “sendbacks” were not returned which amounted to a substantial 69\% of them in total. The Inspectorate estimated that the loss of revenue in total

\textsuperscript{1124} Ibid as at para 7.74 at p.105.
\textsuperscript{1125} Ibid at p.95.
to the Exchequer in this instance was €850,000. The Inspectorate also examined the number of summonses issued and the amount of cancellations made by Garda management.1127

In the period 2011 and 2012 the figures are as follows:1128

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Summons Issued</td>
<td>-</td>
<td>178,500</td>
</tr>
<tr>
<td>Summons Served</td>
<td>-</td>
<td>85,000 (48%)</td>
</tr>
<tr>
<td>Summons Unserved</td>
<td>-</td>
<td>93,500 (52%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss of revenue</td>
<td>estimated at €7.4 million.</td>
<td></td>
</tr>
</tbody>
</table>

Table 5.1  Summons Issued/Served/Unserved for Period 2011 and 2012

In the period 2011-2013 the following is the breakdown of FCPS notices cancelled by Garda management:1129

<table>
<thead>
<tr>
<th>Year</th>
<th>FCPS Notices Issued</th>
<th>-</th>
<th>Cancelled</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>514,959</td>
<td></td>
<td>22,781 (4.4%)</td>
</tr>
<tr>
<td>2012</td>
<td>449,403</td>
<td></td>
<td>21,960 (4.8%)</td>
</tr>
<tr>
<td>2013</td>
<td>393,588</td>
<td></td>
<td>17,393 (4.4%)</td>
</tr>
</tbody>
</table>

Table 5.2  FCPS Notices Issued/Cancelled for Period 2011 to 2013

It is contended that these reports are strong evidence of what Newburn and Reiner assert:

… recent decades have witnessed some important developments in policing, many prompted by the pressures under which all criminal justice agencies were placed by governments increasingly concerned to secure “value for money” and economy efficiency and effectiveness in public services.1130

Similarly, it can be argued that these reports are solid evidence of Garland’s thesis where he states that:

… issues of costs and effectiveness are foregrounded in policy decisions today to the extent never seen before … and the police … are costed and audited more thoroughly today than at any time in their history.1131

1127 ibid at p.23.
1128 ibid at p.24.
1129 ibid at p.30
1130 T. Newburn and R. Reiner supra at note 1062 at p.927.
1131 D. Garland supra at note 2 at p.188.
Garland argues that the “pressure to attain ‘value for money’ … has given rise to a framework of economic thinking that has become increasingly pervasive and powerful.”

The powers of the Dáil Public Accounts Committee in tandem with Section 43 of the Garda Síochána Act 2005 it is submitted are evidence of this “economic thinking” which has become so “pervasive and powerful”.

On 23rd January, 2014 Garda Commissioner Martin Callinan gave evidence before the P.A.C. in respect of the F.C.P.S. controversy regarding the cancellation of F.C.P.S. notices. He highlighted that the internal Garda report into the matter covered the period 1/1/2009 to 30/6/2012. He noted that “66,407 fixed charge notices were terminated which is the equivalent of 4.55% of the 1.46 million tickets that were issued.” He said that where legal and technical reasons for the termination of notices were accounted for there remained 2.57% of the 1.46 million issues in the review period that were terminated by authorised officers exercising discretion. There were 859 which required more scrutiny. Of the 859 there were 661 of cancelled by three Garda officers and came in for disciplinary investigation while in the remainder warnings or advices were given. The 859 figure is approx.05% of the total number of notices issued. He gave some context to the figures by stating that the figure amounted to approximately two cancellation of notices per week per Garda District and pointed out that each District can range from between one and six stations. He said that the internal Garda report and that of the Comptroller and Auditor General in respect of “the level of terminations during the (respective) periods under examination were very similar” in that the Garda report found that terminations came to circa 4.5% while the C&AG’s report found that it was 5%.

---

1132. D. Garland supra at note 2 at p.188.
1134. Ibid at p.7.
1135. Ibid at p.7.
1136. Ibid at p.7.
1137. Ibid at p.7.
1138. Ibid at p.7.
1139. Ibid at p.7.
1140. Ibid at p.5.
Deputy Shane Ross T.D. when examining the Commissioner would later give a different context to these figures. He argued that it amounted to 300 cancellations a day and kept pressing the Commissioner on the figure.\textsuperscript{1141} The Commissioner did his own arithmetic and corrected Mr. Ross that that figure was only 30 cancellations a day and not 300 as stated by Mr. Ross.\textsuperscript{1142} Mr. Ross acknowledged the error and the Commissioner remarked with brevity and perhaps some irony “we will not fight over it.”\textsuperscript{1143}

The Commissioner stated that the 661 cancelled notices required disciplinary investigation because Superintendents/Inspectors had acted outside the process, but no criminality was found.\textsuperscript{1144} That 661 accounted for 0.04\% of all tickets issued. Lally, Humphries and McGee for the \textit{Irish Times} on the 24\textsuperscript{th} June 2014 in an article headed “Garda Commissioner take legal advice on Gardaí speaking to P.A.C. – Callinan consults A.G. as he seeks to prevent whistleblower testifying on alleged wrongdoing” focused on a particular remark by the Commissioner. He said, “(a)s a rule serving Gardaí should not use an Oireachtas Committee as a platform to air grievances or raise concerns about the Force. The Commissioner should not be usurped by subordinates.”\textsuperscript{1145} The Commissioner it is contended tried to distinguish between the PAC’S right to enquire into “value for money” matters pertaining to AGS and its attempts to enquire into potential criminal accusations made by Garda whistleblowers against their colleagues. He stated:

\begin{quote}
I do have a strong view that matters of this importance where clearly members of AGS are making very serious criminal accusations against other members of AGS and producing personal sensitive individual data that this is not the appropriate forum for any member of AGS to be involved in that exercise to use this committee as a platform. I fully respect the Committee and subscribe to the work it is doing in the context of how people conduct their business in terms of value for money … the appropriate person to deal with these issues is the Accounting Officer namely the Commissioner … I am the legitimate target for all those questions.
\end{quote}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{1141} \textit{Ibid} at p.23.
\item \textsuperscript{1142} \textit{Ibid} at p.24.
\item \textsuperscript{1143} \textit{Ibid} at p.24.
\item \textsuperscript{1144} \textit{Ibid} at p.7.
\item \textsuperscript{1145} C. Lally, J. Humphries, H. McGee, “Garda Commissioner Takes Legal Advice on Garda Speeding to PAC – Callinan Consults A.G. as He Seeks to Prevent Whistleblower Testifying on Alleged Wrongdoing” \textit{Irish Times} (24\textsuperscript{th} June 2014) at \url{www.irishtimes.co/Gardacommissioner}\textsuperscript{takeslegaladviceonGarda} speaking to PAC (dated accessed: 11/5/14 at 2.15 p.m.
\item \textsuperscript{1146} Dáil Public Accounts Committee Debate \textit{ supra} at note 1133 at p. 23.
\end{itemize}
\end{footnotesize}
The Commissioner here boldly acknowledges his statutory role as Accounting Officer but also simultaneously refers to himself as “a target”. The Commissioner gave evidence for circa five hours before the PAC and perhaps his role as Accounting Officer was wearing very heavily with him at that point. It was towards the conclusion of his evidence that he made his most controversial remarks in response to a query from Deputy Shane Ross T.D. The Commissioner stated:

… We have two people out of a force of over 13,000 who are making extraordinary and serious allegations. There is not a whisper anywhere else from any other member of AGS however about this corruption, malpractice and other charges levelled against their fellow officers. Frankly on a personal level I think it is quite disgusting.\(^{1147}\)

The Commissioner’s “quite disgusting” remark created substantial controversy. Just over two months later Commissioner Callinan on the 25\(^{th}\) March 2014 retired unexpectedly from AGS. It is not known to what extent (if any) the controversy concerning his remarks to the PAC played a part in his departure from the organisation and it is not the purpose of this chapter to examine the details. These were subject \textit{inter alia} to an investigation by the Fennelly Commission of Inquiry set up by order of the Government on the 8\(^{th}\) April 2014 and were also part of the inquiries being carried out by Judge Peter Charlton at the Disclosures Tribunal \textit{(infra)} . The fact that the Garda Commissioner was so thoroughly and extensively questioned by a Dáil Committee on these matters is convincing evidence of what Garland says:

Agencies like the police … are now increasingly subject to State imposed standards and guidelines and are closely monitored and inspected to ensure that they comply. The long-term trends towards professional autonomy and the delegation of penal powers has been abruptly reversed and the State has begun to tighten its grip upon criminal justice agencies and employees.\(^{1148}\)

It should be noted that the Gardaí have been issuing Fines on the Spot notices for years. In the 1970s such notices (tickets) would have been issued for parking offences and for vehicles having no tax disc displayed on the vehicles. The Commissioner’s Report of 1970 gives the following details in respect of the Dublin Metropolitan Area.\(^{1149}\)

\(^{1147}\) \textit{Ibid} at p.24.  
\(^{1148}\) D. Garland \textit{supra} at note 2 at p.120.  
<table>
<thead>
<tr>
<th></th>
<th>1970</th>
<th>1969</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOS Issued Gardai</td>
<td>23,355</td>
<td>32,915</td>
</tr>
<tr>
<td>Wardens</td>
<td>152,587</td>
<td>131,481</td>
</tr>
<tr>
<td>Paid</td>
<td>97,838</td>
<td>99,392</td>
</tr>
<tr>
<td>Court</td>
<td>38,077</td>
<td>37,861</td>
</tr>
<tr>
<td>Cancelled</td>
<td>3,110</td>
<td>6,703</td>
</tr>
<tr>
<td>Other cases for Cancellation (viz statute barred, drivers untraced, summons not served, drivers out of jurisdiction)</td>
<td>27,788</td>
<td>16,925</td>
</tr>
<tr>
<td>Spoiled Notices</td>
<td>1,819</td>
<td>3,151</td>
</tr>
<tr>
<td>Pending Court Proceedings</td>
<td>7310</td>
<td>365</td>
</tr>
</tbody>
</table>

Table 5.3 Fine on the Spot Details for 1969 and 1970


<table>
<thead>
<tr>
<th></th>
<th>Parking</th>
<th>No Tax Displayed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gardai</td>
<td>133,517</td>
<td>38,859</td>
</tr>
<tr>
<td>Wardens</td>
<td>424,232</td>
<td>55,420</td>
</tr>
<tr>
<td>Total</td>
<td>557,749</td>
<td>94,270</td>
</tr>
<tr>
<td>Paid</td>
<td>218,317</td>
<td>19,694</td>
</tr>
<tr>
<td>Court</td>
<td>177,598</td>
<td>22,710</td>
</tr>
<tr>
<td>Cancelled</td>
<td>70,998</td>
<td>18,291</td>
</tr>
<tr>
<td>Pending</td>
<td>76,379</td>
<td>32,533</td>
</tr>
<tr>
<td>Spoiled</td>
<td>14,457</td>
<td>1,051</td>
</tr>
</tbody>
</table>

Table 5.4 Fine on the Spot Details Garda Commissioners Report 1982

In 1969, 1970 and 1982 that there were substantial cancellations in Fines on the Spot notices but there was no scandal or controversy. It is difficult to know why then Commissioner Callinan didn’t highlight these facts when interviewed before the P.A.C. At the very least these figures would have given some context to the recent F.C.P.S. controversy. Perhaps these figures over a forty-five-year period are indicative of what Niamh Horan states in an article in the Sunday Independent newspaper dated 30\textsuperscript{th} March 2014, “we’re all to blame for point mess in the ‘nod ‘n wink’ world. Bending the law would be our national sport as long as we’re given half a chance to do it.”\footnote{N. Horan, “We’re all to Blame for Points Mess in Nod ‘n Wink World” Sunday Independent, 20\textsuperscript{th} March 2014.} In the 1970s and 1980s Garda discretion in these matters was not likely to be challenged but things were now changing.

In the aftermath of the Comptroller and Auditor General’s Report of 2000 which criticised the Fines on the Spot system and on how the Garda managed it the Government set up the F.C.P.S.
system. The FCPS was given effect by the Road Traffic Act 2002 however it was the Road Traffic Acts 1961 – 2011 and ancillary regulations that essentially grounded the system. From the 31st July 2008 some public order offences can now be dealt with under the FCPS system i.e. simple drunkenness. AGS developed the FCPS to allow for the systematic computerized recording of offences including drink driving within certain alcohol limits that incur fixed charges under the legislation. The drink driving offences were included in FCPS under the Road Traffic Act 2010 which was given effect on the 27th October 2011. The legislation was further amended by the Road Traffic (Amendment) Act 2018 which provided for the disqualification from driving of persons paying a fixed charge penalty in respect of a drink driving offence. Such disqualifications were not provided for previously.

S.17 of the Road Traffic Act 2006 permitted the printing, posting and payment of FCPS notices to be outsourced. There were further amendments to the legislation in s.81 of the Road Traffic Act 2010 and this provides for the outsourcing of safety speed camera detections on behalf of AGS.

The legislation replaced the old “fine on the spot” system and improved matters in many ways in that more time was given to pay the fine and the later the payment the higher the fine. In addition, if the owner was not driving at the time of the offence he or she would now have to furnish the name and address of the driver. Also drink driving under certain blood/urine/alcohol limits was decriminalised if the fine was paid and penalty point accepted by the driver.

This penalty points system is administered by the National Roads Authority under the aegis of the Department of Transport, Tourism and Sport. It is submitted that this is a good example of the Gardaí outsourcing its previous functions and demonstrates that Government and Garda management’s policy “to maximize the practices that are most easily measured.”1152

It is contended that drink driving has never been far from the media’s headlines. The whole FCPS system and in particular the inclusion of drink driving into that system is supportive of Garland’s theory of a

“generalized cost consciousness in the allocation of criminal justice resources including investigative resources, court calendars … statutory fines, fixed penalties and de facto

1152 D. Garland supra at note 2 at p.189
decriminalization of minor offences ... all embody this tendency to conserve expensive crime control resources for the more serious offences and the more dangerous individuals.\textsuperscript{1153}

The FCPS system has freed up Garda time as Gardaí do not have to attend court if the fines are paid. AGS members could now be directed to more serious criminal matters. This would be in ease to what Garland refers to as Garda or police court “calendars”. Certain low alcohol-level drink driving detections and many other road traffic offences conclude in fines and penalty points and do not end in court with the result that there is no criminal conviction recorded against the person.

The FCPS is now the bedrock of Garda Road Traffic law enforcement within this jurisdiction and it is submitted the decisions made by Gardaí in how they enforce the system and cancelled notices created controversial problems for AGS afterwards and saw Commissioner Callinan before the Dáil Public Accounts Committee (PAC) as highlighted earlier. What happened here was that detections for road traffic offences were simplified which resulted in a massive increase in detection rates. This created problems at the other end of the prosecution system as Gardaí still had to serve a substantial number of summonses on non-compliant drivers which is very time consuming and in effect Gardaí could not keep up with their own detection rate. In 2018 in its report the Commission for the Future of Policing in Ireland would recommend that the Court Service take over service of summonses. The wide Garda discretion in the cancellation of notices has been eroded and strict guidelines are now in place to delimit such discretion. It is contended that all of what has been said in this section is compelling evidence of what Garland calls “the economic style of reasoning” and how it has “changed how criminal justice institutions control their staff and how they manage their internal actions.”\textsuperscript{1154}

Morris was critical of managerialism in AGS. When asked by Morris if there “was a distinction between a service provided by a voluntary company such as a computer firm selling a product of service and An Garda Síochána?” a Garda of much experience replied:

\begin{quote}
No. Well I see both as providing a service, in the sense that the Garda Síochána is now providing a service to the public. It is more generated in the last number of years towards a service industry and I don’t use that word lightly, but it is expected and the
\end{quote}

\textsuperscript{1153} D. Garland \textit{supra} at note 2 at p.19
\textsuperscript{1154} D. Garland \textit{supra} at note 2 at p.188.
people expect it because they are paying our wages and we are subject to the taxpayers’ good wishes that we provide a service and that it would be done to the best of our ability … we are the unitary police force in the State and therefore the people expect the Garda Síochána to do the job.\textsuperscript{1155}

This is the view and mindset of a member of AGS. However, Morris was having none of it when it held:

The Tribunal rejects this. This evidence expressed a view of the purpose and role of the police force in any modern State that is \textbf{not in any way tenable}. (emphasis added) Members of An Garda Síochána cannot be equated in any way with the service industry. In the history of the State many have died in the course of heroic efforts to enforce the law. They are vested with enormous powers and are obliged to account for these in a manner that preserves the integrity of the process of interaction through force with the people living in this country.\textsuperscript{1156}

Morris would investigate several policing matters that caused the AGS much turbulence. The issues that were inquired could be said to be a microcosm of many important Garda functions. What Morris investigated, and his findings would be clearly set out in a series of comprehensive reports over a four-year period between 2004 and 2008. The incidents that Morris would investigate go back essentially to 1993, the same year that managerialism would manifest itself in the AGS (\textit{infra}). Since the mid-1990s in terms of economy and efficiency AGS was being scrutinised like never before. The trend would continue.

\textbf{Managerialism – Strategic Planning}

Garland argues that:

\begin{quote}
Agencies like the police … that were once given statutory powers and responsibilities, an annual budget and a degree of freedom to get on with it, are now increasingly subject to state imposed standards and guidelines and are closely monitored and inspected to ensure they comply.\textsuperscript{1157}
\end{quote}


\textsuperscript{1156} \textit{Ibid} at para.13.107 at p.492.

\textsuperscript{1157} D. Garland \textit{supra} as at note 2 at p.120.
As stated before and as noted by McNiffe in 1997: “(i)nspections of guards and sergeants by superior officers was an integral part of the Garda Síochána organisation from the force’s inception in 1922.”¹¹⁵⁸ Officers carried out detailed inspections of entire stations. The station records were examined to ensure that they were regular and correct.

In modern times these inspections are still carried out by officers but because of the data recorded on PULSE much of the inspection (now called audits) can be carried out by each Superintendent and Chief Superintendent from their own offices before they arrive in a Garda station at all. The result is that senior Garda officers do not spend too much time visiting stations any more. PULSE is a significant instrument of Garda audit.

Notwithstanding the fact that these “audits” by senior officers are carried out, Morris was stingingly critical of AGS when it stated: “An Garda Síochána cannot be compared in industrial relations terms or in terms of its internal accounting to a business. It is not a commercial enterprise.”¹¹⁵⁹ The very strong emphasis now on the tracking of paperwork and ensuring that all enquiries are followed up is attributable to further criticism from Morris when it castigated Garda management when it stated “it is wrong to have in place a system whereby inspections by senior officers including the divisional commander and the regional commander do not involve scrutiny of paperwork.”¹¹⁶⁰ Traditionally inspections and audits carried out by senior officers focused on cash handling within stations and detection rates not to mention accommodation, equipment, transport, uniform and community issues.

The advent of Information Technology has facilitated accountability in AGS in the aftermath of Morris. Traditionally all correspondence arriving or emanating from each office was recorded in correspondence registers and given its own file number. This was effective from the point of view of recording if individual items of correspondence had arrived or had been sent but it was not effective in ensuring that it was responded to or replied to. There was no easy way of checking this. All correspondence registers are now computerised, and reminders are automatically flagged on the system highlighting if no reply has been received to any given item of communication. The system automatically prints out a reminder to be forwarded to the correspondent reminding them that a response is sought. Routine checks are carried out by

¹¹⁵⁹ F. Morris *supra* at note 815 at para 6.05 at p.262.
¹¹⁶⁰ F. Morris *supra* at note 1155 at para 13.09 at pp.455-456.
supervisors and management to ensure responses are received in time. The system also permits
checks to be carried out on the number of reminders sent in respect of any subject. Excessive
reminders and failing to respond to correspondence may lead to disciplinary sanction.

P.U.L.S.E. went live in AGS during late 1998 and has profoundly changed the organisation at
every level. It permits Gardaí to record details of everything they do and everyone they deal
with. It is a massive source of information and an important tool in the investigation of crime.
However, the process must be managed. At its inception it was heralded *inter alia* as a paper
reducing exercise.¹¹⁶¹ Not so. Gardaí will record a criminal incident on the PULSE system.
A paper investigation file will then be opened in respect of each one. If the crime has been
detected the file will be prepared in full and submitted to the Garda authorities, or where
appropriate, to the DPP for direction. Each investigation file will be given a file number from
the correspondence register. This must also be recorded on the PULSE system for cross
referencing and audit purposes. Meetings are held on regular basis in each Garda District
between local management and supervisors. Cases are tracked planned and discussed. There
is a large agenda at these meetings encapsulating all outstanding incidents requiring Garda
review or attention. Each agenda is easily generated from PULSE. Updates of these meetings
must then be recorded and dated on each individual crime record on the PULSE system. Where
the crime is not detected, then after witness statements have been taken and nothing evidential
has come from scenes of crime examination, the paperwork is filed with a PULSE reference
number and correspondence register number for audit and crime referencing purposes. The
investigating Gardaí in these cases must confirm that any CCTV available has been sought and
viewed if it exists and that a door to door canvass for witnesses has taken place. The file
number is recorded on the PULSE system also for cross referencing and audit purposes. The
Inspectorate in 2014 (*infra*) was critical of AGS for acquiring large amounts of statements in
cases where there was no likelihood of proceedings being taken further.¹¹⁶² As noted by Rose
“control workers whether they be police or psychiatrists thus have a new administrative
function – in the administration of marginalia ensuring community protection through the
identification of the riskiness of individuals.”¹¹⁶³

¹¹⁶³ N. Rose *supra* at note 1065 at p.333.
All Mandatory Alcohol Testing checkpoints are recorded on the PULSE system with details of detections if any in each case. The checkpoint is even recorded if it is not carried out, but a reason must be given on the PULSE system for its non-performance and it must then be marked “invalid”.\textsuperscript{1164} In 2017 AGS would be scandalised \textit{inter alia} on how it recorded these checkpoint on the PULSE system. (\textit{infra})

In recent times the organisation implemented a new way for accounting for property and exhibits coming into the possession of AGS. Traditionally these details were recorded in what was known as a ‘Property Book’ or a ‘Drugs Register’ if property concerned emanated from an illicit seizure of drugs. Property Exhibit Management Stores (PEMS) are in the process of being set up country wide. The PEMS system is a hugely effective instrument of accountability but much work is needed in setting up, managing and supervising the process. As things stand each PEMS store has its own computer system. Initially it was not linked to the PULSE system and there was much work involved to ensure that the PULSE property records and the PEMS record were \textit{ad idem}. This has now changed. Effectively when property arrives at the PEMS store it does so with a \textit{pro forma} paper record and bar code with its own individual reference number and the PEMS/PULSE systems are now easily reconcilable. Meanwhile a paper record remains on file at the PEMS store. Each transaction after that regarding the tracking of any movement of an individual item of property generates more paperwork again and further updating of computer records.

In a Garda Inspectorates Report dated the 1\textsuperscript{st} February 2012 styled “Responding to Sexual Abuse” it stated that when carrying out its audits of Garda Districts nationwide it found that it had no effortless way of auditing if AGS was effectively dealing with allegations of child abuse and making the necessary referrals to the HSE. What they found was filing cabinets full of investigative paperwork and record books in these matters but no easy way to cross reference or audit them to see that they had been properly concluded or could be cross referenced with HSE records. The PULSE system was changed to permit such an audit. HSE referrals now have their own separate category to facilitate audit and cross referencing. However, notwithstanding the improvements and enhancements on the PULSE system paper records are kept for everything.

\textsuperscript{1164} M. O'Sullivan, \textit{Checkpoint Examination. Examination of the Recording of Breath Tests at Mandatory Alcohol/Intoxicant Testing (MAT/MIT Checkpoints)} 11\textsuperscript{th} of August 2017 at pp.3-7 and pp.20-21
The PULSE system continues to evolve. In the writers view it provides a system for management and supervisors to ensure that all matters are followed up and investigated to a conclusion. However, the managing of the process is huge. Copious hard copy lists are printed off in every Garda District to ensure that every incident on PULSE is closed off in every detail. The role-outs, enhancements and modifications to the PULSE system continue and create a constant state of flux in managing the whole process. No sooner has one got to grips with the system as it is when a new enhancement brings with it more checking, monitoring and cross referencing. In 2018 in a Report from the Commission on the Future of Policing in Ireland it stated that “the current PULSE system dates from the 1990s. It is neither a crime investigation tool or a management tool. It is an incident recording system that has become too complex and slow and is proving difficult even in the functions for which it was originally designed.”

The PULSE system has not reduced the paperwork of the organisation. It is an effective instrument in monitoring that paperwork, but it doesn’t decrease it. It adds to it and runs parallel to it. As noted by the Inspectorates Report of 2014 (infra) there is “unnecessary duplication of PULSE reports with paper reports.” It is all about managing the process and managing risk. The risk being the failure of the organisation to follow up on something it should have followed up on to avoid embarrassing scandals for the organisation. It is also about the avoidance of blame and damage limitation. In the event of serious issues arising, the organisation itself and the people in it can protect themselves by highlighting the systems that were in place to prevent such failure. However, the system is only as good as the people who manage it, use it and supervise it. If sufficient suitable personnel are not in place to manage the system or supervise it, then it is inevitable that the problems that the PULSE system was intended to avoid will continue to occur. The PULSE system itself is subject to audit by the Data Protection Commissioner as highlighted by Fiona Gartland in the Irish Times on the 23rd February 2012 with an article headlined “Garda Pulse System Audit to go ahead.” The Data Commissioner has checked the Garda PULSE Information process for unlawful use of information contained on the system. There are strong statutory penalties for persons or organisations found in breach. The Audit uncovered some irregularities but nothing of substantial significance.

1167 F. Gartland, “Garda PULSE System Audits to go Ahead” The Irish Times (23rd February 2012).
It is submitted therefore that what Garland says is correct when he states:

Within specific agencies and organizations performance indicators and management measures have narrowed professional discretion and tightly regulated work practices. Across the system as a whole a new system of monitoring, information technology and financial auditing have extended centralized control over a process that was previously less well co-ordinated.\textsuperscript{1168}

The Garda process as described here is also evidence of what Rose asserts:

Risk classifications tend to become the means by which such professionals think, act and justify their actions. In that service the very gaze of the control professional and the nature of their encounter with their client, patient or suspect is liable to be formatted by the demands and objections of risk management.\textsuperscript{1169}

Risk management – the identification, assessment, elimination or reduction of the possibility of misfortune or loss – has thus become an integral part of the professional responsibility of a host of professions.\textsuperscript{1170}

Notwithstanding the lofty managerialist speak in the reports emanating from AGS in the 1990s and noughties serious shortcomings in Garda planning and managing serious investigations were exposed by Morris. In a report into the investigation into the death of Richard Barron Morris would say, “(t)he theory that Mr. Barron was murdered was never built of firm foundations. The six incriminating statements of ‘Mr. X’ had never been analysed … against existing statements of honest people.”\textsuperscript{1171} Gardaí in all investigations routinely cross-reference statements and the Incident Room is crucial for that purpose. It requires strict and proper management. Morris would hold that this broke down in Donegal. However more criticism of the organisation was to come, “(t)he failure to call in a forensic pathologist is completely inexplicable in the light of the burden of proof in criminal cases.”\textsuperscript{1172} The scene of all road fatalities should be closed off and forensically investigated. The Gardaí believed the death of Richard Barron was murder and the fact that a forensic doctor was not called in by the Gardaí “was indication of the most unbelievable incompetence on the part of the senior officer in the Donegal Division.”\textsuperscript{1173}

\textsuperscript{1168} D. Garland \textit{supra} at note 2 at p.18.
\textsuperscript{1169} N. Rose \textit{supra} at note 1065 at p.332.
\textsuperscript{1170} N. Rose \textit{supra} at note 1065 at p.333.
\textsuperscript{1171} F. Morris \textit{supra} at note 1118 at para 4.79 at p.357.
\textsuperscript{1172} F. Morris \textit{ibid} at para 4.81 at p.358.
Morris would also refer to the morale of Gardaí in the Donegal Division and laid the blame for poor morale with Garda management:

One should not lose sight of the disgraceful extent to which the morale of the Gardaí in the Donegal Division had fallen during and as a result of all this. One has an example of a Garda taping a conversation with his Chief Superintendent apparently for his own protection. It demonstrates in my view a collapse in the leadership qualities associated with an officer holding the rank of Chief Superintendent.\(^{1174}\)

There was more stinging criticism to come. “The situation in County Donegal was characterised by an almost indescribable breakdown in morale of senior officers who were at each other’s throats.”\(^{1175}\) The lack of impartiality of Gardaí was further an issue, “fault … has to be laid on the entire organisation of the Incident Room, its lack of objectivity, its chaotic nature and its hysterical determination to prove the culpability of suspects.”\(^{1176}\) The lack of impartiality is further evidenced in finding that, “the device as put on the mast by Sergeant (named) for the purpose of effecting arrests under Section 30 of the \textit{Offences Against the State Act 1939} in respect of an earlier arson attack. Either this was done by him or on his behalf.”\(^{1177}\)

Morris held that the Gardaí planted evidence to ground arrests and similarly criticised two Gardai who, “manipulated the procurement of false information … then furnished to the investigation team which grounded the search warrant on foot of which the house was searched.”\(^{1178}\)

Never has AGS been so strongly and disturbingly criticised in how it went about its work. Morris was concerned, “with potential for catastrophic injustice that arises when laws are flouted, protections abandoned and lies told by some Gardaí in pursuit of those whom they regard as guilty”\(^{1179}\) and was:

\(^{1174}\) F. Morris \textit{ibid} at para 1.76 at p.26.
\(^{1175}\) F. Morris \textit{ibid} at para 5.156 at p.426.
\(^{1176}\) F. Morris \textit{ibid} at para 6.25 at p.466.
\(^{1177}\) F. Morris \textit{supra} at note 138 at p.50.
\(^{1178}\) F. Morris, \textit{Report of the Tribunal of Inquiry set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division: Report on the Detention of ‘Suspects’ following the death of the Late Richard Barron on the 14\textsuperscript{th} October 1996 and Related Detentions and Issue. Terms of Reference (b), (d) and (f).} Volume 2 at pp.957-958. [hereinafter Morris]
\(^{1179}\) F. Morris, \textit{Report of the Tribunal of Inquiry set up Pursuant to the Tribunal of Inquiry (Evidence) Acts 1921-2002 into Certain Gardaí in the Donegal Division: Report on the Detention of ‘Suspects’ following the death of the Late Richard Barron on the 14\textsuperscript{th} October 1996 and Related Detentions and Issue. Terms of Reference (b), (d) and (f).} Volume 1 at para 1.89 at p.40. [hereinafter Morris].
Staggered by the amount of indiscipline and insubordination it has found in the Garda force. There is a small but disproportionately influential core of mischief making members who will not obey orders, who will not follow procedures, who will not tell the truth and who have no respect for their officers.  

Morris was unsparing but AGS would respond in the language of managerialism. It is being submitted that what Morris found was very much at variance with what was being presented in the Garda’s own managerialist reports. Conway in 2010 would state that “Justice Morris told Ireland what was wrong with the police force, but Ireland has failed to listen.” AGS would disagree and would point inter alia to the following changes:

i) HETAC accredited Batchelor of Art Programme in Police Management for Senior Officers

ii) Officers going on transfer or promotion have been told that it is now policy that such transfer “may require permanent relocation to other areas.”

iii) A civilian has been appointed head of the Internal Audit Section.

iv) Each Assistant Commissioner is now “prime managerial strategist for his/her domain of responsibility.”

v) Regular meetings between managers are now held at District, Divisional and at Regional level.

AGS would also state that “street level policing will benefit from the cascading of external professional assistance at Headquarters” and that developments at a strategic level “will result in a cascading of new and improved processes to the Tactical Operation level within the Garda Síochána.” AGS would also say that Information and Communications Technology “skill,” “competences and abilities” need to be developed to deliver “the conceptual architecture, hardware and software platforms and technical support to service customer needs and expectations …” Indeed, AGS would also need to build, “Professional H.R. capacity

---

1180 F. Morris supra at note 815 at para. 6.09 at p.264.
1181 V. Conway supra at note 1070 at p.186.
1183 Ibid at p.22.
1184 Ibid at p.22.
1185 Ibid at p.21.
1186 Ibid at p.21.
1187 Ibid at p.21.
incorporating core H.R. competencies and business processes to serve the operational policing organisation."\textsuperscript{1188} AGS would also advise that, “(r)eports 3, 4 and 5 of the Morris Tribunal have been reviewed and synopsised. The main issues raised in the three reports have been distilled into the following core themes …”\textsuperscript{1189}

In the aftermath of Morris AGS continues to embrace managerialism and the language of the corporate world in its planning notwithstanding that Morris emphatically rejects same as having place in AGS. Morris would say:

An Garda Síochána cannot be compared in industrial relations terms or in terms of internal accounting as a business \textsuperscript{1190}… (Policing) is a serious business. It is not a matter in which industrial relations chaos can be brought without potentially affecting everyone in Ireland.\textsuperscript{1191}

While Morris was one of the most stinging indictments of Garda management since the foundation of AGS, its management would continue to be rocked by other scandals since the time of Morris. Many them are dealt with in other chapters but there is one incident that occurred at or around the same time frame of the incidents that were examined by Morris but not connected to that Inquiry. In Abbeylara\textsuperscript{1192} Mr. Justice Barr would castigate Garda management and planning. He held that two senior Garda Officers “as scene commanders had primary responsibility for the circumstances which led to Mr. John Carthy’s death.”\textsuperscript{1193} Carthy had been involved in an armed stand-off with Gardaí. This was a damning finding at the time, but the officers concerned might now take some consolation in that their efforts ensured that nobody else was killed or injured. It is submitted that what the police faced in Newtown, Connecticut, U.S.A. on the 14\textsuperscript{th} December 2012 and Las Vegas on the 1\textsuperscript{st} October 2017 would later give some context text to what occurred in Abbeylara. A total of 28 people were killed in Connecticut while 58 were slaughtered in Las Vegas. In both cases a single gunman carried the

\begin{flushleft}
\textsuperscript{1188} \textit{Ibid} at p.21.
\textsuperscript{1189} \textit{Ibid} at p.27.
\textsuperscript{1190} F. Morris \textit{supra} at note 815 at para. 6.05 at p.262.
\textsuperscript{1191} \textit{Ibid} at para 6.07 at p.263.
\textsuperscript{1192} J. Barr, \textit{Report of the Tribunal of Inquiry into the Facts and Circumstances Surrounding the Fatal Shooting of John Carthy at Abbeylara, Co. Longford on the 20\textsuperscript{th} April 2000} (Government Publications Office, 2006) at Chapter 8, Section K at para (c). \textit{[hereinafter Abbeylara].}
\textsuperscript{1193} \textit{Ibid}.
\end{flushleft}
shootings If *Abbeylara* were to occur now, it is suggested the criticism of Garda action might not be as harsh.

The Garda “managerialist ethos” in its strategic planning goes back to the Strategic Management Initiative (SMI)\(^{1194}\) which emanated from a Government Report styled “*Delivering Better Government* (1996).”\(^{1195}\) It was stated that the “culture of the Garda Síochána needs to change from a command and control style to a more consultative management style. Middle and senior management should be visible and accessible to all ranks and members should be given feedback on performance including praise for a job well done.”\(^{1196}\) Some ten years later Morris would reject this view and declared “(m)embers of An Garda Síochána cannot be equated in any way with the service industry.”\(^{1197}\) As mentioned earlier but more specifically here the SMI also introduced a human resource allocation model known as the Garda Establishment Redistribution Model (G.E.R.M.).\(^{1198}\) This model sought answers to four questions:

1) What do the Gardaí do?
2) How much do they do?
3) How much time do they spend doing what they do?
4) How many Gardaí should be doing it?

The SMI Management project team set out to get answers to these questions and identified in excess of two thousand tasks that the Gardaí perform. The project team used what was called “datawand” technology among a sample number of personnel to establish “some indication of how much time Gardaí spent on the identified tasks. Gardaí using the “datawand” could record the time spent on each activity when it was swiped across the relevant barcode.\(^{1199}\)

Contrast for a moment the words of Regan who accompanied Gardaí for a number of weeks in the mid-1990s while researching his book. He states: -

\(^{1194}\) An Garda Síochána Strategic Management Initiative Booklet
\(^{1196}\) An Garda Síochána Strategic Management Initiative Booklet at p.7.
\(^{1197}\) F. Morris *supra* at note 1155 at para 13.107 at p.492.
\(^{1198}\) An Garda Síochána Strategic Management Initiative Booklet at pp.15-20.
\(^{1199}\) *Ibid* at p.17.
The police are called in when a situation gets ugly and unmanageable. They are not around to see the build-up. There is no time to prepare. The radio gives out the command and in they go dropped into the centre of chaos armed with only their wits and a piece of wood. Violence for some is an everyday thing, a way of life, a way of expressing themselves and when it erupts we expect the Gardaí to get in there and sort it out. The Garda has to understand the language of violence and be eloquent in its use. This is what we ask of them.1200

These words give context to the SMI project and “datawand” technology. The team was endeavouring to pigeonhole Garda tasks that do not lend themselves easily to such labelling. It is submitted that the very fact that “the team identified in excess of two thousand such tasks” supports this.1201 Any occupation that can perform in excess of two thousand tasks cannot ever lend itself fully or comfortably to the reasoning of economics, managerialism and the factors of production. The final report of the Committee when it was issued in 2003 was given anything but an enthusiastic endorsement by members of the Garda representative bodies of all ranks who were part of the committee.1202

It is submitted that what the SMI report tried to achieve is similar to what Garland says occurred to “criminal justice agencies in the U.S.A. and U.K.”1203 from the mid-1980s. He called it “this systemization of criminal justice.”1204 He argues that “a different way of approaching problems has emerged, a style that might be described as economic rather than social. This way of thinking has shaped how criminal justice practitioners make decisions, how they allocate resources and how they deploy their powers.”1205 In the end the G.E.R.M. model as it was known was embraced by AGS and became the guide to Garda management in the equitable allocation of personnel between districts.1206

The Inspectorate some two decades later in 2014 would make further pejorative findings of Garda management regarding the allocation of personnel within the organization i.e. G.E.R.M. model. It has this to say:

1200 N. Regan, *Taken Down in Evidence: Ireland from the Back Seat of a Patrol Car* (Dublin: Gill and MacMillan 1995) at p.11. [hereinafter Regan]
1201 An Garda Síochána Strategic Management Initiative Booklet at p.16.
1204 D. Garland *supra* at note 2 at p.115.
1205 D. Garland *supra* at note 2 at p.188.
1206 An Garda Síochána Strategic Management Initiative Booklet at p.15.
During the inspection process the Inspectorate did not meet any senior Garda who was able to explain the rationale behind the numbers of people in particular divisions or in national units and could not recall when the allocation of resources was last reviewed.\textsuperscript{1207}

The Garda Síochána has a model called G.E.R.M. (Garda Establishment Reserve Model) created in 1999 for allocating Garda resources but it has been a considerable period of time since this model redistributed staff.\textsuperscript{1208}

So, the benchmark by which Garda management allocated staff and resources was not known by the managers themselves. Waddington’s words as highlighted previously about “bright ideas are implemented without any systematic evaluation at all or if evaluated are doomed to success because senior officers cannot be seen to have erred”\textsuperscript{1209} come to mind.

In the writer’s view the work of AGS was hampered by the lack of supervisors between circa 2010 and 2016. Garda Districts have a serious lack of supervisors of Sergeant rank. The Inspectorate has highlighted this in its 2014 report.\textsuperscript{1210} Every shift needs its individual supervisors. Members of all ages need supervision and instruction in good practice. There were many units without supervisors and heavily tasked supervisors on other units covering the unsupervised unit notwithstanding that they do not work the same hours of work at them. In 2018 the situation is being remedied with substantial promotions to supervisory rank. The Gardaí are subject to the discipline regulations, the criminal law, civil law and judicial review. They are subject to investigation by the Garda authorities and G.S.O.C. and subject to audit by Professional Standards Unit (P.S.U) and the Headquarter based Garda Internal Audit Section (G.I.A.S.) – the organisation’s own internal audit group. It is contended that it is wrong that Gardaí are vulnerable to discipline and investigation when they are not allocated supervisors to supervise them and it is particularly wrong to have overburdened supervisors being over-tasked with supervision to the extent that they just cannot watch or be there for everything. It is submitted that the S.M.I and the G.E.R.M model are examples of what was argued by Golding and Savage:

\begin{quote}
(p)olice management is premised on an assumption now taken largely for granted that policing can be ‘managed’ as such. This is not a straight forward assumption as it made
\end{quote}

\begin{itemize}
\item[\textsuperscript{1208}] Ibid.
\item[\textsuperscript{1209}] P.A.J. Waddington supra at note 122 at p.226.
\end{itemize}
clear; some scholars have questioned whether management principles and processes which apply to other organisations private and public can ever apply to the specific world of the police organization.\textsuperscript{1211}

Waddington in particular has articulated this thesis by arguing that ‘management by objectives’ involving a cycle of objective setting plans to achieve objectives and assessments and review of outcomes in terms of performance is a model which cannot realistically apply in a policing context.\textsuperscript{1212}

Why? Policing is reactive rather than pursuing goals.\textsuperscript{1213}

These remarks are supported by Reiner who argues that “what the police are is as important as what the police do – and as such policing cannot be reduced to the execution of measurable tasks as performance measurements as management appears to assume.”\textsuperscript{1214} The Inspectorate’s report dealt solely with how the Garda management investigated crime, but the same difficulties manifest themselves in other areas of work. In the AGS Policing Plan of 2015 makes reference to Section 22 of Garda Síochána Act 2005. This piece of legislation sets out that the Commissioner must include in its Plan any station closures or openings that are to take place in following year. When the Gardaí closed one hundred stations in response to Minister Shatter’s order to rationalise in 2012 the Gardai closed Kilmihil Garda Station in Co. Clare on the 31st January,2013 and moved its staff to Lisseycasey Garda Station. Kilmihil Station is a new purpose-built Garda Station but nevertheless it was closed. The AGS 2015 Policing Plan now announces that staff are being reallocated from Lisseycasey to the purpose built Kilmihil Garda Station because the OPW has declared that it will not be renewing the 99-year lease on Lisseycasey Garda Station when it expires in 2016.

It contended that on the face it difficult to comprehend the initial decision to close Kilmihil Garda Station. PULSE was meant to be an instrument that grounded Garda planning. Instead the management of PULSE became a burden that distracted from that purpose. Morris would find the practices of the corporate world should have no place in policing, but these practices continue to permeate AGS and Garda managers continue to struggle to equate budgets with strategic plans and coping with the unexpected.

\textsuperscript{1212}Ibid.
\textsuperscript{1213}Ibid.
Managerialism – Resources

The greatest resource of AGS is its members. Garda management’s greatest responsibility is not only how it manages them but how it treats them, when they highlight problems, particularly in relation to resourcing. A Deputy Garda Commissioner who gave evidence at Morris stated afterwards in 2008 that Morris “created an awakening that the 21st century required a new paradigm for the Garda Síochána: that is policing to accountability.” Cormac O’Keeffe in the Irish Examiner on the 6th July 2012, some four years later in an article headlined “Garda members issued with gag order over station closures” cited an internal Garda H.Q. Directive as follows:

(m)embers of An Garda Síochána are forbidden to communicate either directly or through some other person with any public representative or other person with the objective of lobbying or otherwise attempting to influence any future decision of the Commissioner without his express authority on the matter.1216

The Commissioner’s decisions regarding station closures and district realignments were publicly released only five months later in the Policing Plan for 2013. So, what were the grounds for the so called “gagging order”? The Commissioner’s directive is at least inconsistent with the earlier words “policing to accountability”1217 and in the end, this matter was only an efficiency/management/resourcing issue and not human rights one, but Garda managers have always been sensitive to criticism on how they manage resources.

On the 24th November 2013 an editorial in the Sunday Independent criticised the management of AGS for “the mentality of the barrack room”1218 when they moved to discipline Detective Garda over his appearance on the popular T.V. drama “Love Hate”. Garda bosses were concerned about what this detective Garda was doing in his spare time. He was type cast playing a detective Garda in the T.V drama who did not hold his on screen Garda manager in high regard.

1216 C. O’Keeffe, “Garda Members Issued with Gag Orders over Station Closures” Irish Examiner (6th July 2012).
1217 T.P. Fitzgerald supra at note 1215 at p.4.
In a front-page headline in *The Examiner* on the 20th April 2015 the “gagging” word appeared again. The headline went “Gardai call for end to political gagging.”

In an article again by Cormac O’Keeffe it was reported that rank and file Gardai “have called on Garda management to open up to the public so it can see the force is not a secretive or suppressive organisation”. The article reported the Garda Representative Association as stating that the Garda Press Office is “often restricted when the force came under scrutiny but laid the blame on Garda bosses: (t)his is the responsibility of our leadership to explain the situation as it happens in a timely and responsible manner. ‘The organisation cannot look for permission to speak from a political master. As it stands too many careers are dependent upon political interference.’”

The *Irish Examiner*’s editorial of the same date supports the G.R.A.’s view:

> This is the kind of initiative that could if done openly and honestly, rebuild the Forces’ image and undo the damage caused by the former justice Minister Michael McDowell’s gagging legislation, legislation that has deeply damaged the relationship between the public, the media and this society’s understanding of the daily challenges faced by its police force.

The Guerin Report contains criticism and examples of the intransigence of Garda management. Garda Whistle-blowers had made allegations concerning the deficiencies of accommodation and resources at Bailieboro Garda Station, Co. Cavan. A Garda Inspector (referred to as Inspector Delta) in a minute to Garda management in respect of the accommodation issue stated, “(t)he station clearly reflects the ambivalence of transient District Officers over a protected period.”

Guerin commented that “the deficiencies in the accommodation and resourcing at Bailieboro were widely recognised” but what

causes concern in relation to this particular incident is whether it is reflective of the way in which criticism of Garda management was handled within the Force. Inspector Delta was effectively saying that a particular problem was not being dealt with because no one served long enough as District Officer to be committed to solving it. That is an implicit criticism of policing and practice of allocating newly appointed

---


1221 An Garda Síochána Strategic Management Initiative Booklet.

Superintendents to Bailieboro for short periods of time … At the time Inspector Delta had served as Inspector within the Division for more than ten years. It would be a matter for concern that a critical voice of an experienced officer would be silenced; it would be a matter of altogether greater concern if an effort were made to pretend that he had never spoken.\endnote{1223}

In the same report Guerin was also critical of Garda management for the routine preference for the evidence of senior officers in respect of whom complaints had been made and that “conclusions were arrived at as a result of the investigative process without there ever being a thorough and searching test of the evidence.”\endnote{1224}

Two senior officers initially investigated the complaints made by Sergeant McCabe. Their report was referred to in the Guerin Report as the Byrne/McGinn report. Later Deputy Commissioner Rice carried out a review of this report. Guerin had this to say:

Commissioner Rice expressed the view that the Byrne/McGinn investigation was professional, impartial and carried out properly. He was satisfied in respect of the investigation … that all matters were fully enquired into. Given the various outstanding issues identified during my review I cannot share the view that all matters were fully enquired into. Having regard to the apparent failure to give Sergeant McCabe an opportunity to comment on evidence and the answers of superior officers were accepted without ever testing them too rigorously against other available evidence or given Sergeant McCabe an opportunity to respond to them. I cannot share the generally approving conclusions of Deputy Commissioner Rice’s review.\endnote{1225}

Higher ranking Gardaí in this instant did not appear to give a low-ranking member the facility of due process in the investigation of his complaints.

Guerin goes on to say:

The overall impression given by the internal Garda investigation process was that complaints of matters of concern were put through a process of filtration and distillation so that by the end of the process any matter of concern had been removed as a form of impurity and only what was good was found to remain.\endnote{1226}

\begin{footnotes}
\item[1223] Ibid.
\item[1224] Ibid at p.290.
\item[1225] Ibid at pp.290-291.
\item[1226] Ibid at p.292.
\end{footnotes}
It is submitted that Waddington might agree when he said that “(t)he punishment centered bureaucracy operates to ensure that any responsibility for wrongdoing remains with the lower echelons and rarely implicates their superiors.”

Notwithstanding that Garda management had embraced managerialism since the mid 1990’s and had trumpeted its merits and advantages to the organisation in its internal *Communiqué* magazine for the years the Garda Inspectorates investigation into how Gardaí manage crime and its subsequent report would view things differently.

In the foreword of the report it said:

> The Inspectorate has found a police service in critical need of modernisation of its crime investigation, operational and support infrastructure. The absence of up to date technology and date of inefficient investigative processes and policies combined with internal audit controls inconsistent with case management and poor supervisory practices had led to the systematic operating deficiencies identified in this and other recent government-initiated reports. As a result, potentially, hundreds of thousands of Garda staff hours and resources which should be spent on front line policing are currently allocated to those inefficient processes.

This is straight forward language. There is no mention here of “strategic goals”, “mission statements”, “performance indicators” or “corporate strategies”. The Inspectorate went on: “(t)he Inspectorate had identified several deficiencies in recording practices. The veracity of crime recording in Ireland would have to be addressed.” The *Communiqué* Journal is no longer being published by the organisation.

The Inspectorate made a series of other negative findings which would make difficult reading for a proud organization.

---

1227 P.A.J. Waddington *supra* at note 122 at p.231.
1229 *Ibid* at Foreword at p.2.
• Unnecessary bureaucracy with the organisation and significant numbers of Gardaí in non-operational roles performing administrative functions and there were imbalances in the number of members across districts.\textsuperscript{1230}

• Control Rooms outside the Dublin Metropolitan Region sometimes operate below minimum staff levels.\textsuperscript{1231}

• Large amounts of statements taken in cases where there is no prospect of a prosecution taking place.\textsuperscript{1232}

• Lack of availability of Patrol Sergeants and Inspectors to supervise members in the investigation of crime.\textsuperscript{1233}

• Reception areas of certain Garda Stations are unsuitable for discussing matters of a sensitive nature.\textsuperscript{1234}

• Limited evidence of supervisors checking PULSE incidents to ensure correct recording of crime.\textsuperscript{1235}

• Unnecessary duplication of PULSE records with paper records.\textsuperscript{1236}

It is submitted all these issues are basic policing and organisational matters. The criticism in the report is extensive. It submitted that it would be difficult to reconcile the Inspectorate’s criticism of the organisation with the glossy documents and colourful language, policing plans, reports and mission statements that have emanated from Garda Headquarters over the last 20 years. In 2018 a report of the Commission of the Future of Policing in Ireland stated that AGS “needs to take better care of its employees.”\textsuperscript{1237} It went on to state that AGS “should foster and environment of psychological safety where people feel empowered to speak up and share ideas.\textsuperscript{1238} … personnel at all levels, sworn and non-sworn, should be encouraged to speak up, share ideas, challenge current orthodoxies and develop new initiatives.”\textsuperscript{1239}

\textsuperscript{1230} \textit{Ibid} at Part 2 p.4.
\textsuperscript{1231} \textit{Ibid} at Part 3 p.7.
\textsuperscript{1232} \textit{Ibid} at Part 3 p.8.
\textsuperscript{1233} \textit{Ibid} at Part 3 p.8.
\textsuperscript{1234} \textit{Ibid} at Part 3 p.8.
\textsuperscript{1235} \textit{Ibid} at Part 4 p.10.
\textsuperscript{1236} \textit{Ibid} at Part 4 p.10.
\textsuperscript{1237} Report of the Commission of the Future of Policing in Ireland \textit{supra} at note 1165 at p.xiv at para.22. [hereinafter C.F.P.I.].
\textsuperscript{1238} \textit{Ibid}.
\textsuperscript{1239} \textit{Ibid} at p.xv at para 26.
Managerialism - Staffing

Traditionally, in the writer’s experience Garda Superintendents had a strong autonomy in how they progress serious investigations. When a serious crime occurred within a Superintendent’s district it was essentially a case that he/she adopted an ‘all hands-on-deck approach’. Teams were set up to prepare house to house questionnaires, others to make door to door enquiries, Plain Clothes personnel were tasked with the more sensitive enquiries. An incident room was set up and properly staffed. The Superintendent it is submitted did not have to be overly conscious of the cost of his/her investigation because a serious crime had to be fully investigated and solved. The Superintendent had no devolved budget and the Commissioner was not the Accounting Officer. As noted by Garland “there has never been a time when police … did not complain that their budgets were inadequate” but today Garland argues that “the practices of crime control and criminal justice are required to talk the economic language of ‘cost benefit’, ‘best value’ and ‘fiscal responsibility’”. The Superintendent who is first and foremost a police officer must now think of his/her budget. He/She must think of the rosters of his/her staff that is, who is working, when they are working and when they are off duty. Enquiries and follow up investigations might be assigned to members who are working but not necessarily the most accomplished or experienced investigators. It is difficult to determine therefore how this might impact on an investigation or what serious matters remain unsolved because of this practice. Sometimes judgment calls are made which leave experienced investigators at home on their days off while less experienced personnel carry out sensitive enquiries. All this because the Superintendents are very mindful not to exhaust their budget. If he/she does so, it could adversely affect the way other events are policed in his/her district for the remainder of the year and additional resources may have to sought.

It is submitted that it is difficult to know if a Superintendent’s distraction with the budget affects an outcome of a criminal investigation. In such cases it is a lonely role and if there are shortcomings highlighted in the investigation afterwards the Superintendent is likely to pay an adverse price with his/her career and standing possibly compromised or seriously damaged. He/She may even face a tribunal of inquiry, a civil action or a G.S.O.C. investigation leading to disciplinary or criminal charges.

1240 D. Garland supra at note 2 at p.188.
1241 Ibid.
A Superintendent’s budget also plays a huge role in how cases are prosecuted in court. Over the decades individual Gardaí attended court as witnesses to prosecute their case. Nowadays a case will rarely go ahead on its first appearance in court. Solicitors acting on behalf of defendants will normally apply for the prosecution paperwork in each case and evaluate same. On its first appearance in court a case will be adjourned for approximately one month to enable solicitors to advise their clients. On the second occasion in court there will either be a plea of guilty or a date will be fixed for the hearing of the case, if no such plea is forthcoming. If such a hearing date is fixed this will almost certainly be on a date when the Garda witnesses are rostered to work to avoid the payment of overtime. As stated by the Commissioner in his evidence to the PAC “Going to court is an expensive item. There are huge expenses and factors involved.” This distillation of cases means that a prosecuting Garda may never have to attend court with substantial savings to the taxpayer. However, the loss of court experience to investigating Gardaí is incalculable.

The State makes further savings in the Circuit Court in respect of appeals from the District Court. In the past, all investigating Gardaí would attend the Appeals Court and give evidence of the facts of their respective cases whether contested or not. Today in general, a Sergeant is tasked with briefing himself/herself on all cases before the Appeal Court so that s/he gives evidence in each case where only the severity of the sentence handed down in the District Court is in issue. Again, there is a substantial savings to the taxpayer in these instances. However, there is an element of false economy as Gardaí lose out on valuable court experience and no matter how well the presenting Sergeant prepares himself/herself he/she will not know as much about the case or the accused as the detecting members themselves. A valuable or helpful nugget of information could go astray which otherwise might have led the court to a different outcome. Sergeants who are tasked with this duty can have a large volume of cases and must do justice to each one. Any shortcomings in his/her information to the Court can have dire consequences. As highlighted by Michael Clifford in the Irish Examiner on the 15th April 2014 in a high-profile case there was a “failure by Gardaí to inform the Court” that the person charged before it “was already on bail.” This resulted in the suspect been released again on

\[1242\] Dáil Public Accounts Committee Debate supra at note 1133 at p.16.
bail. Shortly afterwards he murdered a separate victim.\textsuperscript{1243} The matter was part of the terms of reference of the recent Guerin Report.

Historically Superintendents and Inspectors normally prosecuted cases in the District Court. In Dublin a Presenting Sergeant presents the case if there is a plea of guilty, otherwise the case is dealt with by a Superintendent or Inspector. What is known as a Court Presenters allowance is payable to the Sergeant who performs this duty on a full-time basis. It is an effective and serious cost saving measure which the organisation would like to extend countrywide.

Due to the volumes of drugs exhibits being forwarded to the Forensic Science Laboratory in Dublin, several Gardaí in each district were trained to carry out preliminary tests on such exhibits to establish if they are of the genus cannabis. The trained Gardaí then submitted a statement of evidence in respect of his/her own examination for each court/investigation file. If there was a plea of guilty then there was no difficulty but if the accused chooses to contest the matter, then the Forensic Laboratory analysed the exhibit for court. This is simply another example of how AGS endeavours to cut court costs and reduce the workload of the staff at the Forensic Science Laboratory.

As contended by Garland:

\textit{(r)ecently however a different way of approaching problems has emerged, a style that might be described as ‘economic’ rather than ‘social’. This way of thinking has shaped how criminal justice practitioners made decisions, how they allocate resources and how they deploy their powers.}\textsuperscript{1244}

The Inspectorate states that in other jurisdictions serious crime is investigated by detectives and specialist units. In response to this criticism AGS now assigns a Detective Garda to every crime reported notwithstanding the member who first attends the scene.\textsuperscript{1245} The Inspectorate found in some rural areas the allocations of members investigating crime might be determined

\textsuperscript{1243} M. Clifford, “Victim: Whistleblower Inquiry a Whitewash.” \textit{Irish Examiner} at \url{www.irishexaminer.com/ireland/victim} - whistleblowerinquiry. (date accessed 23\textsuperscript{rd} May 2014 at 9.45 p.m.).

\textsuperscript{1244} D. Garland \textit{supra} at note 2 at p.188.

by who is available rather than who has the skills available to investigate a serious crime.”

This goes back to the Superintendent’s budget which was highlighted earlier in this chapter. The report also highlighted “a disconnect between what senior officers thought detectives investigate and what they do in practice” and that only 25% of available training time was spent on operational policy and criminal investigation.

The issue of frontline supervision was raised with the Inspectorate during its visits to selected stations by members of AGS. The Inspectorate noted that, “prior to the implementation of the new Garda roster some regular units were already operating without a Sergeant on each unit. The introducing of the roster has further reduced the presence of Sergeants in front line operation roles.”

The Inspectorate later went on:

Throughout the inspection operational problems with rosters featured in every visit. The impact of “one size fits all” roster is having a serious impact on policing in Ireland.

No additional staffing was allocated to create this fifth unit and personnel had to be found from other units.

The new roster does not meet the demands of policing.

Perhaps some explanation is necessary. Since the Conroy Report in 1970 where recommendations revolutionised pay and conditions in AGS a new roster was put in place. The Guards would now have certainty regarding hours, shifts and rest days over a 4-week period which would repeat itself every 4 weeks. Prior to this Gardaí worked at the whim of the organisation with very little time off and there was no such thing as overtime. The new system was known as the ‘three relief system’. The three shifts of eight hours every day from 6 a.m. to 2 p.m. (Early Tour), 2 p.m. to 10 p.m. (Late Tour) and 10 p.m. to 6 a.m. (Night Tour). While three Garda units covered each 24-hour period and fourth unit was on ‘rest days.’

---

The new Garda roster introduced in 2012 was agreed by Garda management and the Garda Staff Associations. It is argued that it was an ill-conceived but well-meaning effort which was grounded in an E.U. Directive to allow 11 hours rest periods for workers between shifts. AGS could have sought a derogation from the E.U. Directive but chose not to do so. All concerned thought that they could do better than the long standing and very effective three relief system. Garda management thought the new roster to be in ease to their budgets while Garda Staff Associations liked the 6 ten-hour days on duty followed by 4 rest days. To make the new roster work needed a fifth unit. No additional resources were available to make the fifth unit (shift) so the fifth unit was staffed by depleting the existing four units. The five-unit system allows for some overlap of personnel between two shifts of ten hours, but it is not working. In 2018 the Commission on the Future of Policing in Ireland noted that “virtually every member of the police that we have consulted has complained to us that the roster is neither fit for purpose nor good for the well-being of police members. It is long past the time when this problem should have been resolved.”1252 It should be sorted out immediately. As asserted by Waddington, repeatedly well-intentioned programmes are implemented inadequately with the result that they fail or have perverse effect. Programmes are introduced without clear aims or any definite plan for implementation. In the Notting Hill sector policing trial evaluations came to the conclusion that senior management was beguiled by the various ‘management speak’ that surrounded the scheme - a triumph of appearance over substance … but many ‘bright ideas’ are implemented without any systematic evaluation at all or if evaluated they are doomed to ‘succeed’ because senior officers cannot be seen to have erred.1253

It is submitted that Waddington’s words are an example of management’s implementation of the new Garda roster. In the writer’s view it is difficult to understand how a five-unit system could be preferred to the long standing four-unit system with no increase in personnel or supervision. The roster was established at a time when there was no recruitment into the organisation and little promotion of supervisors.

In the early noughties in the noble effort to bring down road deaths the Gardaí pursued a policy to increase road traffic detection rates. It became known as Operation Lifesaver. Extra speed

1253 P.A.J. Waddington supra at note 122 at p.226.
traps and checkpoints were set up across the country. New Garda Traffic Corps Units were set up throughout the jurisdiction and where such units already existed their staffing levels were increased. Gardaí and Sergeants were taken from regular policing units and were seconded to Garda Traffic Corps Units. The regular policing units who are responsible for keeping stations open to the public and keeping patrol cars on the road, the implementation of the Custody Regulations and having a beat patrol in towns and villages were reduced and their numbers were not replaced. The Traffic Corps was to be and is solely an enforcement unit. They perform checkpoints, speed checks, issue FCPS notices and enforce drink driving laws. Traditionally in the writer’s experience members of the Traffic Corps had more senior status in terms of years and service and had a good knowledge of Irish and E.U. Law Directives pertaining to vehicles and large articulated vehicles. The new Traffic Corps were younger and had no such experience and training. As the Garda Inspectorate would find (infra) there was little, or no training given to members regarding the FCPS system. For the most part they were given FCPS notice books and directed to issue notices.

The Garda Inspectorate in their examination in 2014 would also highlight a number of issues including:

- In more rural areas, the allocation of a serious crime might be determined by who is available, rather than who has the skills or experience to investigate a particular crime;
- Responsibilities of traffic units must include investigating collisions, crime prevention and crime investigation;
- Community Gardaí should be allocated for crimes to investigate;
- With the introduction of the pilot roster some pro-active specialist units were disbanded or reduced in numbers, whilst administration units maintained many Gardaí that could be redeployed to operational duties;
- Administrative posts should also be reduced first to maintain patrol numbers delivering police services.\(^{1254}\)

On a regular policing unit Gardaí are exposed to all types of investigations. Any type of crime can be reported to a Garda when on station, patrol car and beat duties. If a crime is reported to

them then they must follow it up. Ideally a supervisor and Detective Branch member will assist them in that regard. Although the Guerin Report (infra) and the Inspectorate Report (supra) were critical of Garda management in that regard. In addition, Gardaí on a regular unit were routinely exposed to the implementation of the Custody Regulations which is one of their most important statutory and human rights functions. It is submitted that all this experience is lost or blunted even after a short secondment to the Traffic Corps not to mention a full time one.

The Inspectorate was critical of the Traffic Corps and stated that “the responsibility of Traffic Units must include the investigation of collisions, crime prevention and crime investigation” (supra). It is submitted that maintaining the Traffic Corps as solely an enforcement unit has created problems within the organisation. What Waddington says is known as “figures” or “activity” in the UK is known here as a “return of work”. The FCPS system makes detections for the Traffic Corps very straightforward. The Traffic Corps members just issue the notice, send a copy electronically or by hard copy to the FCPS office for processing. The detecting member would hear no more about it unless the fine wasn’t paid, and he/she had to attend court to prosecute the offence. The processing of summonses was all handled by the FCPS Office. Before this Traffic Corps members made their detections, returned to the station and had to make out summonses for themselves and follow the case through to conclusion.

The new system meant that detections increased but the summons service rate was only at 48% (supra). It was the regular units and not the Traffic Corps members who had to serve the summonses and these units were depleted and tied up on other mainstream policing duties. The Garda Inspectorate was critical of AGS in this matter. Serving a summons can take time and the service rate was poor. Many people comply with the system and pay their fines but those who don’t had approximately 50% chance of evading detection. In 2014 the Garda Inspectorate stated that:

Summonses must be served by a member of the Garda Síochána and the time diverted to serving summonses which at best has less than a fifty per cent success rate impacts on Garda availability to undertake more urgent policing duties. The Inspectorate believes the high level of Garda resources involved in the summons process and the low outputs for all the effort involved is inefficient.1256

---

1255 P.A.J. Waddington supra at note 122 at p.132.
There can be many genuine reasons for non-service such as people leaving the jurisdiction, changing address within the jurisdiction. There is also difficulty in serving summonses on companies or on persons who are not domiciled in the jurisdiction. AGS works on improving the situation but it is a difficult area. In 2018 the Report from the Commission of the Future of Policing in Ireland recommended the Court Service take over the whole area of the service of summonses.

In circa 15,000 cases the FCPS office couldn’t process the notice submitted by the detecting member (supra) and would return the notice to the detecting member with a query. There are approx. 10,000 or two thirds of them not returned. The Inspectorate would find that it was down to a lack of training and audit and the Inspectorate would also note “the absence of any structured training guidance on the implementation of any aspects of the FCPS policy.”

It must be acknowledged that many lives have been saved by since the advent of the FCPS system, but it is strongly submitted that the shortcomings in the system are due at least in part to the way the AGS had set up and manned the Traffic Corps as strictly an enforcement unit. It is contented that the regular policing units should not have been depleted of members to staff Traffic Corps units. The same detections could have been made from regular units. There would have been no dumbing down of the policing expertise of personnel. The detections would have been moderate and just as effective. A member’s performance would be assessed not just on his/her ticket numbers but also on how he/she performed their station duties and investigations. Supervisors who were seconded to the Traffic Units would remain in normal policing units maintaining a broader supervisory function and policing experience. It is argued that the Traffic Corps Units should have been left as smaller units with properly trained and experienced members to deal with not just FCPS offences, but the more intricate offences set out in E.U. law in respect of larger vehicles. In 2014 the Garda Inspectorate would state that “traffic officers expressed a view that they were underutilised in respect of crime investigation.”

It is submitted that managerialism places a focus of Garda management on measurement and numbers. It is suggested that it distracts their attention from focusing on shortcomings/quality

---

1257 Ibid at p.21.
in the administration in the system. As noted by Garland the “political parties in power during the 1980s and 1990s emphatically favoured ‘market solutions’, ‘private sector’ values, and managerial solutions, and encouraged state agencies to adopt this way of thinking.”

However, in the Morris Tribunal we see evidence of explosives finds being broken up so that other “finds” could be “found” at a later stage to enhance professional careers and standing.

Only in 2018 AGS is now promoting supervisors and middle managers to address the paucity of effective supervision.

**Managerialism – Counting and Measurement**

The year 1993 was a watershed period in how AGS managed itself. The Commissioner’s Annual Crime Report was now a glossy brochure with statistics, pie-charts and colours. The report would now also include details of what AGS was doing and intended to do. It was an impressive document from what had previously existed and a sign perhaps that AGS was progressing into a new era of policing. As noted by Brady:

> A plateau had perhaps been reached upon which the Garda Síochána battered and bruised by more than two decades of pressure and controversy could draw breath, take stock of itself and address not merely the urgent but also some of the important issues. It was now well led and well enough equipped. Its new advanced training system had come on stream. It had succeeded in retaining its largely unarmed status while being able to deploy effective armed units as required and it had a plan for the medium-term future.

It was all so promising. As Brady would further state “the new language of managerialism now started to emerge in how the Garda Síochána saw itself operating for the future.”

What Kilcommins *et al* referred to as the “fetish for the quantifiable” would begin and hindsight has shown this “fetish” did not suit AGS.

As Brady would elaborate:

---

1259 D. Garland *supra* at note 2 at p.190.
1260 *Morris supra* at note 1155 at para 14.56 at p.506 and para 14.94 at p.524.
1261 C. Brady *supra* at note 275 at p.234.
1262 C. Brady *supra* at note 275 at p.231 and V. Conway, *supra* at note 355 at p.162.
Nothing illustrated this change more clearly than the abandonment of the old-style Annual Report of the Commissioner of An Garda Síochána and its replacement with the Annual Report of An Garda Síochána.

The change in title was significant; police business was not simply any longer about totting up reported crime and detection rates. The Annual Report now fronted with a picture portrait of the Commissioner of the day put up a wealth of information about policy, innovation, technical advances, training and organisation as well as the years crime statistics.1264

It is submitted that this is evidence of Garland’s ‘outputs over outcomes theme’. As highlighted earlier it was in 1996 when the Irish Government published a document entitled “Delivering Better Government.” It outlined how improvements could be made in how the public service was managed and insofar as the Gardaí were concerned led to the Strategic Management Initiative. The AGS now had a mission statement, a corporate strategy and performance indicators. Each Division and District had a policing plan with objectives and targets. The organisation now pursued goals.1266

It is submitted that the Irish Police Force was as Garland says (supra) “being remodelled in ways that emulate the values and working practices of private industry.” It had been decided that managerialism was the way forward for AGS. The Gardaí it is suggested were being ‘shoehorned’ into a form of a corporate entity with the corporate values akin to the pursuit of profit.

It is suggested that he experience of the NYPD might be a good comparison. William Bratton was appointed NYPD Commissioner in 1994. He would later boast that:

We began to run the NYPD as a private profit orientated business. What was the profit I wanted? Crime reduction. I wanted to beat my competitor – the criminals – who were out there seven days a week, 24 hours a day. I wanted to serve my customers, the public better and the profit I wanted to deliver to them was reduced crime.1268

1264 C. Brady supra at note 275 at p.234.
1266 C. Brady supra at note 275 at pp. 233-235.
1267 D. Garland supra at note 2 at p.18.
Bratton was referring to “CompStat”. It was how his administration would hold local precinct commanders to account. CompStat is shorthand for “Compare Statistics” or “Computer Statistics”. Crime statistics would be recorded and tracked on computer and regular meetings would be held where local police commanders would be held accountable for the investigation of crime in their precincts. After a sojourn in other police forces Bratton returned as Commissioner to the NYPD in 2014.

As noted by Rayman:

In the beginning crime was so out of control that once NYPD committed to CompStat, it was easy to reduce numbers but as time went on it got harder. At the same time crime numbers became inextricably linked to career trajectory. Those two factors combined to provide an incentive to precinct Commanders to fudge the numbers to look better in these CompStat meetings.1269

Rayman asserts that in hindsight Bratton’s view of CompStat as a business “foreshadowed the future focus on gimmicks and inflated bottom lines that would distort precinct reporting.” 1270

Rayman uses the analogy of “the auto industry in Detroit – bound to go bust because the cars they produced weren’t really what the people wanted.”1271 He argues “that the role of a police officer after all involves human interaction in a broad spectrum of community affairs not the mindless building of widgets on an assembly line.”1272

By way of comparison Garda Superintendent P.V. Murphy wrote in 2004 that “one of the primary purposes of performance measurement and control is to allow for fact-based management – that is management that moves from intuition and hunches to analysis based on hard data and facts.” 1273[emphasis by original author]. It is clear that Bratton’s approach to the NYPD is arguably similar to Garda Management’s approach as encapsulated in the vocabulary by Superintendent Murphy who goes on to say:

... when the strategic goals of An Garda Síochána are juxtapositioned with the strategy map, integrated performance plans and measure can be developed for each strategic

1270 Ibid at p.21.
1271 Ibid at p.21.
1272 Ibid at p.21.
goal. Facilitated operational planning workshops are ideal for this type of forward planning. Operational Managers can be confident that they have engaged essential capability building needs when they use the strategy map process as a guiding template for their management and measurement scorecard development.\footnote{Ibid at p.6.}

What the Superintendent says is not an issue here but his language it is contended is clear evidence of the Garland thesis and supports Conway’s view that “the rhetoric of managerialism plays an important role in Irish Policing”\footnote{V. Conway supra at note 355 at p.162.} and is evidence of what she calls “the creeping managerialism” that has pervaded AGS in the last thirty years.\footnote{Ibid at p.162.} The Gardaí too in the past have had their own controversies (see infra) regarding the compilation of crime statistics and how they investigate crime and the manner in which they recorded these crime figures was the subject of much criticism from the Garda Inspectorate in 2014.

“Gardaí massaging crime statistics for years, new C.S.O. reports show” this was the headline in Jim Cusack’s report ten years ago in the \textit{Sunday Independent}, 27\textsuperscript{th} April 2008. Cusack states in the above article that “(a) (m)ajor independent appraisal of crime has shown a shockingly low level of convictions for the most common forms of crime in Ireland”.\footnote{J. Cusack, “Gardaí Massaging Crime Statistics for Years” \textit{Sunday Independent} (27\textsuperscript{th} April 2008).} The Garda Commissioner’s report on crime has essentially been the Garda report card over many decades. Garda effectiveness could be viewed through these statistics. Gardaí could claim credit for reductions on crime rates and increase in detection rates, but Cusack’s report alleges that here the Gardaí were “massaging” the statistics relating to their outcomes.\footnote{Ibid.} A report published in 2014 by the Garda Inspectorate\footnote{The Garda Inspectorate Report on Crime 2014.} would be very critical of how the Gardaí recorded crime and was corroborative of Cusack’s report.

Up until 2006 Irish crime statistics were published by the Gardaí. The 2006 Crime Report was first such a report where the Gardaí did not have the responsibility of compiling the crime figures. The Central Statistics Office (CSO) now performs this function following a report by an Expert Group on Crime Statistics in 2004.\footnote{Report of the Expert Group on Crime Statistics (2004) at para 2.1 at p.9 at \url{http://www.crimecouncil.gov.ie/statistics} (date accessed 19th September 2013).} While the CSO compiles its crime report it
does so from records on the Garda PULSE system. The Expert Group did not recommend any changes in the “counting rules”\textsuperscript{1281} of AGS (including the principal offence rule and the detection rules. It said that those rules were “a sensible and prudent statistical convention similar to those in use in England and Wales.”\textsuperscript{1282} However, the Expert Group was divided in its views. The group had eleven members and three of them issued a “minority report separate from the recommendations of the majority.”\textsuperscript{1283}

The Gardaí operate a primary or principal offence rule when counting crimes\textsuperscript{1284}. If two or more offences are disclosed in a criminal episode it is the most serious or the most serious offence is the one counted. A crime can also be marked detected notwithstanding that no proceedings have been taken under certain specific criteria, that is where the offender dies before proceedings can be taken or where an essential witness or victim refuses or is permanently unable to come forward. Also, in cases where an offender is too ill to stand trial, or an essential witness has passed away. Similarly, in cases where there is sufficient evidence to bring criminal proceedings, but statutory time limits have expired or in cases where it would not be in the public interest to proceed. These instructions were issued internally by Gardaí in 2003 after AGS reviewed the way it compiled crime statistics after high profile events in 2002 in the Waterford Garda District where during an internal Garda conflict there were allegations pertaining to crime statistics and detection rates.\textsuperscript{1285}

It is submitted that classifying crime can be very subjective. If Gardaí attend a call to a break-in in a building or premises and there are 10 offices in that premises where property is stolen from different injured parties – then how is the crime to be enumerated? Is it a singular crime because only one building has been broken into or are their 10 crimes because there are 10 independent victims? If Gardaí are called to a shoplifting incident and arrest the suspect and bring him to the Garda Station, if that suspect is questioned and admits stealing groceries from the shop on 20 occasions for the past 6 months then how is the crime to be quantified? Is it recorded as 1 crime in respect of the shoplifting when the arrest was made or are the 20 other crimes to be included in the calculation? If Gardaí attend the scene of a public order incident

\textsuperscript{1281} Ibid at p.28 at para 4.2.
\textsuperscript{1282} Ibid at p.27 at para 4.2.
\textsuperscript{1284} General Crime Counting Rules @www.cso.ie accessed on 23\textsuperscript{rd} January 2019.
\textsuperscript{1285} Chris Dooley, “Garda Procedures in Waterford Defended” Irish Times 15\textsuperscript{th} February 2002.
and someone makes an allegation of assault but later in the cold light of day declines to make a statement on the matter how is that to be classified and counted? Is it an assault or is it not? These examples highlight why the Gardaí have crime counting rules because counting crime and classifying crime is not always straightforward.

However, in the Minority Report issued by the new group raised a number of issues:

1) It had “no understanding of the extent to which reported crimes are not recorded” and therefore could not come to conclusions about the quality, reliability and accuracy of Garda data.\textsuperscript{1286}

2) It highlighted an 11\% reduction in the number of recorded indictable crimes with the introduction of PULSE in 2000. This was followed by an increase in 18\% in 2001 and 23\% in 2002. (This brings into question the assertion in the aforementioned Garda Report of 1999 \textit{(supra}) that the crime rate was at its lowest in twenty years.)\textsuperscript{1287}

The minority group thought it “improbable” that this reflected change in “underlying criminal activity” but were changes in the way Gardaí recorded matters.\textsuperscript{1288} The minority group was critical of the Garda primary counting rule and believed that all offences should be recorded. The group questioned why the detection rate “remained so stable in those years despite major fluctuations in the level of recorded crime.”\textsuperscript{1289}

Perhaps Newburn and Reiner could clarify these issues:

\begin{quote}
The Police are primarily managers of crime and keepers of the peace, not a vehicle for reducing crime substantially. Crime is the product of deeper social forces largely beyond the ambit of any policing tactics and the clear up rate is a function of crime levels and other aspects of workload rather than police efficiency.\textsuperscript{1290}
\end{quote}

Similarly, Maguire when dealing with the same issue says:

\begin{quote}
\end{quote}

\begin{flushright}
\textsuperscript{1287} \textit{Ibid} at p.1.
\textsuperscript{1288} \textit{Ibid} at p.1.
\textsuperscript{1289} \textit{Ibid} at p.2.
\textsuperscript{1290} T. Newburn and R. Reiner, \textit{supra} at note 1062 at p.943.
\end{flushright}
Despite rules to limit it, the police inevitably retain considerable discretion as to which of the incidents observed by or reported to them are deemed to be crimes and recorded as such. How this discretion is exercised or contained can be influenced by a wide variety of social, political and institutional factors and may change over time.\textsuperscript{1291}

Or perhaps one of Conway’s Garda sources in a recent publication put it best.

Discretion has now gone because at that time you went to an incident took out your notebook and you wrote down the details. If you wanted to do something about it was up to you to come back and do up your file but now when you go to an incident you must put that on PULSE. That is now a public record.\textsuperscript{1292}

A good example of Garda management’s ‘fetish for the quantifiable’\textsuperscript{1293} that led to AGS being unnecessarily scandalised occurred in 2017. An audit carried out by Gardaí consequent to an anonymous complaint to the Road Safety Authority that was passed on to the Garda Commissioner found that Gardaí had been inflating the number of roadside breath tests performed by them by a staggering 1,4588,221 over nearly a decade.\textsuperscript{1294} The number of breath tests recorded on the PULSE system did not tally with the figures recorded on the Drager breath test apparatus used by Gardaí and provided to them by the Medical Bureau of Road Safety. This was a “71% disparity.”\textsuperscript{1295} The media and public seemed to be mesmerised by the inflated figure of approximately 1.5 million breath tests. The scandal went on for months. It is being submitted here that the “fake” breath test scandal was unnecessary and avoidable.

Sometime around 2009 it became policy to record the amount of breath tests being carried out by Gardaí\textsuperscript{1296}. All tests whether positive or negative were to be configured on PULSE. Just figures. No names, no addresses, no vehicle numbers. The recording on PULSE was duplicitous because the breath test apparatus itself would show how many tests were carried out with that apparatus. In the writer’s experience and Assistant Commissioner O’Sullivan who later investigated the matter would find that no one explained it to the rank and file membership why this had been made policy. It is the writer’s view that the only statistics that

\textsuperscript{1292} V. Conway supra at note 355 at p.163.
\textsuperscript{1293} Kilcommins et al (2004) supra at note 120 at p.32.
\textsuperscript{1295} Ibid.
\textsuperscript{1296} Ibid.
matter in respect of drink driving offences are the numbers of detections, arrests and prosecutions.

The Gardaí have been breathalysing people for years. The statutory power of arrest was enshrined in Section 4(8) of the Road Traffic Act 2010 and state that a Garda “may arrest without warrant a person who in the member’s opinion is committing or has committed an offence under this section.” The power has been the same since the 1960s. Traditionally the breathalyser was an aid to the Garda forming his opinion before making an arrest. A Garda could also arrest without using the breathalyser if he was able to form the requisite opinion having observed the demeanour or driving the person in question. The power gives Gardai a discretion. He/She “may” arrest and be empowered to do so solely on his/her opinion. A Garda can also justify an arrest based on a positive alcohol test alone, but the use of a breathalyser might suggest that the Garda had some doubt about his opinion in the first place. This argument could be effective in court if the subsequent blood/urine analysis showed that the driver was only marginally over the limit. The same statute empowers the Gardaí to arrest and use the breathalyser.

On the 22nd February 2017 the Irish Times in an article entitled “Can Garda Management do anything Right”1297 stated:

“Two years ago, the Central Statistics Office declined to publish crime figures because they were not reliable. It found the incidents of ordinary crime was under reported in the Garda PULSE system while the detection rate was exaggerated. Now we find that these recording mistake(s) were compounded by an exaggeration of Garda activity in response to drink driving. The common thread appears to be a massaging of figures to create a perception of efficiency … in 2014 the Garda Inspectorate was even more damning. Apart from concerns in the reclassification of serious crimes at local level it found that 45% of complaints involving domestic violence were not recorded.”1298

The article went on to note that “rather than a sinister conspiracy this succession of failure may reflect a poor Garda management and pressure from the top to do better.”1299 It is submitted that the scandal was of Garda managements own making. The scandal spawned a 103-page report by Assistant Commissioner Michael O’Sullivan to explain what happened.1300 It is a

---

1297 “Can Garda Management Do Anything Right” Irish Times (22nd February 2017).
1298 ibid.
1299 ibid.
1300 M. O’Sullivan supra at note 1294.
detailed, honest and well written report devoid of the language of managerialism. He sums up the position well when he states:

There was never a rationale given at any level in the organisation for the need to record breath tests of sober drivers and thus the experience of this examination was that the importance of such data was not apparent to individual members of AGS of any rank.\footnote{Crowe Horwath, Final Report to the Policing Authority. Review of Matters Related to Mandatory Intoxicant Testing and the Issue of Summonses by the Garda Síochána, date October 2017 at p.45.}

Crowe Horwath in an independent investigation carried out on behalf of the Policing Authority into the scandal would say that they “have been surprised and disappointed at the general lack of recognition of the value of recording negative breath tests in being able to identify trend and attitudinal changes towards drink and driving.”\footnote{Kilcommins et al supra at note 120 at p.32.} This view, it is submitted, is difficult to sustain. There is no doubt that checkpoints are a substantial deterrent to drink driving and the more checkpoints may lead to more drink driving arrests or indeed maybe less. Trend and attitudinal changes can only properly be measured by the amount of drink driving arrests. An arrest will be made based on a positive breath test or on the observations of the Garda. It is contended that the recording of a negative breath test is simply a meaningless measure and “a fetish for the quantifiable.”\footnote{D. Garland supra at note 2 at p.119.} The amount of people stopped and breathalysed at checkpoints depended on traffic volume at a particular time and place and the time and place of checkpoints were always fluid. It is submitted therefore that the statistic is akin to asking the Gardaí – how long is a piece of string? Meaningless. The breathalyser statistic took no account of drink driving arrests made where no breathalyser was used.

Or perhaps as Garland says state agencies have “reacted to criticism by scaling down expectations, publicly redefining their aims and seeking to change criteria by which failure or success are judged.”\footnote{M. O’Sullivan supra at note 1294 at p.5.} The whole area of compilation of the nation’s crime statistics provides strong support for what he asserts. It is submitted that the main point of reference for judging police performance should be on how they perform in court. Where have they secured detections and what happened to these detections thereafter in court. The police can explain how detections, convictions and acquittals have impacted on their security, crime, public order, traffic and immigration functions plainly set out in the Garda Síochána Act 2005. This would
make more sense than reliance on the “outputs over outcomes” theme that is pervasive in Garda Policing Plans and Reports over the last decade or so. A report by Sean O’Riordan in the *Irish Examiner* on the 2nd November 2012 highlights that fact. The report is headlined “State Solicitor: Gardaí being prevented from attending courts due to cutbacks.” The State Solicitor from West Cork reportedly told the court that senior Garda Officers are prohibiting the attendance of Gardaí in court due to cutbacks. He is reported to have said that this “has made prosecutorial work difficult.” The “Audit Society” manifestly to the fore in policing functions again. It is at least questionable if the focus of Garda management on budgets can bring it into conflict with the organisation’s obligations under the *Garda Síochána Act 2005* as set out under section 7. It is also paradoxical when Garda managers seek robust detections and figures from rank and file members that the same rank and file members are not permitted to attend court because of overtime issues to prosecute these cases.

Morris would investigate a series of arms finds that would commence in 1993 and go on for several years. Morris would find that certain Gardaí broke up these arms finds and held them over for a ‘rainy day’ to enhance their professional standing and prospects. To do so, certain Gardaí would use Adrienne McGlinchy who willingly portrayed herself as an informant. Morris would say that named Gardaí would “harness this most unusual person for their own ends.” The breaking up of explosives was again a numbers game which prioritised “outputs over outcomes.” Garda management it seemed looked only at the numbers i.e. the output. They made no enquiries into the outcome i.e. the quality of the investigation that was being carried out. Morris would state this about Garda management and managers at the time:

> What has been so serious about this inquiry has been the neglect of the fundamental duty of police management to ask questions and get answers. This is shocking … Chief Superintendent (*named officer*) failed to use the enquiring mind that is the hallmark of good police work. This was negligence.

---

1306 Ibid.
1307 D. Garland *supra* at note 2 at p.190.
1308 F. Morris *supra* at note 1155 at para 14.56 at p.506 and para 14.94 at p.524.
1309 F. Morris *supra* at note 1155 at para 14.94 at p.524.
1310 D. Garland *supra* at note 2 at p.p.119-120.
1311 F. Morris *supra* at note 1155 at para 14.98 at p.525 and para 14.92 at p.524.
In 2014 the Garda Inspectorate would find:

- Based on a sampling of 50 PULSE crime records the Inspectorate found 30% to be incorrectly classified and insufficient detail in 16% of cases to determine if classification was correct.\textsuperscript{1312}

- The Inspectorate disagreed with 32% of the classifications shown on PULSE.\textsuperscript{1313}

About the classification of crime, the Inspectorate investigated further. It stated that it selected:

Eight crime categories and examined 2372 crimes reclassified between January 2011 and May 2012 in the seven divisions visited were marked to a lesser type of crime. In 83% of cases reclassifications resulted and crime being recorded to a less serious offence.\textsuperscript{1314}

Perhaps it goes back to the NYPD experience as noted earlier by Rayman that “crime statistics became inextricably linked to career trajectory.”\textsuperscript{1315} In the aftermath of stinging criticism of Garda management during the Morris Tribunal AGS set up a Performance Accountability Framework. It is submitted that this is a form of CompStat by another name. Weekly meetings were now held between Chief Superintendents and Superintendents and between a Superintendent and his Sergeants. At these meetings all have to account for their respective areas of responsibility. It is contended that whilst statistics are a useful means of assessing and measuring performance it should not be the sole way of doing so. Consideration should also be given to good community relations, good administration and record keeping, good file handling and preparation, high visibility and good morale and work ethic amongst staff. Members of all ranks were assessed by statistics. Poor statistics might chill promotion prospects. The Inspectorate criticised “examples of Regular Unit Gardaí investigating serious crimes such as rape, threats to life, aggravated burglary and child sexual abuse.”\textsuperscript{1316}

Golding and Savage in 2008 use a headline from \textit{The Times} newspaper in the U.K. dated 13\textsuperscript{th} November 2009 it read, “Targets Let Dangerous Criminals Escape Net.”\textsuperscript{1317} Compare this

\begin{flushright}
\textsuperscript{1312} The Garda Síochána Inspectorate Report on Crime Investigation 2014 at Summary p.10.
\textsuperscript{1313} \textit{Ibid} at Part 4 p.10.
\textsuperscript{1314} \textit{Ibid} at Part 5 p.12.
\textsuperscript{1315} G. Rayman \textit{supra} at note 1269 at p.25.
\textsuperscript{1317} B. Golding and S.P. Savage \textit{supra} at note 1211 at p.725.
\end{flushright}
headline with an article by Jim Cusack in the *Sunday Independent* six years later on the 10th May 2015. It reads, “Policing by Numbers lets Real Criminals off the Hook.” Cusack’s article has a sub heading which reads, “Garda Managements Obsession with H.R. - Led Policing Policies is a Sham and a Nonsense.” It is submitted that these two newspaper articles in two different jurisdictions are highlighting the same thing. The Gardaí are obviously not alone in embracing the practices of the world of commerce. It is worth quoting the Golding and Savage article further. It is self-explanatory.

In 2007 … the Chief Executive of the National Policing Improvement Agency, Peter Neyroud, challenged the ‘target culture’ surrounding the British police service on the basis that pursuit of particular government driven targets – in this case around the ‘numbers of offences brought to justice’ – was becoming detrimental to the policing of serious violent crimes. … This was a significant intervention in the development of performance management within British policing because it signalled a concern amongst those clearly not unsympathetic to performance management *per se* that perhaps things had gone too far. … It seems performance management in the policy context is becoming a hotly contested issue.

Jim Cusack in his article said the Gardaí owed a “debt of gratitude” to the Inspectorate for the work they have carried out for the report published in November 2014. He states that:

> The Inspectorate’s report, the only such evaluation of the Garda Síochána by a body with reputable international credentials, provides the basis for a return to the core philosophies of policing where officers of ability and moral courage are allowed to do their jobs and not become slaves to a nonsense ‘human resource’ model initially designed for putting more widgets into gadgets on a factory floor.

It is submitted that one of the core philosophies of policing is that policing is essentially reactive and as noted previously by *The Irish Times* it would appear the AGS was using and “massaging” figures to “create a perception of efficiency.” It is submitted that this is a good example of Garland’s theme of outputs being preferred over outcomes. Gardaí react to incidents that they are called to or come across while on patrol or that are reported to them. Individual Gardaí were compared and contrasted solely by numbers. Their numbers of arrests, their numbers of summonses issued, their numbers of tickets issued, their numbers of crime

---

1319 B. Golding and S.P. Savage *supra* at note 1211 at pp.725-726.
1320 J. Cusack *supra* at note 1318.
detected. Individual sub-districts, districts and divisions were similarly assessed. Garda management was anxious to show reductions in crime rates because of the focus on numbers. It is submitted that this was a malpractice that led in part to the scandals that have beset AGS in recent years and was laid bare by the Garda Inspectorate’s Report 2014.

**Conclusion**

In 1993 AGS would publish its first Corporate Strategy document for the period 1993 to 1997. In 2002 Garland stated that “police chiefs found that their new budgetary responsibilities and financial reporting duties made a difference in how they responded to their staffs, the public and their clients.”\(^{1322}\) This was cited at the very outset of the chapter and it is being contended now that what has been set out here is stark evidence of Garland’s theory. What has been highlighted in this part is compelling evidence of what he calls the “all-pervasive managerialism that affects every aspect of criminal justice”\(^{1323}\) of which AGS, in this jurisdiction, is the front line.

To authenticate Garland’s theory, managerialism was broken into the component parts of language, efficiency, planning, resources, staffing and measurement. Insofar as language is concerned Garda parlance had very much remained the same up to the 1990s. In the aftermath of SMI at that point, the language of managerialism began to fully permeate AGS. Along with managerialism came so called economies and efficiencies. The Garda policing structure had remained almost the same since the foundation of AGS but in the mid-1990s things changed. Superintendent’s now had budgetary responsibilities and resources were prioritised at District Headquarters stations to the detriment of the smaller stations. In the late 1990s Garda planning was grounded on the PULSE system which was initially rolled out to the larger District Headquarters stations circa 1999. All duties that the Gardaí now performed were to be pigeonholed as a PULSE record. This reflected the recommendations of SMI. A murder investigation would be recorded as one incident the same as a drunken disorderly incident notwithstanding the difference in effort and time to investigate this type of crime. PULSE was supposed to effectively facilitate the audit of policing functions and was to decrease the amount of paper that the organisation generated. PULSE had the opposite effect. AGS has been

\(^{1322}\) D. Garland _supra_ at note 2 at p.116.

\(^{1323}\) D. Garland _supra_ at note 2 at p.18.
scandalised in how it managed or didn’t manage it. Senior Garda management simply made do with what resources they had even if this meant there was a shortage of Gardaí and supervisors and poor accommodation facilities. Senior management became extremely vigilant in how their staff were employed to avoid extra costs. In some cases, Gardaí were not going to court, and the most experienced investigators were not necessarily investigating serious crime. In addition, senior Garda management were using PULSE as an instrument for measuring Garda performance. Checkpoints and breathalyser tests were counted, and many crimes were incorrectly classified downwards. Garda members were rated on detections notwithstanding that a Garda could spend months in properly preparing a file in a serious investigation while still ensuring he/she had a respectable number of fine on the spot notices issued with other summonses. Notwithstanding the scandal and criticism that this brought from different Commissions of Inquiry the Gardaí continue with their managerialist ethos.

AGS continues to be run as a business.

It is submitted that what has been presented in this chapter strongly evinces Garland’s theory that the “emphasis upon the cost-effective management of risk and resources has produced a system that is increasingly selective in its responsiveness to crime and offending”\textsuperscript{1324} It also demonstrates the “generalized cost consciousness in the allocation of criminal justice resources including investigative resources, court calendars …” \textsuperscript{1325} Regrettably, the common thread in tracing transformation of AGS under these component benchmarks is scandal. In the end, what is being proposed here is that what Garland asserts in respect of his “managerialism index “is fully substantiated by what has been set out in this chapter.

\textsuperscript{1324} D. Garland \textit{supra} at note 2 at p.19

\textsuperscript{1325} \textit{Ibid.}
CHAPTER SIX

A Perpetual State of Crisis

From Scandal to More Scandal

When I go to bed at night, I say a special prayer for the safety of the city. Then I say another special prayer of thanks that nothing bad happened in the police department.1327

Robert Wagner, Mayor of New York (1954-1965)

Introduction

This chapter will examine Garland’s theory and specifically the index of change that he refers to as “a perpetual state of crisis.” As in other chapters, his index will be cross referenced with the Garda Síochána to show in this case how crisis affected and transformed the organisation over a period of five decades. It will be argued that for the most part it was always crisis that brought about change in the Garda Síochána and the perpetuity of crisis over the period in question brought about and continues to bring about fundamental and profound transformation to the organisation.

Background

Garland noted in 2001 that:

(f)or much of the last two decades an unmistakable malaise and demoralisation have beset the field. This is regularly expressed in talk of a ‘crisis’, though the term is clearly inappropriate for a situation that has now endured for several decades. Since the 1970s those who work in criminal justice have experienced a period of unrelenting upheaval and reform that shows no sign of letting up.1328

It will be argued in this chapter that Garland’s theory is strongly corroborated not only by what happened in AGS in the 1980s and 1990s but also in the years before and beyond. In this

---

1326 D. Garland supra at note 2 at p.19.
1327 J. Lardner and T. Repetto supra at note 933 at Preface.
chapter, transformation in AGS will be looked at through the prism of scandal and for the purpose of this study these controversies will be looked at under four headings i.e. accountability, prisoners, intelligence and media. For the most part, it is how Gardaí treated persons in their custody that has caused the organisation to be at the wrong end of Commissions of Inquiry and other investigations. However, the Gardaí have also been criticised in how they handled and acquired criminal intelligence and the operations that would flow from such intelligence. The media played a key role in how they reported on these controversies and in how scandal would impact on the AGS.

The Gardaí have also been controversial in how they handled and acquired warrants, grounded arrests and in how they managed themselves, but these are dealt with in separate chapters. Scandal has been an omni-present feature of Garda work and continues to be so. It is submitted that the scandals both historical and current are indicative of what Garland says: “(t)here is a growing sense that the ‘modern’ arrangements for crime control – organized through the specialist agencies of the criminal state may no longer be adequate to the problem of crime and no longer coherent in themselves.”1329

It is contended that this is true of AGS. The perpetuity of scandal has seen Garda discretion substantially eroded notwithstanding the vast powers it received by statute over the years. The Gardaí now carry out their work under continuous spotlight. As noted by Fennell:

Criminal justice today is the stuff of common parlance. Long the preserve of the elite ruling class and its members comprised of the legal profession, it has entered the common domain. Not only does every wag in a public house have a view on the latest criminal verdict or sentence but talk show hosts, journalists and ‘popular culture’ generally are awash with tales of crime and punishment … The role of the media in forming and feeding the tyranny of that ‘popular view’ is identified as crucial; facilitating political invocation of short-term responses and public acceptance thereof.1330

This chapter sets out the evidence that the Gardaí operate in this world that Fennell describes. As noted by Garland: “(c)riminal justice is now less autonomous than it was three decades ago and more forcefully directed from the outside. Criminal justice actors and agencies are now

1329 D. Garland supra at note 2 at p.20.
less capable of directing their own fate and shaping their own policies and decisions.”1331 This chapter will show that AGS in its practices and duties has been seriously reined in over the past five decades or so.

**Accountability**

It is submitted that AGS is the most accountable organisation in the Republic of Ireland. As observed by Walsh, “The Garda accountability requirement is discharged through a combination of: an action in tort, a judicial review, the criminal process, the Garda complaints procedure, the Garda disciplinary procedure and the democratic process.”1332 In reality for Gardaí on the ground this means that they are subject to the Garda internal disciplinary regulations and G.S.O.C. They must also submit and stand up to audits by the Internal Audit Section (IAS) and the Professional Standards Unit (PSU). The IAS carry out with and without notice audits of District and Stations in how they account for finance and public monies while the PSU will do likewise in respect of police standards, practices and records. Both units will check how property and exhibits, and assets are accounted for.

In the writer’s experience the PSU will audit investigation files and custody records and cross reference them with PULSE records. Firearms and equipment will be checked in addition to cell accommodation, patrol cars and station premises. The units will ensure that station and districts are compliant with Health and Safety legislation and make strong recommendations on good practice. These audits are thorough. Gardaí are also accountable to the Garda Inspectorate and the Policing Authority not to mention the new Commission on the Future of Policing in Ireland recently set up in 2017 to carry out a root and branch review of AGS and policing in this jurisdiction. The Commission produced its report in September in 2018 and its recommendation have been accepted by the Irish Government. In December 2018 the Minister for Justice, Charles Flanagan announced the implementation plan for the report.1333

It is argued here that it has mostly been scandal that brought about change in how the Gardaí were made accountable and as acknowledged by Walsh it was the “findings of the Morris

1331 D. Garland *supra* at note 2 at p.172
1332 D. Walsh *supra* at note 134 at p.308.
Tribunal of Inquiry together with its subsequent reports from 2004 and 2008” that were “a major watershed in the history of the Garda Síochána and policing in Ireland.”

Walsh argues that from the establishment of AGS in 1922 to recent times AGS:

Had escaped the sort of comprehensive detailed and transparent critical scrutiny of its structures, powers, functions, operative management and accountability that had featured in some cases on several occasions in comparable police forces in most other common law liberal democracies.\textsuperscript{1335}

While this may be a valid argument, it is suggested that Conway is more forceful when she says that “circumstances and challenges faced by the force have contributed to the guards blindly receiving an exceptionally high level of public confidence.”\textsuperscript{1336} The “circumstances and challenges”\textsuperscript{1337} she refers to are those connected to the “emergence of the Northern Irish conflict which placed (the Gardaí) once again in the role of defending the State against subversives.”\textsuperscript{1338} In the year Morris issued its first report in 2004\textsuperscript{1339} General de Chastelain\textsuperscript{1340} also reported that subversives had placed their arms beyond use and Northern Ireland violence generally was receding from memory. Notwithstanding high approval ratings, trust was eroding in AGS. The words of Garland reflect that change, “Agencies like the police … that were once given statutory powers and responsibilities an annual budget and a degree of freedom to get on with it are now increasingly subject to state imposed standards and guidelines and are closely monitored and inspected to ensure they comply.”\textsuperscript{1341} These words are starkly evidenced in the words of Patten who in his report on policing in Northern Ireland stated:

People need to know and understand what their police are doing and why. This is important if the police are to command public confidence and active co-operation. Secretive policing arrangements run counter not only to the principles of democratic society but also to the achievement of full effective policing.\textsuperscript{1342}

\textsuperscript{1334} D. Walsh \textit{supra} at no 134 at Preface (vii).
\textsuperscript{1335} D. Walsh \textit{supra} at 134 at Preface (viii).
\textsuperscript{1336} Garda Public Attitude Survey 2008 found that 81% of respondents were “satisfied” or “very satisfied” with overall Garda service in 2007.
\textsuperscript{1337} V. Conway \textit{supra} at note 1070 at p.7.
\textsuperscript{1338} \textit{ibid} at p.6
\textsuperscript{1339} F. Morris \textit{supra} at note 1155.
\textsuperscript{1341} D. Garland \textit{supra} at note 2 at p.120.
The landscape in which the Gardaí have operated has changed substantially. Morris was an emphatic catalyst that brought about much of that change but there were other scandals in the last five decades which brought about fundamental changes in how AGS carried out its functions and one of these was again controversial in Morris and that was how Gardaí treated people in custody.

**Prisoners**

On the 30th May 1967 Liam O’Mahony died in Garda custody at the Bridewell Garda Station in Cork City. He had been arrested some hours earlier outside the Long Valley Bar in Winthrop Street in Cork. It was reported that he had ten broken ribs and when his brother arrived at the station having been contacted by Gardaí he did not immediately recognise the corpse of his brother. He said “his face was all black and blue and marked.” He noted some “dried blood under the nostrils” and when he asked the Garda Inspector why he had not been contacted earlier he was told that his brother “was not a little boy who was lost, that his parents should have been contacted.” The brother alleged that the “cell was like a pig sty, the floor was dirty and so was the toilet.” A Coroner’s Inquest subsequently took place and proved controversial. The Minister of the day set up a Tribunal of Inquiry to investigate the matter “due to public disquiet that had appeared since the holding of the Coroner’s Inquest on O’Mahony and which in part had been contributed to at least by newspaper articles and by letters to the newspapers.”

The Tribunal would exonerate Gardaí of any wrongdoing and expressed the belief that, “it is probable that O’Mahony would have died as a result of the injuries that he had sustained in the Long Valley Bar, Winthrop Street, Cork even if medical attention had been procured for him in the Bridewell.” However, it was critical of the Gardai when it found that, “(i)t would however have saved a good deal of public disquiet if it so happened that a doctor had been

---

1349 *Ibid*
called to the Bridewell to examine him (O’Mahony).”1350 The Tribunal would also state that, “(t)he Garda authorities are commended for having amended regulations dealing with the procuring of medical attention for the prisoner since the incident.”1351

It is contended that the O’Mahony case is a nascent example of public mistrust in the Garda account of events and where the media played a part in highlighting public disquiet regarding Liam O’Mahony’s death. Garland states that “the criminal justice system has come to be a danger zone – a constant generator of risks and scandals and escalating costs.”1352 It is submitted that the O’Mahony case is an early example of Garland’s theory. It is also contended that if such an Inquiry were to take place in more modern times it may have been be more vocal in its criticism the Gardaí.

Dunne and Kerrigan in their work on the Sallins Mail Train Robbery1353 highlighted allegations of several suspects who were arrested, detained and charged in respect of the robbery. The robbery occurred on the 31st March 1976. One of the men was Nicky Kelly who was convicted but later received damages and a Presidential Pardon in the matter. All suspects in this case made serious allegations of assault, malpractice and misconduct on the part of investigating Gardaí. They all alleged they were ill-treated when they were interviewed.

One of the controversial aspects of the case which, “defence counsel repeatedly referred to was the extent to which Garda statements matched very closely and also the way Garda witnesses gave evidence which was remarkably consistent with the wording of their statements.”1354 At one-point Mr. Seamus Sorohan, S.C. for one of the accused when cross examining a Detective Garda queries when he (the Detective) had last seen his statement of evidence. His response was that he had seen his statement “about two months earlier.”1355 Mr. Sorohan noted that the Detective, while giving evidence kept fidgeting with his pockets and eventually queried the matter with the him. He asked that he empty his pockets. The Detective did so and included

1350 Ibid.
1351 Ibid.
1352 D. Garland supra at note 2 at p.20.
1354 Ibid at p.199.
1355 Ibid at p.199.
in the contents was the Detective’s statement of evidence which he subsequently claimed under oath that he “hadn’t known it was there.”\(^{1356}\)

The Gardaí would claim in cross examination that their statements “were made individually and at separate times”\(^{1357}\) but as noted by Dunne and Kerrigan:

One of the most remarkable elements of the case was the extent to which Garda statements concurred. The statements again and again use the same phraseology. Some statements are hundreds of words long yet where two or more Gardaí are describing events their statements concur almost word for word.\(^{1358}\)

Dunne and Kerrigan would opine that, “(t)here is a substantial body of evidence that a number of Gardaí committed crimes of assault during the investigation of the train robbery and that a number of Gardaí perjured themselves in the subsequent trial.”\(^{1359}\) When in opposition Fianna Fail T.D. Gerry Collins, “was vociferous about the need for an independent inquiry into the allegations being made. Once in office he reneged on his own demands. He subsequently presided over the promotion of most of those (Gardaí) involved in the Mail Train case.”\(^{1360}\) The interview room tactics and techniques of investigating Gardaí would continue to come under robust scrutiny in court proceedings for many years to come and would not just be confined to this particular case.

On the 14\(^{th}\) February 1977 the *Irish Times* reported that “a heavy gang” was operating within AGS. The headline ran “Garda using North-style Brutality in Interrogation Techniques”.\(^{1361}\) In the same publication on the same date it was boldly stated that “Gardai stand accused.”\(^{1362}\) On the following day the 15\(^{th}\) February 1977 another front-page headline heralded that “Heavy gang” “used new Act to Intensify Pressure on Suspects”. The article alleged that:

Gardaí have used public ignorance about the provisions of the new Act (*Emergency Powers Act 1976*) to deceive suspects about their legal rights when in custody. A number of people detained under the Act have told us that their interrogators said to

\(^{1356}\) *Ibid* at p.199.
\(^{1357}\) *Ibid* at p.205.
\(^{1358}\) *Ibid* at p.205.
\(^{1359}\) *Ibid* at Introduction.
\(^{1360}\) *Ibid* at p.268.
\(^{1362}\) *Ibid* at p.11.
them “You have no rights under this Act”. Suspects have been told that they must make
statements and refusal to do so would result in imprisonment. They have also been
informed that they have no right to see solicitors or doctors.\textsuperscript{1363}

The Garda Press Office would respond with the following statement, “(b)ruital interrogation
methods are not a routine practice at the moment, they never have been. Such practices are not
condoned by our present Commissioner, Mr. Garvey nor have they ever been encouraged or
condoned by a previous Commissioner.”\textsuperscript{1364}

As noted by Dunne and Kerrigan this statement “is a model of careful language.”\textsuperscript{1365} Detective
Superintendent John Courtney oversaw the murder squad at the time that these allegations were
being made in the media. He maintained that the “tag” of “heavy gang” emanated from Mr.
Patrick McEntee S.C. during a murder trial. Courtney would say that:

The tag came about in a very simple way. In the course of a trial following the murder
of Larry White in Cork City, Paddy McEntee S.C. arguing for the defence referred to
the “heavy gang” coming down from Dublin. The media immediately latched onto the
label and it went from there. The reality was that no one from the Commissioner down
would stand for that and these allegations were scurrilous.\textsuperscript{1366}

It is submitted that the “danger zone”\textsuperscript{1367} of the criminal justice system referred to by Garland
in the mid to late 1970s is very much in existence, so much so that the Government in response
to concerns that a “heavy gang” was operating within AGS established the O’Briain Committee
on the 6\textsuperscript{th} October, 1977.\textsuperscript{1368} Its remit was “to recommend with all convenient speed whether
and if so what additional safeguards are necessary and desirable for the protection against ill
treatment of persons in custody.”\textsuperscript{1369}

\begin{flushleft}
\textsuperscript{1363} “Heavy Gang Use New Act to Intensive Pressure on Suspects” Don Buckley, Joe Joyce & Renagh
Holohan. \textit{Irish Times} 15\textsuperscript{th} February 1977 at p.11.
\textsuperscript{1364} D. Dunne & G. Kerrigan \textit{supra} at note 1353 at p.188.
\textsuperscript{1365} D. Dunne & G. Kerrigan \textit{supra} at note 1353 at p.188.
\textsuperscript{1366} J. Courtney, \textit{It Was Murder!} (Dublin: Blackwater Press 1996) at pp.129-130. [hereinafter Courtney].
\textsuperscript{1367} D. Garland \textit{supra} at note 2 at p.20.
\textsuperscript{1368} O Briain Report \textit{supra} at note 314.
\textsuperscript{1369} \textit{Ibid} at para 37 at p.3.
\end{flushleft}
O’Briain noted that “upwards of 80%” of crimes were solved by confessions made by persons in Garda custody.\textsuperscript{1370} At the time the Gardaí had no power of investigative detention except under the provisions of Section 30 of the \textit{Offences Against the State Act 1939} and more belatedly under the \textit{Emergency Powers Act 1976}. If the crime being investigated – such as murder – was not related to subversive type crime, the Gardaí could not use the Section 30 provision. Although in \textit{Howley}\textsuperscript{1371} and \textit{Quilligan}\textsuperscript{1372} the Gardaí conducted murder investigations and invoked their Section 30 power of arrest and detention to investigate the offence of malicious damage under the \textit{Malicious Damage Act 1861} which was a scheduled offence under the \textit{Offences Against the State Act 1939}. In these cases, malicious damage was caused to some object in the course of the killing and the courts ultimately found it permissible for the Gardaí to investigate this damage and use the detention powers under the 1939 Act for that purpose. It was permissible notwithstanding that it was not the main crime they were investigating. In other instances, a practice emerged over the years where the Gardaí would bring suspects to the station “to help police with their enquiries.”

The case \textit{D.P.P. v. O’Loughlin}\textsuperscript{1373} would put an end to this practice. It was held that, “holding for questioning, taking into custody or detaining were merely different ways of describing the act of depriving a man of his liberty. To do so without lawful authority is in open defiance of Article 40.4 of the Constitution.”\textsuperscript{1374} The O’Briain Committee also recommended the discontinuation of this practice.\textsuperscript{1375} O’Briain in an \textit{addendum} to the final report would state:

\begin{quote}
I can think of no way in guaranteeing ill treatment of persons in Garda custody will not take place except by providing as far as practicable the surveillance of an independent eye witness throughout that custody … I would go somewhat further and question whether or not the time has come to change the law relating to the investigation of crime.\textsuperscript{1376}
\end{quote}

O’Briain’s recommendations were later reflected in the \textit{Criminal Justice Act 1984}. The Gardaí would now have a six hour period of investigative detention which could be extended for

\begin{footnotes}
\item[1370] \textit{Ibid} at para 38.
\item[1372] \textit{The People (D.P.P.) v. Quilligan} No. 3 [1993] 2 I.R. 305. [hereinafter Quilligan].
\item[1374] \textit{Ibid}.
\item[1375] O’Briain \textit{supra} at note 314.
\item[1376] O’Briain \textit{supra} at note 314 and \textit{Irish Times} 13\textsuperscript{th} September 1978 at p.4.
\end{footnotes}
another period of six hours on the direction of a Superintendent.\textsuperscript{1377} The Act was enacted in 1987 along with a set of Custody Regulations\textsuperscript{1378} and an independent complaints procedure.\textsuperscript{1379} There would now be appointed a “custodial Garda” or “member in charge” for the purpose of overseeing the enforcement of the custody regulations.\textsuperscript{1380} Inferences could be drawn from a person’s silence\textsuperscript{1381} when questioned and provision was made for the electronic recording of interviews.\textsuperscript{1382} However the supporting regulations for the electronic recordings of same were not introduced until 1997.

O’Briain believed that what was recommended would go a long way to protecting persons in Garda custody. The O’Briain rationale was as follows:

Notwithstanding this they (the Gardaí) are under extreme pressure from the whole community which is claimant that the police uncover and prevent crime and bring guilt home to the guilty parties. Is it any wonder that the allegations which we have considered show a picture again and again of the Gardaí frustrated by their lack of legal power to question suspected persons in custody taking the law into their own hands by holding them for custodial interrogation and in doing so breaking the law if not indeed the Constitution?

This is so even apart from ill treatment. But the allegations we have considered state that in a number of cases the Gardaí in their frustration have used physical violence or threats of violence to secure answers to their questioning. If then the element of frustration can be eliminated or even reduced in some cases by a change of law, it seems to me that this change would afford persons some further safeguards against ill treatment.\textsuperscript{1383}

It is contended therefore that any further Garda empowerment was coming with a strong leash. While in the past Gardaí as noted by Garland “had a degree of freedom to get on with it”\textsuperscript{1384} this “freedom” was no longer unqualified and without \textit{caveat}.

In 1982 Peter Matthews would die from injuries he allegedly received at Shercock Garda Station. He had gone there voluntarily to meet Gardaí, who wanted to speak with him in

\textsuperscript{1377} S.4 of the \textit{Criminal Justice Act 1984}.
\textsuperscript{1378} \textit{Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations) Regulations 1987}.
\textsuperscript{1379} \textit{The Garda Síochána (Complaints) Act 1986}.
\textsuperscript{1380} S.7 of the \textit{Criminal Justice Act 1984}.
\textsuperscript{1381} Sections 18 and 19 of the \textit{Criminal Justice Act 1984}.
\textsuperscript{1382} \textit{The Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997}.
\textsuperscript{1383} O’Briain \textit{supra} at note 314 and \textit{Irish Times} 13\textsuperscript{th} September 1978 at p.4.
\textsuperscript{1384} D. Garland \textit{supra} at note 2 at p.120.
relation to a suspected stolen post office savings book that was reported to have been presented at a local post office. Two Gardaí were later charged in connection with the death but were acquitted. Three Gardaí were dismissed. Matthews was not in good health and was an alcoholic.\textsuperscript{1385}

In 1984, Joanne Hayes and four members of her family confessed to the killing and disposal of a baby. Later scientific evidence indicated that statistically they could not have committed the crime. The circumstances became known as the \textit{Kerry Babies Case}.\textsuperscript{1386} The government set up a tribunal under Mr. Justice Lynch who according to Conway “declined to find why the family had given false confessions regarding allegations of physical abuse of Ms. Hayes and her family”\textsuperscript{1387} at the hands of the Gardai. However, in the aftermath of the case the “Murder Squad” or the “Investigation Section” as it was formally known within AGS was disbanded. The independent complaints procedure outlined in the \textit{Garda Síochána (Complaints) Act 1986} came shortly thereafter.

Mr. Justice Lynch in the course of the Inquiry made a number of findings and remarks in respect of the Garda evidence. He stated that, “(t)hey are not barefaced lies on the part of Gardai (as regrettably is the case with the Hayes family) but they are an exaggeration over and above the true position or a ‘gilding of the lily’ or wishful thinking elevated to the state of hard fact.”\textsuperscript{1388}

The Tribunal Chairman would go on to explain:

For persons who take the witness Oath relatively frequently there is a danger that the Oath may become for them largely a matter of form. This does not mean that such a person is likely to tell completely groundless lies on Oath, where ‘familiarity breeds contempt’ has affected a witness it will most often manifest itself in the elevation of honest beliefs or suspicious into positive facts.\textsuperscript{1389}

\begin{footnotes}
\item[1385] C. Brady \textit{supra} at note 275 at p. 185.
\item[1387] V. Conway \textit{supra} at note 1070 at pp.7-8. and M. McAleese, Police and People, \textit{Dublin University Law Journal} (1987) at p.45.
\item[1388] K. Lynch \textit{infra} at note 1386 at p.61.
\item[1389] K. Lynch \textit{infra} at note 1386 at p.59.
\end{footnotes}
Mr. Justice Lynch cited an example, the evidence of Detective Superintendent John Courtney of the ‘Murder Squad’ who led the investigation. The Detective at one point in his evidence “sought to justify the searches he had directed” of the Hayes family property. These searches were an important issue in the course of the Inquiry. The Detective stated that Garda Liam Moloney “knew every inch of that farm.” Garda Moloney was the local uniformed Garda who would have had a knowledge of the Hayes family. Garda Moloney would state in evidence to the Inquiry that “he was not really familiar with the Hayes farmlands at all.” Mr. Justice Lynch remarked in his report that “if there was ever an example of wishful thinking (on behalf of the Detective) then this was it!”

The Chairman’s remarks relate to Garda evidence and its credibility. He would exonerate Gardaí of any wrongdoing but as noted by Kerrigan and Brennan “some found that a somewhat large leap of faith was required if one was to agree fully with the judge’s findings.” Detective Superintendent Courtney (later Chief Superintendent) when retired remarked that:

I have never lost a night’s sleep over the case because I did not set out to do any injustice to Joanne Hayes or anyone else … During the course of the Tribunal, Nurse Bridie Fuller, an aunt of Joanne Hayes gave evidence of two babies being born in the house on the night in question. I thought that would have brought the inquiry to a quick conclusion, but it dragged on for weeks.

The retired Detective would also state, “What gave rise to a lot of publicity was the fact that the then Minister for Justice Michael Noonan took it on himself to set up a Tribunal of Inquiry.” Insofar as this chapter is concerned the Kerry Babies case is further evidence that trust was continuing to erode in AGS in the eyes of the public and government. The manner in which Gardaí carried out interviews with prisoners would continue to be controversial.

\[1390\] Ibid at p.62.
\[1391\] Ibid at p.62.
\[1392\] Ibid at p.62.
\[1393\] Ibid at p.62.
\[1394\] G. Kerrigan and P. Brennan This Great Little Nation The A-Z of Irish Scandals and Controversies (Dublin: Gill & Macmillan 1999) at p.178.
\[1395\] J. Courtney supra at note 1366 at p.129.
\[1396\] Ibid.
On the 27th February 1991 what was known as “the stag party murder case” collapsed at the Central Criminal Court. Mr. Justice Barron dismissed all charges against Damien Marsh who was before the court for the stabbing and murder of Kieran Farmer on O’Connell Bridge, Dublin on St. Patrick’s Day, the 17th March 1990. The Irish Times headline read “Questions raised over Interrogation.” Mr. Patrick McEntee S.C. for Marsh “made allegations of serious misconduct against several Garda officers.” One of the Gardaí who had interviewed Marsh stated in evidence that the statement taken from Marsh while in custody was taken down line by line as it was made. The other interviewing Garda stated it was drawn up at the end of the interview.

On the 16th May 1995 the Court of Criminal Appeal would order a retrial in the case of Peter Pringle. Pringle had been convicted of capital murder and robbery at the Special Criminal Court. On the 7th July 1980 an armed robbery had taken place at the Bank of Ireland, Ballaghaderreen, Co. Roscommon. Garda Henry Byrne and Detective Garda John Morley were shot and killed by raiders when they were intercepted by the Gardaí as they sped from the scene. When later arrested Pringle told interviewing Gardaí that “I know that you know I was involved, but on the advice of my solicitor I am saying nothing, and you will have to prove it all the way.” This admission was one of the main pillars of evidence that resulted in Pringle’s conviction in the Special Criminal Court. The Court of Appeal some fifteen years later would rationalise Pringle’s admission as follows:

What he in fact said amounted to an admission of his appreciation that those who were accusing him of the crimes of murder and armed robbery knew that he had committed them and his admission was accompanied by a statement that on the advice of his solicitor he was going to say nothing and an observation that the Gardaí were going to have to prove the case themselves.

In view of the Court’s decision to order a retrial for Pringle, the D.P.P. subsequently entered a nolle prosequi and proceeded no further with the matter.

---

1398 Ibid.
1399 Ibid.
1400 Ibid.
1402 Ibid at p.563.
On the 16th October 1996 Paul Ward was arrested in connection with the murder of journalist Veronica Guerin. He was later charged in connection with that murder. The main pillar of the prosecution case was a particular admission he made to Gardaí while detained. The Special Criminal Court would acknowledge that Ward was “an experienced Section 30 detainee” and who for “a total of 14½ hours of intense interrogation by a series of experienced police officers … firmly maintained his policy of silence.” The Gardaí would also arrest his partner Vanessa Meehan and his mother Elizabeth Ward and would separately have each of them meet Paul Ward during his detention. Paul Ward would eventually confess his involvement in the crime to the Gardaí. Mr. Justice Barr would state that “the police were under severe pressure to bring charges in regard to that crime. The coincidence that the accused’s capitulation after more than 14 hours of silence during interrogations had occurred immediately after the visit of Ms. Meehan is a remarkable volte face which gives rise to unease and raises a series of pertinent questions.”

The Court would be satisfied in respect of the visit of Elizabeth Ward to the prisoner that:

It was a deliberate ploy devised and orchestrated by the police in a final effort to prevail on the accused to disclose what he had done with the gun … the visit was not arranged for any humanitarian purpose but was a cynical ploy which it was hoped might break down the accused.

The Court would add, “(a)s to the visit from Ms Vanessa Meehan to the accused the Court accepts her evidence that she was successfully subjected to grievous psychological pressure (by Gardaí) to assist police in breaking down the accused.” The Court was also concerned that documents relating to the detention of Ward were at the time of trial “unaccountably missing.” In the end the Court would find that the confession made by Ward when detained was “induced by grievous psychological pressure which emanated from his meeting with Ms. Meehan immediately prior thereto.” It ruled it inadmissible. The Court, notwithstanding

---

1403 The *People v. Paul Ward* Judgement of the Special Criminal Court delivered by Mr. Justice Barr on the 27th day of November 1998 at p.2.
1404 *Ibid* at p.5.
1405 *Ibid* at p.5.
1406 *Ibid* at p.5.
that Ward was charged with one of the most prolific crimes in the history of the State on the basis of his own confession – was not willing to accept the behaviour of Gardaí in how that confession was obtained. Ultimately Ward was convicted of the murder of Veronica Guerin in the Special Criminal Court based on the supergrass evidence of Charles Bowden but on the 22nd of March 2002 the Court of Criminal Appeal would quash the conviction.1410

On the 22nd January 2002 Colm Murphy was convicted at the Special Criminal Court on charges connected to the Omagh Bombing that occurred on the 15th August 1988. A car bomb was detonated and killed 29 people and injured in excess of 300 others. Part of the prosecution case were admissions allegedly made by Murphy to the Gardaí when arrested and questioned by them. There were a series of Garda interview teams. The notes taken by Gardaí of these interviews were subsequently scientifically analysed on behalf of the defence legal team. One of the interviews was recorded as follows:

<table>
<thead>
<tr>
<th>JF</th>
<th>Could your wife have taken your mobile phone to Omagh?</th>
</tr>
</thead>
<tbody>
<tr>
<td>CM</td>
<td>Definitely not.</td>
</tr>
<tr>
<td>JF</td>
<td>Getting back to the phones Colm, the matter will have to be clarified. You have a big problem here.</td>
</tr>
<tr>
<td>LD</td>
<td>We’ll take a break now Colm. Think about it.1411</td>
</tr>
</tbody>
</table>

However, scientific examination would show “with reference to the indentations on the following page”1412 of notes “that what had been originally written” was as follows:

<table>
<thead>
<tr>
<th>JF</th>
<th>Could your wife have taken your mobile phone to Omagh?</th>
</tr>
</thead>
<tbody>
<tr>
<td>CM</td>
<td>Definitely not.</td>
</tr>
<tr>
<td>JF</td>
<td>She’s Sheila McGrew’s sister isn’t (word indecipherable).</td>
</tr>
<tr>
<td>CM</td>
<td>That’s right.</td>
</tr>
<tr>
<td>JF</td>
<td>Getting back to the phones Colm the matter will have to be clarified. You have a big problem here.</td>
</tr>
<tr>
<td>LD</td>
<td>We’ll take a break now Colm. Think about it.1413</td>
</tr>
</tbody>
</table>

It was easily established by the defence that Sheila McGrew was not the sister of Colm Murphy’s wife. She had strong republican connections and was known to be the girlfriend of

1410 The People (D.P.P.) v. Paul Ward, Judgement of Court of Criminal Appeal delivered by Mr. Justice Francis D. Murphy on the 22nd March 2002 Record No. 14/99.
1411 The People (D.P.P.) v. Colm Murphy, The Court of Criminal Appeal No. 25 of 2002 Judgement of the Court delivered on the 21st January 2005 at pp. 8-10.
1412 Ibid.
1413 Ibid.
another man who had a similar background and was suspected by Gardaí to be involved in the Omagh Bombing.

Senior Counsel for the accused submitted:

Why … would Colm Murphy say that Sheila McGrew was his wife’s sister when such was patently not the case. There must, Mr. O’Higgins submitted be an almost inescapable inference that Murphy never said such a thing, that the question and answer were concocted and that the two officers on discovering the error set about altering the third page of that interview notes.  

Murphy would appeal his conviction and the Gardaí would face perjury charges. Both Gardaí would be acquitted and one of them would die shortly after. On the 21st January 2005 the Court of Criminal Appeal would order a retrial of the matter by the Special Criminal Court. Murphy would be acquitted. The Court of Appeal in its decision in 2005 would state:

Going forward … there should be a marked reluctance to excuse failures to comply with the requirements of the Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997 other than those circumstances specified in the Regulations themselves. We feel therefore that in respect of the station interviews from this point onwards the court should only exercise its discretion under Section 27(4) for good reason.

As highlighted by Coonan and O’Toole, Kearns J, made it clear that the Court was not satisfied with the Garda excuse “concerning a chair in the interview room (that) was facing the wrong way” or why there was no record to “explain the non- operation of the recording equipment in the Garda station.” Since the court case, all Garda stations with recording equipment are ordered to have a record book to highlight inspections, use and problems with recording equipment and the maintenance of same. It is difficult to comprehend why it took the State approximately thirteen years to give effect to the legislative provision for the electronic recording of interviews. Maybe it was a straightforward budgeting or resource issue. Perhaps

---

1414 Ibid.
1416 G. Coonan & K. O’Toole, “Criminal Procedure in the District Court” (Dublin: Round Hall 2011) at para.8.3.6 at p.251. [hereinafter Coonan and O’Toole].
1417 Ibid.
it was partly because each Government was awaiting the progress in the Northern Irish peace process which would ultimately lead to the Good Friday Agreement in 1998.

Dean Lyons admitted to two murders he did not commit. The subsequent Inquiry into the matter held that Dean Lyons was “able to provide accurate details of the murders” that he did not commit “due to the manner he was interviewed by Gardaí.” “He readily agreed to leading questions that were asked of him” by investigators. The Inquiry held that the D.P.P. was given “a good overview” of the case by a senior Garda and it found that Dean Lyons “was not abused or ill-treated in any way during his detention” and that “there was no believable attempt to frame Dean Lyons.” However the Inquiry also found that the D.P.P. was not told of “the existence of misgivings on the part of some key members of the investigation team including one of the principal interviewers to whom admissions were made.” The Inquiry held that “the extent of the misgivings were not recognised and acted upon by those present including the senior officer leading the investigation.” This theme of senior officers ignoring the valid and credible views of other members in particular those of lower rank who challenge the ‘group think’ would later permeate throughout other scandals that would besmirch AGS.

Between 2004 and 2008 Morris would publish a series of reports of his investigations into certain Garda activity in the Donegal Division. These reports would examine almost every aspect of Garda duties. The incidents that were examined go back to 1993 – the same year that Garda management produced its first Corporate Strategy document. These incidents flagged many important features of Garda duties and procedures and Morris would forensically examine and scrutinise them all. These areas concerned essentially four elements; how the Gardaí treated people in custody, handled criminal intelligence, acquired warrants and managed and accounted for themselves. The finding of the Tribunal in respect of all these

1418 Report of the Commission of Investigation (Dean Lyons Case) set up Pursuant to the Commission of Investigation Act 2004.
1419 Ibid at p.7.
1420 Ibid at p.7.
1421 Ibid at p.7.
1422 Ibid at p.7.
1423 Ibid at p.7.
1424 Ibid at p.7.
1425 Ibid at p.8.
1426 Ibid at p.7.
elements would make disturbing reading. As regards persons in Garda custody Morris found
the following in respect of a Garda custody officer, “(t)he task entrusted to him by the people
of Ireland on that right was to ensure that the prisoner was properly treated. He did nothing to
fulfil his function as custodian of the rights of the prisoner.”

Morris also made the following observations in respect of the electronic recording of interviews:

(H)ad recording facilities been available in 1996 in Letterkenny Garda Station this
Tribunal would have been saved months of evidence and those participating in
wrongdoing might have been discouraged from their improper behaviour. Those who
exaggerated or made false allegations against members of An Garda Síochána might
also have been discouraged from doing so. Of course, this applies in a more general
sense to all similar cases during the protracted period.

There can be no other words that highlight the importance and necessity of electronically
recording interviews at Garda stations. It is even suggested here that persons voluntarily being
interviewed in Garda stations should have their interviews recorded unless explicitly made
clear on tape that they did not wish to have the interview so recorded. As noted by Morris:

There should be a marked reluctance on the part of the courts who ultimately provide a
benchmark for best practice in An Garda Síochána to accept anything less than the full
implementation of these regulations “absent extraordinary excusing circumstances”
clearly established in evidence by An Garda Síochána.

All persons in custody are now interviewed on tape unless they state otherwise (on tape).
Allegations of false confessions induced by threats and assaults will be substantially reduced.
Similarly, false allegations of assault and wrong doing against Gardaí will also decrease. Cases
coming before the criminal court in recent times are rarely contested on these matters. There
may be fewer confessions made to Gardaí by persons in custody but those that are made will
be acknowledged by the accused in court. In addition, there are excellent examples of skilled
Garda interview techniques on tape which can be used to enhance the interviewing skills of
other Gardaí.

1427 F. Morris, supra at note 1118 at para 5.132 at p.415.
1428 F. Morris, Report of the Tribunal of Inquiry set up Pursuant to the Tribunal of inquiry (Evidence) Acts 1921-
2003 into Certain Gardai in the Donegal Division: Terms of Reference (b) (d) and (f): Report on the
Detention of ‘Suspects’ Following the Death of the Late Richard Barron on the 14th October 1996 and
[hereinafter Morris].
1429 ibid at para. 15.93 at p.1218.
Intelligence

Historically Gardaí always had a wide discretion when it came to intelligence and informants. Information on criminal activity can come to Garda attention in several ways. A concerned citizen might see or hear something suspicious and relay this information to a Garda known to him/her or by simply contacting a Garda at the local station. The caller may or may not wish to disclose his or her identity. Off duty Gardaí may also come across suspicious activity and pass it on to colleagues or seek the assistance of colleagues if imminent Garda action is necessary. The most controversial intelligence very often comes from criminals or other police forces who similarly harness their own intelligence sources. Most Gardaí during their service will receive intelligence from whatever source. In the past the quality of the information received was assessed by the member’s supervisor or managers. If necessary, a warrant was obtained. Every Garda is disposed to protecting the identity of his or her source unless that same person has made it clear that identities could be disclosed to other Gardaí. Difficulties arise if an informant observed or overheard something that might be material evidence in any court case. A decision must be made by Gardaí which would ultimately lead to the informant becoming a witness and making a statement to Gardaí of what was seen or heard. A dramatic example of this was the evidence of Charles Bowden in the Veronica Guerin murder case. He turned State’s evidence that led to others being charged in connection with the murder of Veronica Guerin. He gave this evidence on foot of assurances of ‘benign’ treatment by State irrespective of his own transgressions. The courts ultimately found supergrass evidence to be unacceptable but what occurred was very controversial at the time as Gardaí were also criticised by the courts for their “oppressive” interview room tactics in acquiring a confession from Paul Ward in respect of the same murder. It is shown here that the Gardaí have in the last half century been scandalised by the manner in which they might have acquired or acted on criminal intelligence. It is also correct to say that AGS has been scandalised by the paucity or lack of its criminal intelligence at certain times.

On the 9th July 1976 President O’Dálaigh accepted the credentials of the New British Ambassador to Ireland Mr. Christopher Ewart Biggs. Three days later the Ambassador met

---

1430 The People (D.P.P.) v. Paul Ward supra at notes 1410 and 1403.
1431 D. Dunne & G. Kerrigan supra at note 1353 at p.181.
the Gardaí in respect of his own security. He was not impressed. 1432 He wrote in his diary, “(t)hey (the Gardai) are not very reassuring … (t)hey thought for some reason that an attack on his car was unlikely.” 1433

Dunne and Kerrigan would write, “(I)t appears from the diary, that Ewart Biggs raised the possibility of an attack on his car and got the reply ‘it hasn’t happened yet.’” 1434 The Ambassador went on to write “it seems to be the department of ‘fingers crossed’.” 1435 Some nine days after his meeting with the Gardaí the Ambassadors and his assistant would be murdered when the P.I.R.A. detonated a bomb under his vehicle as it proceeded about two hundred yards from the entrance to his residence in Dublin. Dunne and Kerrigan would later observe:

The Cosgrave Coalition went berserk … clearly the killing of Ewart Biggs was a colossal security cock-up by the Gardaí and security ministers … the Cosgrave response was not security based it, was political. A State of Emergency would be declared, tough new laws would be brought in, civil liberties would be suspended, the people would be convinced that the security of the State (was under threat) and that would squeeze out the Provos. 1436

No one was ever made amenable by the Gardaí for these killings. In 2015 Crank would state, “(a)nd when we are at war complex issues are simplified. Warriors don’t need to worry about all that due process stuff. You’re with us or against us.” 1437 It is submitted that what happened after the British Ambassadors assassination is an example of what Garland refers to as “a sovereign state strategy stressing enhanced control and expressive punishment … the criminal justice state was perceived as having failed to deliver adequate levels of security.” 1438

In 1989 two RUC Officers were ambushed and shot to death by the P.I.R.A. as they returned to Northern Ireland from Dundalk Garda Station. Chief Superintendent Harry Breen and Superintendent Bob Buchanan had departed the Garda station consequent to a cross-border

1432 ibid.
1433 ibid.
1434 ibid.
1435 ibid.
1436 ibid., pp.181-182.
1438 D. Garland supra at note 2 at p.140.
policing meeting with their Garda counterparts. There would later be allegations that members of AGS colluded in the murders.

The Smithwick Tribunal\textsuperscript{1439} would inquire into these matters and report on same in 2013. The Inquiry would be conducted almost two decades after the murders and would examine the whole murky world of intelligence and collusion. \textit{Smithwick} would note:

Collusive acts are by their very nature surreptitious. Absent a phone call or an incriminating bank transfer, if collusion has occurred the evidence of it will almost certainly be difficult to find … the Tribunal has not uncovered direct evidence of collusion.\textsuperscript{1440}

However, in the end Smithwick did reach “the conclusion that there was collusion.”\textsuperscript{1441} He based his finding on “circumstances” and “three strands of intelligence received by An Garda Síochána from the same source within a few years of the murders.”\textsuperscript{1442} He also took into consideration that the RUC and AGS had “both … received information from reliable sources that there was collusion.”\textsuperscript{1443} Smithwick would hold:

I am satisfied that the I.R.A. required positive identification that Harry Breen in particular had arrived at Dundalk Garda Station. Whilst his image was well known and therefore he may well have been recognised by a member of the Provisional I.R.A. observing the station, the optimum confirmation of his identity from the point of view of the Provisional I.R.A. would likely be a member of An Garda Síochána. Given that I am satisfied that the evidence points to the fact that there was someone in the Garda station assisting the I.R.A. it also seems to me to be likely that the Provisional I.R.A. would seek to exploit that resource by having that individual or individuals confirm the arrival of the two officers.\textsuperscript{1444}

Smithwick would make no findings of collusion against individual Gardaí. The Tribunal was critical of both the RUC and AGS in that at the time:

\begin{itemize}
\item \textsuperscript{1439} P. Smithwick, Report of the Tribunal of Inquiry into Suggestions that Members of An Garda Síochána or Other Employees of the State Colluded in the Fatal Shootings of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchannan on the 20th March 1989: Set up Pursuant to the Tribunal of Inquiry (Evidence) Act 1921-2004.
\item \textsuperscript{1440} \textit{Ibid} at p.424.
\item \textsuperscript{1441} \textit{Ibid} at p.428.
\item \textsuperscript{1442} \textit{Ibid} at p.428.
\item \textsuperscript{1443} \textit{Ibid} at p.428.
\item \textsuperscript{1444} \textit{Ibid} at p.429.
\end{itemize}
It was particularly regrettable that both police services acted swiftly to dismiss speculation of the possibility of collusion rather than to deal with that by means of a thorough and credible investigation. This was an example of prioritisation of political expediency in the short term without due regard to the rights of victims and the importance of placing justice at the centre of any policing system.  

It is contended that what Smithwick investigates is a good example of what Garland states that the “criminal justice system is a minefield. It routinely deals with emotionally laden and high visibility cases that stretch the meaning of justice and provoke hostile reactions on one side or another.”  

This case still creates bad feeling between authorities on both sides of the border.

In 1995 a Garda tout set up a drug deal in Amsterdam. A large consignment of cannabis was to be imported into the country. Undercover Gardaí would use a trawler to collect the consignment at sea and bring it ashore. The Gardaí would bring the same consignment by road for collection by a Dublin based gang. When the gang would collect the illicit consignment, the undercover Gardaí would spring the trap. Unfortunately, the gang never turned up for their illicit haul. The Gardaí waited. Nothing happened. The Gardaí were now in possession of a large consignment of cannabis. The story would go to press that the Gardaí had located the haul at Urlingford, Co. Kilkenny. The street value of the cannabis was stated to be £130 million. The find was heralded as the largest drugs seizure ever in the State and a tribute to the skills and co-operation of the Gardaí, customs officers and naval service. Obviously there had been no arrests. The spin on the story was an effort by the Gardaí to put a “brave face” on an operation that had gone awry. Customs officers were not involved. The Minister for Justice Nora Owens later had to clarify that the exchequer did not have to foot the bill for the cannabis.

As noted by Kerrigan and Brennan the scandal that followed, “Was not the fact that the operation went wrong, not even in the lack of co-operation between police and customs but in the attempt to portray the fiasco as a victory.”  It is submitted these remarks are valid but it might also be fair to say that Gardaí could have been endeavouring to protect the informants. Persons who are identified as informants by powerful criminal gangs do not have a long-life span thereafter. It is submitted that this was an ugly and embarrassing case for AGS and a

---

1445 Ibid at p.431.
1446 D. Garland *supra* at note 2 at p.113.
1447 G. Kerrigan and P. Brennan *supra* at note 1394 at pp. 299-301.
1448 G. Kerrigan and P. Brennan *supra* at note 1394 at pp. 299-301.
good example of Garland’s argument that “the public is easily scandalized by many of the decisions that are routinely made.”

Undercover operations are dangerous and unpredictable. There is no template practice for them and while many members of the public would be willing to give Gardaí the benefit of the doubt in these matters, many others would not.

On the 1st May 1998 Ronan MacLochlainn was shot and killed by members of the Gardaí in the course of an attempted armed robbery of a Securicor van in Co. Wicklow. It occurred on the day of the Garda ‘blue flu’ when most Gardai of Garda rank reported ‘sick’ for work in a pay dispute with government. On the day of the shooting the operation was reported to be intelligence led with the involvement of Garda surveillance units. MacLochlainn’s partner would later take a case to the European Court of Human Rights because she alleged that there was a breach of the European Convention on Human Rights because there was no independent investigation into the killing of her partner. The State agreed to set up a Commission of Investigation and the European Court struck out the case on the basis of that commitment. The Commission was set up in 2014 and presented its report in June 2018 to the Minister for Justice. The Commission report found that the killing was lawful. MacLochlainn’s partner believes that the Gardaí could have “prevented the robbery beforehand and made arrests but instead ‘went for the spectacular.’” The Commission had heard evidence that the Gardaí “believed there was going to be a kidnapping or high value robbery or explosives were to be transferred, and an officer realised the target was a cash in transit van on its way to the scene. An issue arose whether action should have been taken at this stage to stop it perhaps by simply parking a police car on the opposite side of the road.” However, “an attack was mounted” by the Gardaí “with the National Surveillance Unit and Emergency Response Unit involved.”

MacLochlainn was suspected by Gardaí to be a member of a dissident I.R.A. group.

---

1449 D. Garland supra at note 2 at p.113.
1450 “Legal Challenge Over Case of Man Shot Dead by Gardaí” R.T.E. Report 17th January 2017 accessed at www.r.t.e.ie at 1.15 p.m. on the 21st October 2017.
1451 Ibid.
1452 Ibid.
1453 Ibid.
1454 Ibid.
1455 Ibid.
In the same year a “red Vauxhall Cavalier used in the Omagh Bombing was stolen in Carrickmacross, Co. Monaghan on the night of the 12th/13th August 1998.” A Garda detective would later make a series of serious allegations regarding the mishandling of intelligence which would or could have prevented the Omagh Bombing and saved many lives. The most serious allegations were against a very senior officer in AGS. The Nally investigation would subsequently hold that these allegations “were a direct consequence of and motivated solely by concerns arising from the difficulties in which (the complainant) found himself with his superiors in the Garda Síochána and with the criminal law.” The member who made these allegations accused senior Gardaí and P.S.N.I. officers of being involved in criminal conspiracy in matters connected to the Omagh Bombing. The same member was embattled with serious allegations being made against him which were subject to inquiry by both Morris and internally by AGS itself.

The toxic world of criminal intelligence was again under the spotlight in July 2008 when Kieran Boylan walked free from court when the State did not proceed with six charges against him in connection with the seizure of €1.7 million worth of cocaine in Co. Louth. At the time of that particular seizure he had been on bail in respect of other charges relating to the seizure of €700,000 worth of cocaine in both Dublin and Louth. He received a five-year prison sentence in respect of the former charges. GSOC would investigate the unexplained dropping of charges in the aftermath. GSOC would inquire into Boylan’s relationship with the Gardaí and seek to establish if he was an informant. An R.T.E. report would state:

The Ombudsman investigated whether or not any Gardaí knew he was dealing drugs while acting as an informant; if he supplied drugs to other drug dealers and then gave information about those drugs to Gardaí; and whether or not a conviction secured on the basis of such information is now unsafe.

---

1457 ibid
1458 ibid at para. 4.27 at p.63. and Nally Report at para. 4.4 at p.51 accessed at www.justice.ie on 21/10/17 at 1.30 p.m.
1460 ibid
The D.P.P. would ultimately direct no charges in the matter against any Gardaí on the basis of the investigation file submitted by GSOC consequent to a four-year investigation by them. However, GSOC would complain that Gardaí delayed the GSOC investigation and “expressed serious concern about informant handling procedures.”¹⁴⁶¹ Garda Commissioner Martin Callinan would publicly reject these criticisms. GSOC criticised “informant handling procedures, training and management and recommend changes.”¹⁴⁶² Tension between GSOC and AGS would again arise in 2014 when on the 9th February of that year:

an article appeared in a weekend newspaper under the heading “GSOC under Hi-Tech Surveillance” asserting that the offices of GSOC had been ‘targeted as part of a sophisticated surveillance operation which used government level technology to hack into its e-mails, wifi and phone system.’¹⁴⁶³

The newspaper concerned was the Irish Edition of the *Sunday Times*. The government would appoint Retired Judge John D. Cooke to investigate the matter. The Cooke Report would conclude:

It is impossible on the basis of the technical opinions and available information, categorically to rule out all possibility of covert surveillance … it is clear that the evidence does not support the proposition that actual surveillance of the kind asserted in the Sunday Times article took place and much less that it was carried out by members of the Garda Síochána.¹⁴⁶⁴

AGS remains under the spotlight right up to the present time in respect of how it handles and manages informants. On the 10th October 2015 Garda Tony Golden was shot and murdered when dealing with a domestic incident involving Siobhán Philips and her partner Adrian Crevan Mackin. Mackin shot Garda Golden dead and with the same firearm shot his partner causing her serious injury. Ms. Philips and her family are now seeking a “full public inquiry”¹⁴⁶⁵ into Mackin’s liaisons with Gardaí. They suspect he may have been an informant and that there was a delay by Gardaí in investigating the complaint of Ms. Philips who allegedly

¹⁴⁶⁴ *Ibid* at p.48.
had been badly beaten by Mackin a short time before the shooting. They suspect that Garda Golden’s death and Ms. Philips’ injury could have been prevented by prompt actions by the Gardaí and the reasons why the Gardaí did not move sooner was, they suspect, that Mackin was a Garda informant. He was before the Courts on charges of membership of an illegal organisation notwithstanding that there was evidence to connect him with firearms. He was on bail at the time of the shooting. After shooting and murdering Garda Golden and attempting to murder Ms. Philips he ultimately turned the gun on himself and ended his own life. The controversy remains live in early 2019.

Morris was scathingly critical of Garda informants and intelligence handling. Five telephone calls had been made to the home of Michael and Charlotte Peoples. Morris would find that a Garda informant would make these calls from the home of a member of AGS\textsuperscript{1466} who in turn would deny that they had occurred, and the station duty detail would be altered to support the denial. Nonetheless Morris would find that:

> Certain members of Garda management in Donegal would condone the tactic … of allowing a police informant to make these type of bizarre telephone calls to the home of Michael Peoples for the purpose of illegitimately entrapping him and setting him up for arrest.\textsuperscript{1467}

Morris would criticise AGS on the “chaotic nature of informant handling.”\textsuperscript{1468}

In response to Morris, AGS produced what it called “a Code of Practice for the Management and Use of Covert Human Intelligence Sources”\textsuperscript{1469} (CHIS). The organisation says that this policy “brings together current established best practice.”\textsuperscript{1470} AGS state:

> Authority to recruit, handle and manage these CHIS will only be given by Assistant Commissioner at Crime and Security. These CHIS will be strictly managed in accordance with our Code of Practice.

\textsuperscript{1466} F. Morris \textit{supra} at note 1118 at para 1.73-1.74 at p.25.
\textsuperscript{1467} F. Morris \textit{supra} at note 1118 at para 6.35 at p.470.
\textsuperscript{1468} F. Morris \textit{supra} at note 1118 at para 9.11 at p.602.
\textsuperscript{1469} Public Statement by the Commissioner of An Garda Síochána on the Management and Use of Covert Human Intelligence Sources. Accessed at www.garda.ie on 6\textsuperscript{th} November 2017 at 9.40 p.m. at pp. 1-6.
\textsuperscript{1470} \textit{Ibid}.
AGS has a duty to protect the identity of CHIS and as such (we) have a duty of care to these individuals. This duty will necessitate that a risk assessment is conducted in respect of each CHIS.\textsuperscript{1471}

The organisation will appoint and train CHIS Handlers “to approved standards”\textsuperscript{1472} and where “authority is given to use a CHIS the use will be subject to appropriate review”\textsuperscript{1473} and “will also maintain records of our activities in the management and handling of CHIS.”\textsuperscript{1474}

The discretion of each member of AGS to engage and develop his or her own informants is now more or less set at zero. Within the organisation the CHIS system must be used and failing to do so will generally lead to strong disciplinary sanction. Informants should be registered. The advantage of such a system is to minimise the abuse of informants and criminal intelligence as was found by Morris. It also protects younger members who could be compromised by informers. The downside is that if an alert member of the public calls to the local station to report suspicious activity and Gardaí act on same and recover stolen property, drugs or firearms, then the first question now asked by management is where did the information come from? The member of the public may have no wish to be identified or may not have even given his details. The member of the public who now acts to assist Gardaí will now be expected to be a CHIS. Gardaí might no longer be inclined to take the initiative and will choose to play safe and invoke the CHIS system. Time is lost and windows of opportunity to recover stolen property, illicit drugs or firearms will be firmly closed but the Garda will face no disciplinary sanction. As noted by Garland:

\begin{quote}
The changes that have occurred in the control field have mainly been a matter of redeploying and redirecting the practices of existing institutions. It has been a process not of investigating new institutions or instituting new practices but redefining those that already exist giving them a different force and significance and putting them to different uses.\textsuperscript{1475}
\end{quote}

The cultivating of informants and the gathering of good criminal intelligence remains recognised as an essential police skill, but the system is now strongly regulated to protect AGS

\begin{footnotes}
\item[1471] Ibid.
\item[1472] Ibid
\item[1473] Ibid
\item[1474] Ibid.
\item[1475] D. Garland \textit{supra} at note 2 at p.174.
\end{footnotes}
from scandal and arguably to the immeasurable detriment of the successful investigation of crime.

**Media**

Garda work is never black and white and Garda duties can be contentious and Gardaí are easily second guessed. AGS is the most accountable and supervised organisation in this jurisdiction. Not only are Gardaí subject to both criminal and civil law like every other citizen they are also amenable to its internal disciplinary regulations and the decisions that Gardaí make in difficult situations on the spur of the moment can be legally challenged and exposed to scrutiny by judicial review and hindsight. Since the 1960s the Gardaí now have custody regulations, custody records, custody officers, electronic interviewing of prisoner interviews, GSOC, the Inspectorate, and their own Professional Standards Unit (PSU) including its Internal Audit Section (IAS) and the Whistleblower’s Charter. There is also now a Policing Authority and a Commission on the Future of Policing in Ireland. It is submitted that this transformation on Garda oversight is evidence of what Garland states:

Criminal justice is now less autonomous than it was three decades ago and more forcefully directed from the outside. Criminal justice actors and agencies are now less capable of directing their own force and shaping their own policies and decisions.

The scrutiny and supervision of the Garda organisation is massive compared to what it was back in the 1960s and the decades before. It is easy for persons outside the Garda organisation whether they be politicians, media commentators, academics or the public generally to find fault with AGS from its highest echelons right down to the Garda on the beat. Garda duties, functions and work are massively diverse and fraught with risk and danger. It is easy therefore

---

1477 Ibid at Regulation 6.
1478 Ibid.
1486 Commission on the Future of Policing in Ireland @www.policereform.ie accessed at 10.05 p.m. on the 6th November 2017.
1487 D. Garland supra at note 2 at p.172.
for politicians and others to highlight the real and perceived shortcomings of Gardaí in certain situations and politicise them.

As noted by O’Donnell and O’Sullivan in 2001 in respect of ‘zero tolerance policing’ espoused by Michael O’Donoghue T.D. (later Minister for Justice) in the 1997 general election:

Politicians, especially in Fianna Fail have used crime as a ‘wedge issue’ designed to separate voters from opposition parties. Criminal justice policy is no longer a subject for practitioners and technocrats. It is no longer an unglamorous core function of governments like public health, transport or communication. It has become politicised and emotionally charged.1488

It is submitted that much of the scandal pertaining to AGS over the decades was seriously politicised and emotionally charged particularly so in the last ten years. As noted by O’Donnell and O’Sullivan “sound bite politics was the order of the day … while slogans and symbols may have some visceral appeal they did little to solve complex problems.”1489

Opposition T.D.’s now find it easy to use AGS to score political points against the government of the day. Garda work easily lends itself to sensationalism but as noted by O’Donnell and O’Sullivan:

To describe the nuances of a rational response to crime requires time and this is impossible to do in a ten second sound bite. To some extent therefore the media agenda “especially television and radio” shapes the political discourse in the sense that it makes proper discussion a luxury. To be heard above the crowd requires a mastery of catch phrases rather than detailed understanding.1490

It is submitted that the work of AGS lends itself easily to this political and media cynicism. If the Gardaí are guilty of wrong doing, then those responsible should be held to account, however on many occasions Gardaí have to make decisions in the heat of the moment and many decisions can only be seen as wrong in the cold light of day and with plenty of hindsight and discussion. It is one thing to hold Gardaí to account, it is another thing altogether to impugn

1489 Ibid at p.75.
1490 Ibid at p.75.
and damage them personally and professionally especially so without trial or some proper investigation and this can happen when T.D.’s highlight Garda matters under Dáil privilege.

On the 10th February 2017 Garda Keith Harrison wrote to Minister Catherine Zappone T.D. making “allegations of the most serious kind … against the national police force and against the social services” which led in part to the setting up of what is now known as the Disclosures Tribunal. A number of T.D.’s supported Garda Harrison. In February 2017 Alan Kelly T.D. welcomed the fact that a number of Garda Harrison’s allegations would be looked at by the aforementioned Tribunal. Kelly would state “there are similarities between his case and the others in the form of the role of TUSLA and how he (Garda Harrison), Marissa and their family were treated.” It is assumed that Mr. Kelly was equating Garda Harrison’s allegations with that of Sergeant McCabe. The same Tribunal was simultaneously inquiring into issues involving Sergeant McCabe’s Garda bosses and TUSLA. In January 2017 Mick Wallace T.D. stated “as soon as Keith Harrison put his head above the parapet, he got barraged from all angles by the hierarchy of the force which had not changed its spots.” In December 2017 Claire Daly T.D. asked “Harrison, a member of the Garda? Senior management pressured his girlfriend into making a complaint against him. He had to go to the High Court to stop an action against him … who will be held to account for the breach of human rights of that whistle-blower?”

Having enquired into these matters the Tribunal fully exonerated the Gardaí and TUSLA personnel who dealt with Garda Harrison. Judge Peter Charlton, the Tribunal Chairman would do so in the most emphatic and categoric of terms. In the course of his report the Tribunal Chairman would comment on the nature of these type of allegations:

One of the earliest and bitterest experiences of almost every lawyer is that of meeting a client who has a tale of injustice to tell and setting about deploying the resources of litigation for the benefit of that client, to later realise that there is another side to the

---

1492 “The T.D.s who backed Keith Harrison” Irish Independent 2nd December 2017 accessed at www.irishindependent.ie at 6.10 p.m. on the 5th January 2018.
1493 Ibid.
1494 Ibid.
story and that it is such that the court eventually resolves the case that is brought negatively. It is fundamental to our system of justice that both sides should be heard because both have evidence and insights as to the issue put forward. No case is resolvable without the consideration of the contrary case. Just as a lawyer in an office may hear only one side of the case, that which the potential litigant wants to put forward, so, in terms of political representations, only one side will be heard and accepted in good faith.1495

The Tribunal Chairman espouses the importance of hearing both sides. T.D.’s however can use Dáil privilege to put forth only one side of a story in a very sensational way to presume wrongdoing on behalf of the party or parties being complained of. Notwithstanding the Tribunal’s findings Garda Harrison continues to pursue and litigate his issues.

As Garland noted “the dynamics of the televised press conference or interview has made it more difficult for administrators and professionals to avoid the emotional forces of public opinion.”1496 It is submitted that the AGS at all levels would agree with what Garland states here. Garland would further explore the impact of the media:

    Televised news conveyed a sense of immediacy and intimacy bringing the viewer ‘face to face’ with the subject of the interview or presentation. This led to a new emphasis upon the emotive and intimate aspects of events and the tendency to reveal more and more of the personalities involved.1497

Over the years Garda Commissioners have become almost household names. So too have other Garda members in the course of investigations and scandals. As Garland states:

    The media in the name of realism and candid reporting no longer respects the traditional demands of privacy and intimacy. More backstage behaviour is routinely revealed as one of the failings of public figures and institutions. Its self-serving and much abused – but nonetheless democratic – shibboleth is that the public has a right to know.1498

It is submitted that this chapter has shown that “the central agencies of the modern criminal justice state have undergone quite radical shifts in their working practices and organizational missions.”1499 Garda discretion has almost been set at almost zero because of these changes.

1495 P. Charlton supra at note 1491 at p.5.
1497 D. Garland supra at note 2 at p.86.
1498 D. Garland supra at note 2 at p.86.
1499 D. Garland supra at note 2 at p.3.
This it is submitted is Garland’s theory as it relates to AGS. He further observes that, “practitioners who were trained before the 1980s have seen their codes of conduct rendered obsolete, the distribution of power changed and the aims and objectives that had no place in old systems have become increasingly prominent.” Gardaí trained in the late 1970s and early 1980s have seen the job revolutionised in ways they could not have imagined when they first passed through the gates of the Garda Training Centre in Templemore as it was then known. It is now known as the Garda College.

Amazingly, notwithstanding all the scandals that have engulfed AGS over the decades it has always maintained an elevated level of public support. In 2002 86.6% of the public were said to be “satisfied” or “very satisfied” with Garda service. In 2006 it was 79% and in 2007 it was back up to 81%. In 2015 “high” to “medium” trust in AGS was never below 84% for each quarter of that year while persons “satisfied” or “very satisfied” with Gardaí was down to no less than 66% in each quarter of that year. For the first quarter of 2017 74% were “satisfied” or “very satisfied” with Garda service and 92% had “high” to “medium” trust in AGS. However, only 43% thought it was “well managed” and 38% thought that AGS provided a “world class police service”.

It is submitted that the final two statistics are crucial. The public differentiate between individual members of the Gardaí and the actual organisation itself and how it is managed. Perhaps an observation by retired Superintendent Tim Leahy helps to clarify this paradox:

It must be understood that the Garda Síochána is one of the largest single welfare agencies in the State … The welfare dimension is rarely seen in that light but rather to the public accept the service as a gesture of a person in authority with whom they happen to be dealing with in any given circumstances. Indeed, the major element of a Garda’s job is of a nature which cannot strictly be defined as pure police work. Each time a unit of the Garda Síochána attends to matters calling for attention such as a) a national disaster like a fire, flooding or drowning, b) a traffic accident, c) doing point

1500 D. Garland supra at note 2 at p.4.
1501 Garda Public Attitude Survey 2002 at p.2.
1502 Garda Public Attitude Survey 2006 at p.3.
1503 Garda Public Attitude Survey 2007 at p.3.
1505 Garda Public Attitude Survey 2017 at p.4.
1506 Ibid at p.4.
duty at a road junction, d) an event calling for crowd control, e) an emergency action to save life, the unit attends in the capacity of welfare officers.\textsuperscript{1507}

The public are satisfied that their contact with individual Gardaí but not so happy with how they manage and organise themselves.

In any event it is being submitted that this chapter presents evidence of Garda history through the prism of scandal which supports what Garland says:

\begin{quote}
The public has increasingly lost confidence in criminal justice and politicians have become more unwilling to entrust decision making powers to criminological experts or criminal justice personnel. From the political viewpoint the criminal justice system has become a danger zone, a constant generation of risks and scandals and escalating costs whose officials can no longer be entrusted with autonomous powers and grants of discretion.\textsuperscript{1508}
\end{quote}

\textbf{Conclusion}

This chapter has traced the impact of scandal and controversy in AGS from the 1960s to 2017. The controversies presented in this chapter are not exhaustive of what occurred within AGS, but it is strongly contended that they fully evince the validity of Garland’s theory insofar as it can be applied to the practices and procedures of AGS over the last fifty years. Garland set out his theory in 2001. It is submitted that it held true then and continues to hold true now.

The salient transformation brought about because of scandal is the substantial erosion of Garda discretion. As one of Conway’s Garda sources noted in her recent publication:

\begin{quote}
Discretion has now gone because at the time you went to an incident you took out your notebook and you wrote down the details. If you wanted to do something about it was up to you to come back and do up your files but now when you go to an incident you must put that on PULSE. That is now a public record.\textsuperscript{1509}
\end{quote}

This chapter has looked at Garda scandals under the headings Accountability, Prisoners and Intelligence Gathering. It has also explored how the media and politicians highlighted these

\textsuperscript{1508} D. Garland \textit{supra} at note 2 at p.20.
\textsuperscript{1509} V. Conway \textit{supra} at note 355 at p.163
scandals. It is the view of this author that politicians used Dáil privilege to raise what were in some case unfounded allegations and in some ways exacerbated and sensationalised what had occurred. The Gardaí have also been scandalised regarding their shortcomings on how they investigated or did not investigate crime and how they recorded crime statistics and detection rates. The organisation also found itself in controversies in how it handled and dealt with ‘whistle-blowers’ within its own ranks and generally speaking on how it managed itself. These areas are covered in other chapters of this work. They show that there can be an overlap on the Garland indices. It can be seen from this chapter that much has been done by respective governments to improve Garda accountability and ensure the protection of prisoners in Garda custody. The Government has committed itself to implementing the recommendations of the Report from the Commission on the Future of Policing in Ireland which is discussed in the next chapter. In authors view this can only strengthen AGS well into the future. The Gardaí have also endeavoured to improve how they handle criminal intelligence but notwithstanding these improvements this area will always remain toxic and dangerous. The Gardaí remain scandalised in part because of how they dealt with matters going back many years. It is easy to pick an historical incident involving the Gardaí and retrofit today’s standards to impugn Garda efficacy and integrity. It is not the focus of this chapter or indeed this thesis to challenge criticisms of the organisation. This chapter simply sets out to demonstrate Garland’s theory is strongly evidenced in the transformation of AGS by means of scandal and crisis in the last half century.
DISCUSSION AND FINDINGS

It is the only profession in this country where we ask people to dance a dance with Satan, to come face to face with evil, to play games or have games played on them with people of evil intent.\(^\text{1510}\)

This thesis set out to explore transformation in AGS over the last half century since the late 1960s to 2018 and to establish if David Garland’s theory on the “culture of control” has any relevance to that transformation. It is submitted that the evidence presented here is compelling proof that Garland’s theory is authenticated in what occurred in Irish policing in the period under review. In Garland’s seminal publication in 2001, the 1980s and 1990s were examined *inter alia*, highlighting changes in the criminal justice systems of the U.S.A. and U.K. during those decades. In that time, Garland argues that criminal justice in these large jurisdictions became more authoritarian, coercive and punitive. He uses twelve benchmarks or what he calls “Indices of Change” to make out his case. Six of these indices are examined in this work. They were selected because they are easily applicable to policing and separate chapters focus on each of them. To recap, these benchmarks were as follows:\(^\text{1511}\)

1. The Return of the Victim
2. Above All, The Public Must be Protected.
3. The Expanding Infrastructure of Crime Prevention and Community Safety.
6. A Perpetual Sense of Crisis.

Each chapter in this work presents substantial evidence of changes and renewal to AGS under these benchmarks. That is not to say that there are not some pushbacks on Garland’s theory, but it is maintained that the evidence corroborating what he argues is very compelling. In the first chapter it is shown that victims of crime have a new import and salience, but their rights continue to be trumped by due process rules in favour of the accused. AGS can no longer rely

\(^{1510}\) “Fr. Michael Cusack speaks to mourners at the State funeral of Detective Garda Adrian Donoghue who was killed while on escort duty.” *The Cork News* (1\(^\text{st}\) February 2013).

\(^{1511}\) D. Garland *supra* at note 2 at pp.6-20.
on immunity from civil wrongs perpetrated on victims because of their member’s neglect and the organisation has had to introduce and give effect to its Victims Policy and Charter. Its PULSE system has been updated to ensure that its members attentiveness to victims can be recorded and verified. Gardaí must now carry out call backs to crime victims after a crime has occurred and Family Liaison Officers (FLOs) are appointed to liaise with victims’ families in respect of more grave and heinous crimes. While Gardaí retain some autonomy on prosecutorial decision making in respect of criminal matters their discretion has been eroded by the D.P.P. who now has specifically codified how and when the Gardaí can exercise prosecutorial decision making. Essentially the D.P.P. will now make prosecutorial decisions in all serious matters. Reasons for decisions not to prosecute must now be explained to victims of crime on their request in certain circumstances.

In the second chapter on public protection what Gardaí were confronting on the streets is placed alongside the volume and velocity of legislation that delivered on massive Garda empowerment. These powers covered every area of policing from traffic and casual trading to the seizure of criminal assets and crime investigation. The chapter explains how internally Garda training could hardly keep abreast of legislative changes and their own empowerment and in-service training was limited. This internal difficulty continues but there are plans to improve. As noted in 2018 by the Commission of the Future of Policing in Ireland (C.F.P.I) AGS did not “see training as a critical function but a disposable one”\(^\text{1512}\) as budget cuts after the financial crash in 2009 saw the monies allocated to in service training “reduced to almost zero”\(^\text{1513}\). While the Gardaí have received much empowerment, they have also been reined in with law and regulation in how they deal with prisoners\(^\text{1514}\) and investigations into AGS are now carried out under the independent auspices of GSOC\(^\text{1515}\). A Garda Inspectorate oversees policing procedures\(^\text{1516}\) and internally the Gardaí have their own audit and professional standards units.


\(^{1513}\) Ibid at p.69 at para 3

\(^{1514}\) The Criminal Justice Act 1984 and The Treatment of Persons in Custody in Garda Stations Regulations 1987. Alongside this statute and set of regulations came the Garda Síochána (Complaints) Act 1986 which set up an independent system for the investigation of complaints against members of AGS.

\(^{1515}\) The Garda Síochána Act 2005 gave statutory backing for the Garda Síochána Inspectorate and GSOC.

\(^{1516}\) Ibid.
In the third chapter on crime prevention and community safety explores how the drugs epidemic in the mid-1980s escalated fears in AGS that the public was losing confidence in its ability to tackle the problem. This led to AGS embarking on a charm offensive to restore public confidence in the organisation and its ability to tackle crime and in particular the drugs problem. Neighbourhood Watch (NW) schemes and their derivatives were set up around the country and were vehicles for local Gardaí and their more senior officers to formally and informally meet the public whom they police to address fears (both real and perceived) of criminal activity in their respective areas. The chapter shows how the organisation’s community policing policy has remained important within the organisation up to the present day and while Garda management, mainly due to budgetary and resourcing issues might struggle to maintain adequate staffing of community policing units in their districts, the policy commitment never changed. The various Garda reports are looked at from the 1980s in particular and some of the remarks of senior Gardaí at the time are strikingly similar with the vocabulary of Garland when describing his theory on the culture of control.

In the fourth chapter the commercialisation of policing is discussed. The Gardaí acknowledge that due to budgets and resourcing they cannot be everywhere, and private security interests willingly and profitably filled the vacuum. For many decades but particularly the 1970s private security personnel internally patrol and secure the assets of commercial enterprise and private property. Private security command the doorways of and the internal space of nightclubs and bars. Since the late 1990s the machinery and apparatus of private security is everywhere to be seen. Alarm systems on and in buildings, CCTV systems in premises, the security and transit of cash, bodyguards and locks and fittings to windows and doors. Not only has AGS receded from view it has also itself come to embrace and rely on private security interests to protect its Garda stations and members. In the noughties AGS members now operate intricate radio systems that have features inbuilt for their safety. Alarm systems are in place to deter break ins to rural Garda stations when they are unmanned, and CCTV systems are in place in Garda stations, in particular in prisoner reception and custody areas. In addition, the Gardaí rely on the evidence of private security members in criminal prosecutions before the courts.

In the mid-1990s managerialism arrives in AGS and this is discussed in the fifth chapter. Policing is now run like a business and the “fetish for the quantifiable” comes to the fore in how AGS accounts and manages itself. The Irish government’s Strategic Management Initiative (SMI) seeks to measure garda activity and find that the gardaí perform more than two
thousand tasks. AGS introduced its initially much heralded PULSE system in the late 1990s. This system was very detailed but cumbersome. It was primarily intended to ensure day to day policing activity was properly recorded and acted upon so that proper operational decisions could be made at management level, but it soon became an instrument for performance measurement. Members, districts and divisions were compared and contrasted with each other. Scandal would ultimately emanate from the organisation when the arithmetic and reality were examined and did not tally. Some of what was contained in the glossy brochures emanating from the organisation since the mid-1990s did not pass muster. AGS staffing, resourcing and budgeting all contributed to the difficulties of Garda management in one way or another and continue to do so. As recent as 2018 the C.F.P.I. when it examined management in AGS would find that “the system as it is currently is set up to fail. Unless it is not merely reformed but transformed as we propose, changes in personnel will not turn the situation around and the litany of policing problems besetting the organisation its people and politicians will continue.”\footnote{C.P.F.I. supra at note 1512 at p.8.} The Garda Inspectorate also 2018 states that AGS “has a limited understanding of current and future demand and the absence of intelligence led strategy planning is a significant concern. It also said it concerned with “supervisory levels given the experience of Garda front line members.”\footnote{Report of Garda Inspectorate. Policing with Local Communities. December 2018. Executive Summary at p.4} Kathleen O’Toole the Chair of the C.F.P.I. in 2018 stated that “there are systemic problems related to structures, accountability mechanisms, management processes and culture.”\footnote{C.P.F.I. supra at note 1512 at Foreword.} These matters contributed to Garda controversies in the last twenty years at least. This chapter therefore feeds into the sixth and concluding chapter which deals with crisis in AGS and policing generally. The history of crisis in AGS is traced through five decades. The toxic scent of scandal has permeated the organisation since the late 1960s and throughout the nascent northern troubles throughout the 1970s and 1980s. The intensity of police scandal has increased substantially during the late 1990s up to the present time. In the last half century AGS and policing generally in Ireland has been under the media and public spotlight like never before. The Garda Press Office has been busy in the period under review. Since the 1980s three Commissioners and a Deputy Commissioner have stood down because of scandal. AGS has been transformed by scandal in three areas such as prisoners, intelligence and managerialism. Managerialism is dealt with in chapter five but changes to AGS because of how it dealt with its prisoners and how it dealt with intelligence is explored in chapter six. It is because of these scandals that the Gardaí are now subject to robust and independent
oversight. Prisoner interviews are video recorded and a prisoner’s presence in the station is catalogued from his time of arrival there. The Gardaí have also had to tighten up on their intelligence handling and introduced CHIS but the media spotlight continues to focus brightly on the organisation and AGS continues to be on the back foot.

Notwithstanding all the scandal the C.P.F.l. acknowledge that AGS continues to enjoy the support of the “majority” of the public.\textsuperscript{1520} If that is the case, then it is contended that AGS must be doing something right. Tyler and Huo in 2002 examined “the role of outcomes, procedural justice, and trust in public willingness to defer to legal authorities.”\textsuperscript{1521} They argue that the public will be supportive of legal authorities when they perceive their handling of disputes “are in accord” with “fair process” and their “motives” are perceived “to be trustworthy.”\textsuperscript{1522} They go onto state that “people generalize from their personal experiences with police officers and judges to form the overall view about the legitimacy of the police and the courts.”\textsuperscript{1523} They add that if people experience fair procedure it helps “to shape more accepting views of societal authority.”\textsuperscript{1524} It is submitted therefore that AGS because of its consistent public support in the face of almost incessant controversy the public still trust members of AGS. Cormac O’Keeffe in the Irish Examiner on the 27\textsuperscript{th} November 2018 highlights an AGS survey carried out in July/September 2018 which shows public trust in AGS at 91\%.\textsuperscript{1525} It would appear that the high public trust of AGS in the face continuing scandal strongly corroborates the work of Tyler and Huo. Perhaps that would be a matter suitable for further study.

It is being contended here that the research grounded in each of these substantive chapters fully evinces Garland’s theory and its potent relevance to transformation in AGS. Garland takes and overarching view of the criminal justice systems in the U.S.A. and U.K. This research confines itself to AGS the Irish police force and what happened to it and within it during the last fifty years. Garland’s thesis argues that watershed times of change were the

\textsuperscript{1520} Ibid.
\textsuperscript{1522} Ibid at p.xiv.
\textsuperscript{1523} Ibid at p.xiv.
\textsuperscript{1524} Ibid at p.xv.
\textsuperscript{1525} C. O’Keeffe, “Survey Shows Trust in An Garda Síochána High but Less Reporting of Cases” \textit{Irish Examiner} @www.irishexaminer.com 27\textsuperscript{th} November 2018 accessed at 2.15am on the 28\textsuperscript{th} of January 2019.
1980s and 1990s. This thesis goes further back than that to the 1960s and extends almost right up to the end of the second decade of the 21st century. It is contended that the research produced here demonstrates that Garland’s theory continues to hold true insofar as AGS is concerned. The fear of crime has a prominence it never had before the 1970s amongst the Irish public and the politicians that they elect. In 2001 Garland stated that “the future is not inevitable.”

The “culture of control” emanates from “a certain style of politics, a certain conjunctuture of class forces, a particular historical trajectory.”

He goes on to state that “(t)hey are the outcome of (partly planned and partly unintended) of political and cultural and policy choices – choices that could have been different and that could still be rethought and reversed.”

It is argued here and the research in this thesis shows that insofar as Irish policing is concerned these “political and cultural and policy choices” have not been “reversed” or “rethought.” However, the Report of the C.F.P.I. in late 2018 and the Irish Government’s commitment to implementing its recommendations may be the catalyst for reversion and rethinking that Garland refers to. In time further study would show whether or not that is the case. In addition to these “indices of change” that have been examined in this work there are six others that he names that are certainly relevant but not directly applicable to policing and AGS. It is suggested that they would be more of import to the Irish Prison Service, the Probation Service, TUSLA the Child Care Agency and the Department of Justice. Garland references them as follows:

1. The decline of the rehabilitative ideal.
2. The Re-emergence of punitive sanctions and Expressive Justice.
3. Changes in the emotional tone of crime policy.
4. Politicization and the new populism.
5. The reinvention of the prison.
6. The transformation of criminological thought.

---

1526 D. Garland *supra* at note 2 at p.201.
1527 *ibid*.
1528 *ibid*.
1529 *ibid*.
1530 D. Garland *supra* at note 2 at pp.6-20.
1531 *ibid*. 
There can be no doubt that these particular indices do “piggy-back” on the other six indices that have been examined in this work and certainly could be explored in separate research as it would appear that Garland’s theory also has relevance for other institutions and organisations in this jurisdiction over the last number of decades. It would also seem that his theory will hold true for at least the immediate future, but positive change in the form of the recommendations of C.P.F.I may be on the way.

This writer knew nothing of the “culture of control” or Garland until he belatedly read his publication while pursuing a course of legal study in 2011. The writer was a serving Garda in the 1980s and 1990s – the focal period of change in Garland’s review. The writer was also a serving Garda for almost two decades after Garland’s publication in 2001. It was this writer’s view that he had lived, worked and experienced Garland’s theory at the policing ‘coalface’ for over three decades. Consequently, the writer could produce tangible evidence verifying the authenticity of Garland’s theory and its role in explaining transformation in AGS.

It is being argued here that the “political and cultural and policy choices” that have grounded Garland’s “culture of control” have not been “rethought” or “reversed”, at least not yet but the C.F.P.I brings a promise of change. Neither has the media’s inflated preoccupation with criminal justice and policing receded and the public’s fear of crime continues to remain at large influencing what their elected politicians do when they come to power. The “culture of control” it is submitted has seen AGS battered by scandal and has resulted in two Ministers for Justice and two Garda Commissioners step away from their positions in recent years because of policing matters. Commissioner Drew Harris officially took the reins of AGS in September 2018. To succeed in his role, he will need the support and commitment of his rank and file membership, his officer- corps, his political bosses and the public generally. However, it is submitted that Garland’s theory continues to be strongly relevant in this jurisdiction. Anecdotally it is said that Napoleon Bonaparte preferred that his generals be ‘lucky’ rather than clever. If that is the case, then Commissioner Harris will also need to be lucky. However, it is contended that it is a massive step forward that the Irish Government has published its Implementation Plan and time scale to implement the recommendations C.F.P.I. Report. In the writers view this will strengthen AGS at all levels for the better and rid the organisation of many of the ills that has caused it to be scandalised. Perhaps AGS can also take fortitude from the words of Kathleen O’Toole the Chair of the C.F.P.I who stated that in the course of the Commissions work “we conducted surveys and engaged with thousands of individuals…it is
clear public confidence (in AGS) has been shaken in the wake of tribunal and news reports, yet the majority of people in Ireland continue to support the police and are eager to work in partnership with them to improve safety and the quality of life in their community.”\textsuperscript{1532}

\textsuperscript{1532} C.P.F.I. \textit{supra} at note 1512 at Foreword
BIBLIOGRAPHY

BOOKS

- Coonan G. and O’Toole K., “Criminal Procedure in the District Court” (Dublin: Round Hall 2011).
- Kerrigan G. and Brennan P. *This Great Little Nation; The A-Z of Irish Scandals and Controversies* (Dublin: Gill & Macmillan 1999).
• Orange G., Policing Powers in Ireland (Dublin: Bloomsbury Professional 2014).
• Regan N., Taken Down in Evidence: Ireland from the Back Seat of a Patrol Car (Dublin: Gill and MacMillan 1995).

CASES

• CC v Ireland The Attorney General and Another [2006] 4 IR 1.
• Damache v The Director of Public Prosecutions [2012] IESC 11.
• D.P.P. v. J. C. [2015] IESC 31
• D.P.P. v. O’Donoghue. Unreported Court of Criminal Appeal 18th October 2006.
• S.H. v The Director of Public Prosecutions [2006] 3 IR 57.
• People (A.G.) v. O’Callaghan [1966] I.R.
• People (D.P.P.) v Colm Murphy [2005] 2 IR 125.
• People (DPP) v Colm Murphy [2005] 4 IR 504.
• People (D.P.P.) v McDonagh [1998] WJSC-HC5790.
• People (D.P.P.) v. Pringle [1995] 2 I.R.
• People v. Paul Ward Judgement of the Special Criminal Court delivered by Mr. Justice Barr on the 27th day of November 1998.
• People (D.P.P.) v. Paul Ward, Judgement of Court of Criminal Appeal delivered by Mr. Justice Francis D. Murphy on the 22nd March 2002 Record No. 14/99.

D.P.P. MATERIAL


GARDA REPORTS/MATERIAL

• An Garda Síochána Victims Service.
- Public Statement by the Commissioner of An Garda Síochána on the Management and Use of Covert Human Intelligence Sources.

GARDA INSPECTORATE REPORTS/REPORT ON THE FUTURE OF POLICING IN IRELAND

REPORTS OF COMPTROLLER AND AUDITOR GENERAL


LEGISLATION

- Bail Act 1997.
- Control of Dogs Act 1986.
- Children First Act 2016.
- Copyright and Related Rights Act 2000.
- Criminal Assets Bureau Act 1996.
- Criminal Justice (Amendment) Act 2009.
- Criminal Justice (Burglary of Dwellings) Act 2015.
- Criminal Justice (Drug Trafficking) Act 1996.
- Criminal Justice (Forensic Evidence) Act 1990.
- Criminal Justice (Forensic Evidence & DNA Data Based System) Act 2014.
• Criminal Justice (Money Laundering & Terrorist Financing) Act 2010.
• Criminal Justice (Psychoactive Substances) Act 2010.
• Criminal Justice (Public Order) Act 1994.
• Criminal Justice (Public Order) Act 2003.
• Criminal Justice (Public Order) Act 2011.
• Criminal Justice (Search Warrants) Act 2012.
• Criminal Justice (Surveillance) Act 2009.
• Criminal Justice (Suspended Sentences of Imprisonment) Act 2017.
• Criminal Justice (Terrorist Offences) Act 2005.
• Criminal Justice (Terrorist Offences) (Amendment) Act 2015.
• Criminal Justice (Theft and Fraud Offences) Act 2001.
• The Criminal Justice (Withholding of Information of Offences Against Children and Vulnerable Persons) Act 2012.
• Criminal Law Act 1976.
• Criminal Law Act 1997.
• Criminal Law (Defensive Dwelling) Act 2011.
• Criminal Law (Human Trafficking) Act 2008.
• Criminal Law (Human Trafficking) (Amendment) Act 2013.
• Criminal Law (Insanity) Act 2006.
• Criminal Law (Jurisdiction) Act 1976.
• Criminal Law (Rape) Act 1981.
• Criminal Law (Rape) Amendment Act 1990.
• Criminal Law (Sexual Offences) Act 1993.
• Criminal Law (Sexual Offences) Act 2006.
• Criminal Law (Sexual Offences) Act 2017.
• Criminal Procedure Act 2010.
• Data Protection Act 1988.
• Domestic Violence Act 1996.
• European Arrest Warrant Act 2003.
• Finance Act 1925.
• Firearms and Offensive Weapons Act 1990.
• Garda Síochána Act 2005.
• Garda Síochána (Complaints) Act 1986.
• Housing and (Miscellaneous Provisions) Act 1997.
• Housing and (Miscellaneous Provisions) Act 2002.
• Immigration Act 1999.
• Immigration Act 2003.
• Immigration Act 2004.
• Intoxicating Liquor Act 1988.
• Intoxicating Liquor Act 2000.
• Intoxicating Liquor Act 2003.
• Intoxicating Liquor Act 2004.
• Intoxicating Liquor Act 2008.
• Larceny Act 1990.
• Licensing (Combating Drug Abuse) Act 1997.
• Litter Act 1982.
• Mental Health Act 2001.
• Misuse of Drugs Act 1977.
• Misuse of Drugs Act 1984.
• Misuse of Drugs (Amendment) Act 2016.
• Non-Fatal Offences Against the Person Act 1997.
• Noxious Weeds Act 1936.
• Occupiers Liability Act 1995.
• Offences Against the State (Amendment) Act 1972.
• Offences Against the State (Amendment) Act 1998.
• Proceeds of Crime Act 1996.
• Prohibition of Incitement to Hatred Act 1989.
• Prompt Payment of Accounts Act 1997.
• Prosecution of Offences Act 1974.
• Protection of Children’s Health (Tobacco Smoke in Mechanically Propelled Vehicles) Act 2014.
• Road Act 1993.
• Road Traffic Act 1961.
• Road Traffic Act 1968.
• Road Traffic Act 1994.
• Road Traffic Act 1995.
• Road Traffic Act 2002.
• Road Traffic Act 2003.
• Road Traffic Act 2004.
• Road Traffic Act 2006.
• Road Traffic Act 2010.
• Road Traffic Act 2011.
• Road Traffic Act 2014.
• Road Traffic Act 2016.
• Road Traffic (Amendment) Act 1978.
• Road Traffic and Transport Act 2006.
• Road Traffic (No.2) Act 2011.
• Road Traffic (No.2) Act 2014.
• Safety Health and Welfare at Work Act 2005.
• Sexual Offences (Jurisdiction) Act 1996.
• Sex Offenders Act 2001.
• Video Recording Act 1989.
EUROPEAN UNION


MORRIS TRIBUNAL


MEDIA

- “Garda Delay in “Giving Special Rapporteur on Child Protection Details of Training” The Irish Examiner (24th May 2018).
• “Irish Citizen Pleads Guilty to Terrorism Charges in US.” *The Irish Times.* (24th July 2018).
• Court Report, *Irish Times*, (19th December 2014).
• Devane, Michelle “Pair Charged in Connection with Aidan O’Driscoll Murder” @www.independent.ie.
• Duggan, Barry, “Criminal Who Ordered Bouncers Death a Year Ago Arrested” *Irish Independent* (14th February 2013).
• Editorial *The Irish Examiner* 20th April, 2015) End Political Gagging of Gardaí.
• Gartland F., “Garda PULSE System Audits to go Ahead” *The Irish Times* (23rd February 2012).
• Holland K., “Family of Killer’s Partner Urge Inquiry into Garda’s Murder” (10th October 2017).
• Horan N., “We’re all to Blame for Points Mess in Nod ‘n Wink World” *Sunday Independent*, (20th March 2014).
• Lally C., “Gardai concerned at Shortage of Specialist Investigators” The Irish Times (14th May 2018).
• Lally C., “Purcell No Stranger to ‘Interesting Times’” Irish Times (3rd April 2014).
• Lally C., “Regency Hotel Shooting: Man Killed in Gangland Attack Named” Irish Times (5th February 2016).
• Lally C., Humphries J., McGee H., Garda Commissioner Takes Legal Advice on Garda Speeding to PAC – Callinan Consults A.G. as He Seeks to Prevent Whistle-blower Testifying on Alleged Wrongdoing. Irish Times (24th June 2014) at www.irishtimes.co/GardacommissionertakeslegaladviceonGarda speaking to PAC.
• Loughlin E., “Concerns over Lack of Training as Half of Gardaí can’t give chase or use Siren” The Irish Examiner (14th May 2018).
• McKittrick David, “Ireland Outraged at Acquitted Youth Signals Contempt” The Independent Newspaper (10th November 2003).
• Nugent R., “Man (27) charged with the Murder of Detective Garda Adrian O’Donoghue” Irish Independent (5th March 2018).
• O’Keeffe C., “Garda Criticise Cut to Training Funds” The Irish Examiner (dated 12th October 2017).
• O’Keeffe C., “Garda Members Issued with Gag Orders over Station Closures” Irish Examiner (6th July 2012).
• O’Keeffe C., “Gardai Call for End to Political Gagging” Irish Examiner (20th April 2015).
• O’Riordan S., “Crime Victim Support Group Forced to Beg for Funding” Irish Examiner, (7th August 2015).
• O’Riordan S., “State Solicitor: Garda Prevented from Attending Court due to Cutbacks” Irish Examiner (2nd November 2012).
• Obituary Gertie Shields, Irish Times, (22nd August 2015).
• R.T.E. Series “Love /Hate” Season 5 Episode 2.
• Rafter K. and Coulter C., “Absence of Treatment for Sex Offenders Criticised” Irish Times (13th January 2000).
• Roche B., “Former Chief of Staff in Real I.R.A. Shot and Killed in Cork City” Irish Times 7th December 2016.
• Sheehan M., “Pressure on D.P.P. to Appeal Leniency of Rapist’s Sentence” Sunday Independent (19th July 2015).
• Stack S., “Force Used by Armed Garda in P.O. Raid Proportionate”, Irish Independent (19th October 2011)
• Taylor C., “Big Rise in Speeding Arrests as Cameras Deployed” Irish Times (24th March 2011).
• Williams P., “All in a Day’s Work Says Tenacious Young Garda” Irish Independent (28th March 2015).
• Woulfe J., “Limerick Gang War Marks Its 10th Year” Irish Examiner (11th November 2010).
• Yeats Padraig, “Robinson Faces Four Charges, Gets £10,000 Bail” Irish Times (9th August 1986).
• “Accused has no future in this country when his time is served”, Irish Times, (11th October 2007).
• “Anger Grows Over Rugby Player’s Murder”, Evening Herald (11th November 2008).
• “Call for Action Over Witness Intimidation” Irish Times (14th November 2005).
• “Can Garda Management Get Anything Right” Irish Times 22nd February 2017.
• “Five Refused Bail in Arms Trawler Case” Irish Times (24th October 1984).
• “Gardai Demand Spike Inquiry” Irish Times (14th September 1985).
• “Gardai Using North-Style Brutality in Interrogation Techniques”, Irish Times (14th February 1977).
• “Man Denies Capital Murder Charge” Irish Times 22nd June 2001.
• “Man Shot Dead in Cork City” Irish Times (11th June 29175).
• “Search for Boy Continues” Irish Times (27th October 1986).
• “The T.D.s who backed Keith Harrison” Irish Independent (2nd December 2017).
• 48% of Drivers Not Tested for Drink or Drugs Following Serious Collisions (11th June 2018).


ELECTRONIC WEBSITES

• The Private Security Authority @www.psa.gov.ie.
• Facts and Figures. Irish Prison Reform Trust@www.iprt.ie.
REGULATIONS


JOURNALS


REPORTS-OTHER MATERIAL

- A Programme for a Partnership Government May 2016.
- C. Fennell, Pamphlet on “Crime and Crisis in Ireland: Justice by Illusion” October 1993.


Report of Ms Emily Logan under Garda Síochána Act 2005 (Section 42) (Special Inquiries relating to Garda Síochána Order 2013), July 2014.


Spotlight, Issue No. 7 of 2012. Community Policing in Ireland, Oireachtas Library and Research.

Tribunal of Inquiry into the Murders of Chief Superintendent Breen and Superintendent Buchanan (Smithwick Report, 2013).

STATISTICS/SURVEY

- Garda Public Attitudes Survey 2002.
- Garda Public Attitudes Survey 2006.
- Garda Public Attitudes Survey 2015.