Dublin Institute of Technology
ARROW@DIT

Dissertations | Social Sciences

2011-09-01

A Policy Analysis of the Criminal Justice (Community Service) (Amendment) Act 2011

Fionnuala Lawlor
Dublin Institute of Technology

Follow this and additional works at: http://arrow.dit.ie/aaschssldis

Part of the Social and Behavioral Sciences Commons

Recommended Citation
Lawlor, F.: A Policy Analysis of the Criminal Justice (Community Service) (Amendment) Act 2011. Masters Dissertation. Dublin Institute of Technology. 2011.

This Dissertation is brought to you for free and open access by the Social Sciences at ARROW@DIT. It has been accepted for inclusion in Dissertations by an authorized administrator of ARROW@DIT. For more information, please contact yvonne.desmond@dit.ie, arrow.admin@dit.ie.

This work is licensed under a Creative Commons Attribution-Noncommercial-Share Alike 3.0 License

A Policy Analysis of the Criminal Justice (Community Service) (Amendment) Act 2011

A thesis submitted to the Dublin Institute of Technology in part fulfilment of the requirements for award of Master (M.A) in Criminology

by

Fionnuala Lawlor

September 2011

Supervisor: Dr. Mary Rogan

Department of Social Science, Dublin Institute of Technology.

Declaration

I hereby certify that the material which is submitted in this thesis towards the award of the **Masters (M.A.) in Criminology** is entirely my own work and has not been submitted for any academic assessment other than part-fulfilment of the award named above.

Signature of candidate:.....

Date:.....

Abstract

The Criminal Justice (Community Service) (Amendment) Act of 2011 is legislation which is aimed at encouraging a greater use of community service orders for people convicted of minor offences. It places a requirement on Judges when considering the imposition of a sentence of 12 months or less to consider the alternative sanction of community service first.

This is the first legislation for a number of years which is aimed at diverting offenders from prison and very little is known about the reasoning behind its introduction. This thesis will utilise the framework of policy analysis set out by Kingdon (1995) and developed by Jones and Newburn (2005) to assess the reasoning behind the legislation.

The research will focus on the role played by policy entrepreneurs, civil servants, and interest groups in the introduction of the legislation. It will also examine whether academic expertise or evidence based research was employed in its introduction.

The thesis examines whether symbolism, rhetoric or a specific policy outlook contributed to its introduction.

The findings add to the body of research which suggests that individuals have a significant impact on which policies are chosen, and serve to emphasise the need for further research in the policy analysis area in the future.

Acknowledgements

First and foremost I offer my sincerest gratitude to my supervisor, Mary Rogan, for all her help, support, and encouragement throughout this process. Without her patience, knowledge and good nature this thesis would not have been completed.

Many thanks to my parents Ciarán and Gráinne Lawlor, for all the love, support and encouragement they have given me over the years.

A special thank you to my grandfather Bart Cronin, without whose help, the findings may never have come to light!

Community Service Legislation

Table of Contents

1. Introduction.....8

1.1 Research Rationale and Aims.....8

1.2 Findings.....8

1.3 Thesis Layout.....9

2. Literature Review.....10

2.1 Introduction.....10

2.2 Irish Context.....10

2.2.1 Lack of Ideology.....10

2.2.2. Bias towards Custody.....11

2.2.3. Personalities.....12

2.2.4 Politicisiation of Crime.....12.

2.2.5 Current Irish Context.....13

2.2.6 Importance of policy analysis in an Irish context.....14

2.3 Policy Analysis.....15

2.3.1 Policy-making Process.....16

2.3.2 Problem Stream.....17

2.3.3 Policy Stream.....17

2.3.3.1 Civil Servants..... 17

2.3.3.2 The relationship between Civil Servant and Minister.....18

2.3.4 Political Stream.....18

2.3.4.1 Interest Groups.....19

2.4. Political Styles.....19

2.4.1 Symbolism.....19

2.4.2 Rhetoric.....20

2.5 Conclusion.....21

2. Methodology.....22

3.1 Research Rationale and Aims.....22

3.2 Policy Analysis.....22

3.2.1 Governmental publications.....22

3.2.2 Oireachtas Debates.....23

3.2.3 Pressure group reports and publications.....23

3.2.4 Interviews.....23

3.1 Data Collection.....23

3.2.1 Debates.....23

3.2.2 Department of Justice Website.....24

3.2.3 Department of Justice and Equality.....24

3.2.4 Interviews.....25

3.2.4.1 Interview Question Design.....26

3.2.4.2 Key elected policy actors.....26

3.2.4.3 Sub-Government policy community.....27

3.2.4.4 Government Agencies.....27

3.2.4.5 Pressure Groups.....27

3.3 Ethical Considerations.....28

3.4 Limitations.....28

4. Findings and Discussion of Policy analysis.....29

4.1 Introduction.....29

4.2 Problem Stream.....30

4.2.1 Bias towards custody.....30

4.2.2 Temporary Release.....31

4.2.3 Overcrowding.....33

4.3 Policy Stream.....34

4.3.1 Sentencing Policy.....34

4.3.2 Fiscal Efficiencies/Value for Money.....36

4.3.3 Relationship of Civil Servant and Minister for Justice.....38

4.3.4 Policy Entrepreneur.....39

4.3.5 Lack of Research.....42

4.4 Political Stream.....43

4.4.1 Interest Groups.....44

4.5 Political Styles.....46

4.5.1 Symbolism.....46

4.5.2 Rhetoric.....48

4.5.3 Policy Outlook.....49

4.6 Conclusion.....50

5. Recommendations and Conclusions.....53

5.1 Recommendations.....53

5.2 Conclusions.....54

6. Bibliography.....55

CHAPTER 1

INTRODUCTION

1.1 **Research Rationale and Aims**

In November 2010, the Minister for Justice announced plans to introduce legislation which was aimed at increasing the use of community service as a sentencing option for individuals who are convicted of minor offences.
Consequently the Criminal Justice (Community Service) (Amendment) Act 2011 was signed by the President on the 2nd of August.

The enthusiasm for non custodial sanctions in this jurisdiction has until now been lack lustre. Accordingly it is important to discover why the policy has been introduced and what this signifies for the direction of Irish penal policy in the future.
This thesis endeavours to establish the rationale and driving forces behind this policy decision,and in doing so will contribute to the body of research on criminal justice policy formulation in Ireland.

In order to establish the driving forces behind the legislation, the thesis adopts the policy analysis framework put forward by Kingdon (1995) and utilised by Jones and Newburn (2005). There is a dearth of knowledge on policy formulation in Ireland, and so the research serves to fill some of that gap.

1.2 Findings

The focus of the thesis was on establishing the driving forces behind the legislation. It aimed to ascertain who or what influenced the key policy actors to take legislative action to increase the use of community service orders.

The findings suggest that the legislation emulated from a desire to ensure fine defaulters were not imprisoned for failing to pay debt. Given the current condition of the exchequer the desire for value for money policies or fiscal efficiencies, also had a role to play in the introduction of the legislation. The findings suggest that the policy was evidence based but that the policy makers were uninformed by expert research in the area. This finding serves to reaffirm a trend in criminal justice policy making which has been previously highlighted by researchers.

However what has most defined the policy formulation process is the role of individuals within the policy making community. The research serves to highlight that it is key policy actors, such as the Minister or perhaps senior civil servants, who have the largest effect on, and input into policy formulation in Ireland. Consequently legislative action in the area is dependent on individuals taking a personal interest in the issues.

1.3 Thesis Layout

The thesis commences with a literature review. Firstly the chapter will begin by discussing penal ideology in Ireland. It will outline the key trends in Irish policymaking. It will then provide a description of the context in which the Bill was introduced.

The second section will provide an explanation of the concept of policy analysis and why it is important. It will set forth a framework within which to assess the policy making process.

It will conclude with an exploration of the literature relating to these various elements of the policy formulation process which are relevant to the analysis of the legislation.

All of these areas will highlight the variety of potential influences behind criminal justice policy and provide a clear point of departure for the research.

The framework outlined in the literature review is explained in depth in the methodology chapter. This chapter will also fully explain the data collection which will be undertaken.

Using this framework, the thesis will analyse the material collected. This section will outline the driving forces and rationale behind the legislation.

Finally, the thesis will provide recommendations regarding policy analysis research and also the implementation of the legislation.

Chapter 2

LITERATURE REVIEW

2.1 Introduction

The objective of this thesis is to conduct a detailed policy analysis in order to discover the driving forces behind the proposed Criminal Justice (Community Services) Bill 2011.

This chapter will begin by discussing penal ideology in Ireland. It will outline the key trends in Irish policymaking. It will then provide a description of the context in which the Bill was introduced.

The second section will provide an explanation of the concept of policy analysis and why it is important. It will set forth a framework within which to assess the policy making process.

It will conclude with an exploration of the literature relating to these various elements of the policy formulation process which are relevant to the analysis of the legislation.

2.2 Irish Context

In order to provide a frame of reference for the research findings, it is useful to examine how criminal justice policy in Ireland has been developing thus far. Dissecting the literature which details penal ideology, policies, and the personalities which have dominated the criminal justice policy landscape in Ireland will provide an effective backdrop to the analysis of the policy under discussion here.

2.2.1 Lack of Ideology

Literature which attempts to focus on the nature of penal policy in Ireland suggests that it is a difficult task. Both Rogan (2009) and O'Donnell (2004, 2007) have noted that pinpointing a specific ideology which underpins penal policy in Ireland is an arduous task.

Rogan (2009) reminds us that whilst our penal policies could not be described as punitive, especially when placed in an international context, some elements of our penal system are far from rehabilitative, or indeed even humane. We are advised that whilst Ireland has a comparatively low rate of imprisonment, the conditions in some of our prisons remain antiquated, degrading and inhumane. Rogan (2009) states that neither punitive nor liberal sentiments are deeply embedded Ireland's penal ideology. Indeed, the research supports that of O'Donnell (2004, 2008) whose thesis suggests that criminal justice policy in Ireland is flawed. O'Donnell lists a number of factors to support his view of justice policy in Ireland. There are a number of 'raw materials' which are needed

to ensure that policy is well thought out and meaningful. We are suffering from a data deficit, due to a lack of statistical information. Academic research on areas of criminal justice and penology are at a very early stage in Ireland. He also attributes the flawed policies to the nature of the Department of Justice, which is, he argues, reluctant to release information or engage meaningfully with those parties who are interested in Irish penological issues. Some of the blame also lies with our politicians he argues. Attempts which have been made to provide an ethos for penal policy in Ireland, such as the policy document: The Management of offenders a five year plan or Tackling Crime: Discussion Paper have been hampered, by the re-election of new governments who are happy to ignore previous attempts to define a penal ideology, and instead pursue their own justice agenda.

The existence of the above factors have resulted in a lack of evidence-led or research based criminal justice policy decisions. He describes a policy implemented during the 1980s and 1990s which consisted of increasing prison places and using temporary release to deal with the pressures of overcrowding.

> *As the prison population expanded rapidly in the 1980s and early 1990s the demand for prison places greatly exceeded supply, and there were allegations, probably well founded, of a revolving door policy whereby many prisoners were released early simply to accommodate the influx being committed by the courts (O'Malley, 2008:9).*

However by the 1990s the reliance on temporary release was drawing widespread criticism, and so a policy of expansionism was embarked upon. O'Donnell describes how the Government of the day estimated the number of prison spaces needed on the back of an envelope, without even basic information regarding sentencing, or trends in crime (O'Donnell, 2004:254). It is also noted in the same text that the policy of expansionism was carried out when crime rates were falling. Rogan (2009) points out that this occurred shortly after the Department had declared that a cap should be placed on prison places. This again serves to highlight the lack of research-led evidence based policy-making in Irish criminal justice.

2.2.2 Bias towards Custody

O'Donnell notes a reliance on custody which exists in the Irish justice system. Alternatives to custody became available after the enactment of the Criminal Justice (Community Service) Act 1983. Despite the introduction of the legislation, research suggests that Irish judges are more inclined to use custodial sanctions rather than community punishment (O'Donnell, 2004, 2005). Research conducted by the Irish Penal Reform Trust on sentencing in the District Court also highlighted an under-use of non custodial alternatives to imprisonment such as community service.

Research by Kilcommins et al (2004) also refer to a pattern in Irish sentencing where prison was generally used as a default sanction rather then being the punishment of last resort.

2.2.3 Personalities

If there is no ideology underpinning the justice policies of the Government, there is scope for individuals who hold key positions to make an real impact in the policy area. Research has drawn attention to the impact individuals can have on the policy formation process. O'Donnell and O'Sullivan (2001) concentrate on the role played by John O'Donoghue since the 1997 election. They describe how John O'Donoghue had a huge impact on criminal justice policy through his zero tolerance war on crime. They describe the manner in which he pursued his crime control agenda, as a personal crusade. Kilcommins et al (2004) describe how this policy led him to increase the number of gardaí, engage in a vast prison building and expansion programme, as well as ensuring an increased budget for the Department of Justice, Equality and Law Reform.

Similarly, research by Branagan (2009) has again noted the impact personalities can have on the policy process. The research focuses on the policy decision to build a super prison at the Thornton Hall site, and so also involved examining the role played by policy actors such as the then Minister for Justice, Michael McDowell. The research findings indicate that Michael McDowell was the key catalyst behind the decision to build a super prison at Thornton Hall. His belief that it would adequately deal with the overcrowding problem whilst also providing value for money for the Irish tax payer was the main reason for the policy decision to build a prison at the site.

Equally, research conducted by Rogan (2011) draws attention to the role played by Charles Haughey in the early 1960s in his role as Minister for Justice. Rogan argues that Haughey, as a key policy actor, oversaw huge change in his Department, which led to 1962 being described as a 'turning point' for Irish prison policy (Rogan, 2011:98).

Clearly there is worth in investigating the impact individuals may have had on the policy formation process in Ireland. This thesis seeks to address the gap in information regarding the role played by Dermot Ahern in his role in introducing the legislation, and also by Minister Shatter who in his role as Minister for Justice has also championed the community service legislation.

2.2.4 Politicisation of Crime

The literature which discuss Irish penal policy (O’Donnell, 2004, 2005, 2008) point to the year 1996 as a turning point in Irish criminal justice policy.

O'Donnell (2005) describes the year 1996 as being a watershed in Irish criminal justice policy. As a

result of the murder of both a well know journalist Veronica Guerin, and a Detective Garda Jerry McCabe, crime had become a hugely political issue. O'Donnell (2005) depicts a case of moral panic, where the general public demanded action be taken to deal with crime effectively. As was described by Rogan (2010) an event had occurred which would allow for a certain individual to adopt policies in the realm of criminal justice which were to have lasting effects. The Fianna Fáil TD, and Justice Spokesperson John O'Donoghue fought the 1997 general election campaign on a zero tolerance platform. Fianna Fáil marketed themselves as the party of Law and Order for the 1997 election.

O'Donnell and O'Sullivan (2001) single out murders of Veronica Guerin and detective Garda Gerry McCabe in 1996 and then the 1997 election as the time when the subject of crime became a political issue. It no longer was an issue on which the opinion and knowledge of experts was given priority, but instead one where public opinion was courted in an attempt to gain an electoral advantage.

2.2.3 Current Irish context

Much has changed however since Minister McDowell announced plans for a super prison at Thornton Hall. The condition of the current exchequer means that the policies of expansionism which were pursued in the nineties are no longer financially viable. However past problems which have haunted the prison system still remain. Overcrowding is a constant problem for the Irish Prison Service. The drug problems and conditions in some prisons have been condemned by the Prison Visiting Committees and also by the Council for the Prevention of Torture (CPT, 2010). The practice of 'slopping out' remains a daily reality for some prisoners and has been denounced by the United Nations Committee against Torture. (UNCAT, 2011). Furthermore, problems with inter-prisoner violence and a lack of meaningful activities for prisoners were also mentioned.

The plan to build a prison at the Thornton Hall site was the subject of a recent expert group review (Carroll, 2011). It is clear that the vision Minister McDowell had for Thornton Hall, as the solution to the overcrowding problems which defined the Irish prison system for so many years now, is unlikely to become a reality.

It is within this landscape that the Criminal Justice (Community Service) (Amendment) Act 2011 has been introduced.

Kilcommins (2004) notes

> *'Penal policy often unfolds out of a sense of crisis. Irish penal practice is rarely supported by reference to a set of clear principles that would allow a considered judgement to be made about following a particular course of action' (2004:293).*

Rogan (2010) makes the same point that when change does occur it is usually as a reaction to a certain event or is driven by a particular personality, rather than by a set of principles which guide how Irish penal policy should develop.

In order to establish whether policy is driven by personality or crisis, it is imperative that policiy formulation is analysed, and so this thesis will give regard to the influence of personalities in its examination of the community service order legislation.

2.2.4 Importance of Policy Analysis in Ireland

One of the more striking and consistent points made regarding Irish criminal justice policy is the lack of knowledge about how how it is formed. The research which has been conducted has shed light on some worrying trends. Policies are often not evidence-led or research based, but are reactionary. The work of O'Donnell depicts a Justice Department which is constantly trying to overcome problems with prison overcrowding, or is relying on policies which have proven to be flawed such as providing more prison spaces, or increasing temporary release. The academic research on the Irish penal landscape would suggest that there is no prevailing ideology which underpins Irish penal policy.

The lack of criminological research in an Irish context also serves to emphasise the need for research in this area. We are still not aware of what drives criminal justice policy in Ireland. The work of Rogan (2011) and Brangan (2009) has pointed to the effect a small number of individuals can have on policy decisions. It is clear that it is an area which requires further examination. It is hoped that a policy analysis of the Criminal Justice (Community Service) (Amendment) Act 2011 would add to the body of research that has been conducted so far, and uncover what rationale existed for the legislation.

O'Donnell and O'Sullivan (2001) note that

> *Politicians do not have the power to affect crime rates directly, at least in the short term, but they do have the power to influence the nature of the response to crime and the tone of the debate about its consequences'(2001:82)*

It is hoped that the policy analysis will establish if the community service is an attempt by both Ministers to alter the nature of the response to crime, and indeed if it represents a change in tone of the crime control debate in Ireland.

2.3 Policy-analysis

Policy analysis involves trying to ascertain why things get done, how things get done and who ensures things get done. It involves trying to explain how changes in criminal justice policy come about. There has been little interest in the area of policy analysis generally. Jones & Newburn (2002) specifically note that there is a dearth of literature regarding how criminal justice policy and penal policy came into being. They note that for the most part, criminologists have chosen to focus on the impact of policies rather than examining how a particular policy came into existence (2002: 179). This is especially true in an Irish context. Rogan (2011) notes that very little information is available on how policy is formulated in Ireland. Policy analysis as an area of academic study is in its infancy in Ireland, and so there is a considerable gap in the knowledge. The importance of research studies such as this one, cannot, therefore be over emphasised.

The importance of policy analysis in the area of criminal justice has also been noted by Solomon in Ismaili (2006: 255). Here, it is argued that examination of the policy process can help us in establishing how the political process negotiates change, and how the process can place limits on or hinder the process of transforming ideas and analysis into concrete actions. Ismaili explains how an analysis of policy formulation can assist us in understanding what the obstacles are to innovation in criminal justice and how political structures and cultural differences affect the policy process.

The process of policy analysis seeks to address the problems which broad narratives pose. Loader & Sparkes (2004) are critical of these broader approaches. Approaches of this nature tend to generalise and tar many criminal justice jurisdictions with the same brush. They focus mainly on David Garland and his seminal work 'The Culture of Control'. They argue that it places too much emphasis on the general. Its reluctance in getting into specifics on certain issues means that it has neglected the effect that local issues and peculiarities have on policy formation.

Loader and Sparks (2004) argue that a policy analysis alone will not provide the researcher with a comprehensive picture of how a piece of legislation came into being. In order for the policy analysis to be thorough, consideration must be given to sociological issues in order to truly understand the context of how a specific piece of legislation came into being. They argue that it is important to subject the criminological field to proper historical sociological scrutiny and examination. This clearly indicates that those conducting policy analysis research should be aware of sociological issues which may have impacted on the policy formulation process, and to give them due consideration.

2.3.1 Policy-Making Process

It is noted by a number of criminologists that the policy making process is not a straight forward one. Jones and Newburn (2002) acknowledge that policy formation does not proceed in a straight forward fashion

It is negotiated continuously in the problem definition, legislation, regulation and court decision, and again in the decisions made by practitioners and street level bureaucrats'(Jones et al: 2002:181)

The process of implementing change is not merely influenced by research and evidence but by

Moral sentiments, the tides of cultural change, the vagaries of politics, emotionalism, sensationalism, residual ignorance, and the inertial forces of laziness, habit, and vested interests. (Ismaili: 2006: 257).

It is clear therefore that a specific framework will be essential when attempting to conduct an analysis of the Community Sanctions legislation.

The work of Kingdon in relation to the area of policy analysis is relevant to the type of research the thesis hopes to undertake. Kingdon (1995) proposes that policy making does not proceed in a straightforward fashion and that in order to deconstruct the process successfully, it is necessary to divide the process into three separate streams and examine each one. The three streams which need to be examined according to Kingdon are the problem stream (the process of generation of problems requiring attention by policy makers) the policy stream (the generation of policy ideas and proposals) and the political stream (developments in the public mood, key interest group support etc). Although these streams generally operate independently of each other, there are times when they converge at certain times when 'solutions join with problems and are then joined to favourable political forces' (Kingdon: 1995:20). Kingdon proposes that developments in policy are more likely to occur when problems, policy proposals and politics are linked together. The process of policy formation is very haphazard and is never conducted in a straight forward fashion. Rock (1995) agrees, describing the criminal justice making process as extensive, unpredictable, and fragmented.

A key factor of Kingdon's framework is the convergence of the three streams at a particular point in time which allows policy to be formulated. This moment in time is known as a policy window. This policy window enables policy entrepreneurs to promote their favoured solutions (1995:20). Those who are involved in coming up with new policies are more receptive to hearing ideas on tackling a

certain problem. Rock (1995) agrees

Policies are set in an intricate and volatile environment of other initiatives and events that are also on the move. Their fate will be shaped by the manner in which officials can use that environment to political effect. (Rock: 1995:15)

2.3.2 Problem Stream

Policy formulation can generally arise in a response to a particular problem or issue. Therefore in order to analyse the policy making process, it is essential to recognise the particular problem which caused this policy to come to the fore. Identifying those persons who drew attention to the problem will also guide the research on who is influencing policy formulation. Identifying the core problem which drove the community sanctions legislation will therefore be a key element of the analysis.

2.3.3 Policy Stream

It is noted by a number of authors that policy responses to certain problems are not always rationale and research driven. Therefore it is necessary to examine why certain policies come to be implemented and others do not. One must look at the process of policy ideas and proposals. Policy responses are beholden to a number of factors, not least financial. This thesis will focus on elements which affect the policy stream in order to understand why community sanctions were chosen as a response to a particular problem, over an alternative. (Jones and Newburn, 2002) (Kingdon, 1995).

2.3.3.1 Civil Servants

Jones et al (2002) and Ismaili (2006) have all drawn attention to importance of certain individuals in policy formation. These individuals are a vital component of the policy stream. It is essential that the role of these individuals are analysed and assessed in order to ascertain the input and influence they have had over the policy-making process.

'Understanding the evolution of public policy requires researchers to pay special attention to the actors involved in that process, the public, professionals, and politicians, and to the sites where participants interact and policy decisions are made' (Ismaili: 2006: 260)

It is clear therefore that identifying the role played by a civil servant is critical to conducting a policy analysis. Rogan (2010) has written about this in an Irish context. Rogan focused specifically on the relationship between a former Minister for Justice Charles Haughey and a senior civil servant within the Department of Justice during the 1960s. Rogan's research supports the view that when a

policy window is open (in this case the policy window was 'opened' by the Minister for Justice who was very interested in the idea of penal reform) individuals can have influence over the policy making process. This research from Rogan emphasises the importance of examining the activities of individual policy makers. Is policy being formulated partly because these actors have a strong interest in a particular area? The analysis of the role of policy actors is an important aspect of the policy analysis that will form the basis for thesis. It will be an important factor in establishing the rationale behind the legislation. Following on from the ideas put forward by the aforementioned authors it will attempt to discover what effect, if any particular actors played in the process of choosing to move forward with the Community Service legislation.

2.3.3.2 The relationship of Civil Servant and Minister for Justice

As previously mentioned Rogan (2010) has conducted historical research into the relationship between the civil servant Peter Berry and the Minister for Justice Charles Haughey, and the bearing it had on policy formulation. The research ascertains that the special relationship between the two men led to some significant and concrete changes in Irish Prison Policy. Little is known as to whom in the Civil Service had influence or clout in regards to the formation of the Community Service Orders. However the relationship between the Minister for justice and his ranking officials within the Department could potentially be a point of interest for the research.

2.3.4 Political Stream

The political stream can involve many different things. This can include developments in the public mood, political events, such as an impending election or a change in government, which can lead a given topic or policy to be included or excluded from the agenda (Jones et al, 2002). The political stream is somewhat dynamic and unpredictable as it is guided by the special needs created by a political event and so a particular agenda is subject to change. Ismaili (2006) notes that in order to assess the policy making process one must look to the drivers behind policy, the criminal justice policy community.

> *Includes all actors or potential actors with a direct interest in the particular policy field along with those who attempt to influence it- government agencies, pressure groups, media people, and individuals including academics, consultants and other "experts. (Ismaili: 2006:262)*

It is acknowledged that a significant part of the proposed research study will involve researching the policy drivers in the Criminal justice policy community.

2.3.4.1 Interest Groups

Stolz (2002) has written extensively on the role and impact interest groups can have on Criminal Justice policy making in the United States. Stolz maintains that review of early and recent case studies suggest that lay groups can play an important role in educating policy makers and the public about certain issues. They can maintain legislative support for policies, and can be effective in keeping certain criminal justice issues off the agenda. Stolz is of the opinion that whilst they may not have a huge influence over the detail of the legislation, they can affect what ultimately does or does not become policy. Her main concern is that policy analysis thus far has failed to be broad enough to consider all factors which may influence or affect policy formation. An effect of this lack of in-depth analysis is that it has failed to consider the full effect interest groups have had on the process.

Windlesham (1993: 16) also mentions the role of interest groups in influencing what policies are given the backing of the Ministers in an English context.

In the context of the proposed legislation covering Community Service Orders, it will be pertinent to ascertain if interest groups have had an effect on the decision to pursue this particular policy. Has the lobbying of interest groups such as the Irish Penal Reform Trust had any influence over the Community Services Orders Bill.

2.4 Political Styles

Tonry (2004) has noted the effect political style can have on Criminal Justice policy. Therefore when conducting a policy analysis it is necessary to focus on political styles. An examination of political styles could potentially tell a researcher a great deal about the abstract and symbolic motivations behind criminal justice policy. This thesis will examine the most prominent styles that have emerged from the literature and their possible role as a driver behind the decision to proceed with the legislation covering Community Service Orders.

2.4.1 Symbolic

It is widely acknowledged that there can be a symbolic dimension to policy formation. Michael Tonry (2001) has written about the importance of symbolic and substantive policy-making. While discussing policy convergence between the US and the UK, he draws attention to symbolic innovations that serve primarily ideological ends. He specifically sights the criminal justice policies

pursued by Bill Clinton as an example of a politician who promoted criminal justice policies (in his case boot camps) despite the fact that they were proven to be ineffective. Tonry purports that these policies were pursued with a view to promoting an image of being tough on crime. He describes America as a place where politicians short term self-interest and punitive popular attitudes regularly win out over human rights, effectiveness or cost-effectiveness considerations.

American policy making on penal subjects has for a quarter of a century been more symbolic than substantive. This has meant that evidence about dangers of individual injustices or about the instrumental effectiveness of particular programmes has often been ignored (Tonry: 2001: p.530)

The same point is made by Stolz (2002) who conducted an in depth analysis of Clinton's crime control agenda since 1992. The findings heavily suggest that Clinton (similarly to others) relied on symbolic politics to get electoral support, and public support once in office. Stolz maintains that any crime control policies put forward by Clinton were merely symbolic in nature as the policies have not been developed by the primary crime-control body in the country. Stolz indicates that politicians are likely to pursue symbolic policies on the basis that they prefer legislation which has immediate results, as they are possibly concerned with maintaining support for a possible re-election bid (Stolz:2002:66).

Jones and Newburn (2006) have also explored the symbolic element of policy formation. They studied the specific 'Three Strikes and You’re Out!' policy employed in the United States. They also examined the English approach to implementing similar legislation. They reference work by Zimring et al, who found that most penal laws are purposefully designed to ‘bark louder than they bite’. The purpose is to appear tough on crime in order to win votes, without any major resource implications. It is necessary to consider whether Community Service Orders are an exercise in symbolic politics.

2.4.2 Rhetoric

Another area of interest in policy analysis is the rhetoric used by those introducing the legislation. A number of authors have commented on the huge emphasis placed on rhetoric rather than on the efficacy of the outcome of the policy. Tonry (2004) believes that many pieces of English crime control legislation should be viewed as examples of rhetoric rather than policies emulating from evidence-based research. Tonry picks apart pieces of legislation and Government white papers on certain issues in order to display how the formation of words have little or no substance or meaning. Tonry argues that rhetoric similar to that of the ‘rebalancing the system’ does not survive the

deconstruction process and is void to be devoid of any substance.

Little is known about what influence if any rhetoric has had over the decision to introduce community sanction orders. The role rhetoric can potentially play in policy formation will receive consideration when conducting the policy analysis.

2.5 Conclusion

The above areas may or may not be a factor in the formation of the legislation covering community service orders. The literature review has set forward a framework for the policy analysis. The problem, policy, and political stream policy as proposed by Kingdon and endorsed by Jones and Newburn is to form the basis for the research. It is hoped that following this framework and analysing all necessary document and conducting interviews, will aid in ascertaining who or what is the driving force behind this specific piece of legislation. Identifying the key actors or the key element which had an impact of the legislation, will shed light on what drives policy in an Irish context.

As outlined above there are a number of factors which one must be mindful of when conducting the policy analysis. When attempting to uncover the rationale behind the legislation one must be mindful of the impact of personalities, events, interest groups, civil servants, the relationship between civil servants and Ministers. Attention must also be paid to political styles, the symbolism and the rhetoric of the legislation. As the research involves analysing all the different threads of the policymaking process, it is hoped the findings will add to the body of literature which focuses on criminal justice policy-making in Ireland. The lack of information available on policy formulation in Ireland, serves to emphasise the need for studies such as this one.

It is hoped that the employment of the Kingdon framework for policy analysis and the awareness of other relevant elements, will ensure that the rationale and driving forces behind the Criminal Justice (Community Service Orders) 2011 Bill can be uncovered.

CHAPTER 3

Methodology

3.1 Research Rationale and Aims:

The primary focus of this thesis is to establish what the rationale was behind the Criminal Justice (Community Service) (Amendment) Act 2011. This involves analysing all the factors which may have had an influence on the policy-making process. The literature review highlighted possible driving forces behind the policy, such as policy actors, the influence of interest groups, political styles, symbolism or rhetoric. A qualitative analysis approach was needed to effectively analyse the potential various elements of the process.

Maxfield and Babbie (2006:279) promote the use of social science research procedures to study and appraise criminal justice programmes in all aspects, including the diagnosis of the problems they address, and their conceptualization and design.

3.2 Policy-analysis

The framework of policy analysis which was set out by Kingdon (1995) and recommended by Jones and Newburn (2007) was utilised for the purposes of this research. This framework sets out a three-pronged approach to the research which involves dividing the areas relevant to the research into three different streams, namely the problem stream, the policy stream and the political stream. This structured framework allowed the different elements relevant to the legislation to be examined in an methodological manner. This type of research involves breaking the pertinent sources of information into categories.

3.2.1 Government publications

This includes Ministerial statements, consultation documents, Bills, official press releases and manifestos. A number of research documents were also analysed these included the Value for Money and Policy Review of the Community Service Scheme 2009, a discussion document released from the White Paper on crime 'Discussion document no.2, Criminal Sanctions', the report of the Thornton Hall Project Review Group, The Fianna Fáil election manifesto 2007, the Programme for National Recovery 2011-2016, the Probation Service Annual Report 2010 and the Prison Service Annual Report 2009, and 2010.

3.2.2 Oireachtas debates

The debates of the Dáil and Seanad were examined. These were accessed through the website www.oireachtas.ie.

3.2.3 Pressure groups reports and publications

This included the Position Papers of the Irish Penal Reform Trust, and the work of academic experts.

3.2.4 Interviews

Semi structured interviews were conducted with the Head of operations for the Probation Service and a telephone interview was conducted with an Official from the Criminal law division of the Department of Justice. Interview questions were also emailed to the Communications Officer of the Irish Penal Reform Trust who sent her responses via email.

3.3 Data Collection

A major component of research in this study was the collection of a variety of documentary materials relating to the hypothesis of the community service legislation. All relevant data was sought from the Department of Justice and Equality (freedom of information). A large volume of information was also available on the Oireachtas website.

3.3.1 Debates

The debates were explored using the search engine on the Oireachtas website www.oireachtas.ie, using the following search terms; Community service orders, cost of imprisonment, Dermot Ahern, Alan Shatter, probation service, prison spaces.

The debates provide a rich accurate account of the proceedings that were carried on in the Dáil and the Seanad on a particular day, and so are reliable accounts of the thinking behind criminal justice policy as they highlight and record all issues that were raised on the topic. It was possible to track the progress of the Bill through the Dáil, the Seanad and the committee stages. This tool proved useful during the research. Jones and Newburn (2007) note how ministerial speeches in the parliamentary debates can give key indications of the rational which drives policy change.

The framework of the thesis was helpful in the analysis of the debates. The debates were examined for references to problems, issues or the personal opinions of the Minister in relation to community service orders. The chronology of the legisalation was of importance to the researcher, and so any

references to actions taken were noted in the hope that it would shed light on how long the legislation had been under consideration by the Department. In addition references to interest groups, review group reports , or academic research was also noted by the researcher. The process of analysing the debates involved highlighting key issues or policy actors. This method assisted the researcher in formulating the questions for the interview and the direction of the policy analysis.

It must be remembered that the Oireachtas is a political arena, and so the speeches given by politicians regarding legislation may, for whatever reason, fail to fully explain the problems which led to the legislation. It is hoped that an interview with an official from the Department of Justice would address any information deficit in this regard.

3.3.2 Department of Justice website

Another source of crucial documents was the Department of Justice website, www.justice.ie. This contains a section detailing the speeches made in relation to legislation, including the Community service orders legislation. It also contains documents which relate to sentencing guidelines, and consultation documents relating to Community Service Orders. It also provided a direct link to the Criminal Justice (Community Service) (Amendment) Act 2011 legislation which formed the basis of the thesis, and so was central to the research.

3.3.3 Department of Justice and Equality

The Department of Justice and Equality was contacted and asked to provide information on the Community Service (Amendment) Act 2011. The researcher was directed to the freedom of information section. The relevant website was www.foi.gov.ie . The freedom of information official directed the researcher to the information resources available online, on the Department of Justice website, specifically the Oireachtas debates, and policy documents of the Department of Justice and Equality.

An email was sent again to the Freedom of Information official detailing the type of documents which the researcher required. The official replied informing the researcher that some of these documents may not be available as the records sought were exempt from disclosure under Section 20, which exempts the deliberations of a public body.

The Freedom of Information official subsequently got back in contact, stating that the perhaps a more fruitful avenue would be to contact the Probation Service directly, as many of the document requests had involved the Value for Money and Policy Review of the Probation Service. The official provided the researcher with a contact in the Probation Service, who was willing to discuss the community Service order legislation. The issues of time and cost also factored in the decision not to

proceed with the freedom of information request. Issues of time and cost were also a factor here. There is a standard fee for each request, and additional fees for the amount of time spent retrieving the information requested. It is a lengthy proces, and there is a risk that the information retrieved may not be of worth to the policy analysis, as under section 20 of the Act, the information received would be limited.

3.3.4 Interviews:

Given the decision not to proceed with the freedom of information requests, the importance of gaining access for interviews had gathered new momentum. The second and vital stage of the research process involved interviewing key policy actors. Jones and Newburn have noted the valuable insights which discussions with key members of the policy community can produce, for the purpose of policy analysis. 'A key objective here was to obtain access to senior people who could provide first hand accounts of the particular policy developments in which we were interested' (2007:36).

Gaining acess to these key individuals was a challenge overcome by the use of a 'gate keeper' (Davies, 2011). The individual was a former civil servant who had worked in various departments and was able to make contact with key members of the policy community such as Mr. Ahern through particular channels. Consequently the gaining of access can be described as highly personalised (Davies, 2011).

All interviews were conducted with key members of the policy community (Ismaili, 2006) with a view to gaining an insight into their perception of the policy-making process and the role they perceived themselves and others, of playing. The structure of the interviews were heavily influenced by the methods advocated by Jones and Newburn (2007). The interviews were conducted at a later stage during the research process, after the data collection stage. This enabled the researcher to focus on key events and particular time frames in the development of the community service legislation (Jones and Newburn, 2007). The analysis of the Dáil debates and strategy statements had highlighted factors which were potentially of influence in the policy process. Conducting the interviews at the second stage of the research process allowed the researcher to focus the questions on specific areas of interest, rather than hoping to stumble across an influential factor in the answer of an interviewee. Jones and Newburn (2007) emphasise the benefits of conducting contemporaneous research which focuses on analysing the policy process as it emerges. As the policy analysis was completed within two months of the Bill being signed into law, the research findings benefitted from the time frame in which the analysis was conducted.

3.3.4.1 Interview Question design

When developing the research quesions, it was decided to combine open ended and closed ended questions. Babbie and Maxfield (1995:216) warn that with closed-ended questions the researcher may run the risk of overlooking some important responses the interviewee may have. The danger with open-ended questions is that the interviewee may provide answers which are at odds with the intent of the researcher. The interview was semi structured, and combined six essential questions, some open-ended some closed-ended depending on the aspects of policy-making they referred to. Rubin and Rubin (2005) suggest limiting the number of main questions to half a dozen in order to get sufficient depth in the answers. The researcher supplemented these questions with a number of sub questions or probe questions which could be asked if the researcher required answers with additional depth. This format allowed the researcher to ensure the essential areas were covered but that if the interviewee was vague, sub questions could be used to clarify what the researcher had intended.

The wording of the questions was carefully considered given that two of the interviewees were discussing the policy analysis from the point of view of a governmental organisation (Probation Service) and a Governmental Department (Criminal law division of Department of Justice). The use of negative and biased terms was avoided in the question formulation process.

The interview with Mr. Ahern, a former Minister for Justice required a different approach. It was decided to focus on four key closed -ended questions which were essential to the research, as it was probable that Mr. Ahern may want to discuss his role in other legislation which was not relevant to the research question, and it may be necessary to steer the conversation back on course.

In accordance with the interview technique set out by Davies (2011), the discussion was steered by questions and prompts, but also conversational so that the interviewee felt free to add information which may not have been relevant in the question, but was relevant to the overall question of the research.

The interviews were conducted in person and on the telephone. Before the interview was conducted the researcher ensured the interviewees had a clear understanding of the purpose of the interview by sending them four general topics on which questions would focus. The challenge of being unable to record the phone conversations was overcome by the researcher ensuring theat follow up questions could be emailed on to the interviewees after the interview if clarification on an issue was required.

3.2.4.2 Key elected policy actors

Letters were sent to the Minister for Justice Alan Shatter. This letter included a decription of the research question, and a list of areas on which interview questions would focus on, if access was granted. A letter of acknowledgement was received from the Department of Justice, however no

commitment was given to be interviewed.

Contact was made with the former Minister for Justice, Mr. Dermot Ahern via an intermediary. Mr.Ahern verbally committed to being interviewed and so a letter was sent to him detailing the background to the research, and a sample list of questions, indicating the topic and type of questions which would be involved. A second letter was sent to Mr.Ahern, reminding him of the interview, and setting out the specific questions, incase he would prefer to answer the questions in writing, rather than conducting an interview. An email was received from Mr. Ahern and a phone interview was conducted on the 19th of September 2011.

3.2.4.3 Sub Government Policy Community

Contact was made with the former Secretary General of the Department of Justice Mr. Sean Alyward through an intermediary. It was asked whether he would be willing to be interviewed as a key member of the sub government policy community (Ismailli, 2006). Mr.Alyward felt that as he was not one of the key policy actors in relation to this particular Bill, it would be more fruitful to interview an alternative official within the Department of justice and Equality. The researcher was put in contact with Ms.Joanne Kirk the executive official of the Secretary Generals office in the Department of Justice and Equality. An email was sent to Ms.Kirk detailing the background of the research and a list of questions on which an interview, if granted, would be centred on.

David Brennan of the Department of Justice criminal law division made contact via email, identifying himself as the Official responsible for the Bill and agreed to a telephone interview. A telephone interview was conducted on the 12th of September.

3.2.4.4 Government agencies

The researcher was put in contact with a representative from the Probation Service through the FOI official in the Department of Justice. An email was sent detailing what the research involved, a request for an interview aswell as a list of areas on which the interview questions would be focused. The representative replied, saying another representative would be in contact to discuss issues raised in the email with the researcher. The researcher was contacted by Gerry McNally, director of operations with the probation service. The format for the interview was discussed, and the interview was held in the Probation Service in Smithfield on Tuesday the 30th of August.

3.2.4.5 Pressure Groups

The researcher contacted the communications officer of the Irish Penal Reform Trust, detailing the purposes of the research, and a list of questions focusing on the work of the IPRT in the area. A

reply was received with detailed answers to the questions.

3.3 Ethical Considerations

As noted by Davies (2011) ethical dilemmas are endemic to social research. In order to ensure the research was ethically embued, the methodology complies with the guidelines set out by the Dublin Institute of Technology. The ethical issues which are relevant to the thesis include informed consent. The interviewees were made aware of the purpose and context of the research, and why their input was sought. The use of the information (for use in MA thesis in criminology) was explained fully to those who agreed to be interviewed. Despite the fact that access was gained through a 'gate keeper' (Davie, 2011) the researcher sent letters to all interviewees explaining the exact context and premise of the research. All interviewees were made aware that quotes from their interviews would, if appropriate, be used in the thesis, and consent was granted to this.

Other materials used for research purposes were in the public domain. However care was taken to ensure that quotes obtained from documents or Oireachtas debates were transcribed accurately, and that all references were correct.

3.4 Limitations

Although there were interviews conducted with the Probation Service, the Department of Justice, the Irish Penal Reform Trust, and former Minister for Justice Minister Ahern, no interview was conducted with Minister Shatter. This meant that insights into the policymaking process from key elected legislative actors (Ismaili, 2006) were limited. However the Dáil debates and speeches of Minister Shatter provided primary data for the researcher. The speech given by Minister Shatter on the 16th of September to the Irish penal Reform Trust focused on issues of prison policy and on the justice system generally. It goes some way in addressing the information deficit regarding his opinion on penal issues as a result of a lack of interview. It must also be noted that the elected official was in a position to provide some insight into the interest both Ministers took in the legislation.

CHAPTER 4

Findings and Discussions of Policy Analysis

4.1 Introduction

The Criminal Justice (Community Service) (Amendment) Act 2011 provides that a court before which a person is convicted and in circumstances where a sentence of up to twelve months would be appropriate, shall consider, as an alternative to that sentence, the imposition of a community service order. Since the Community Service Act of 1983 community service has been available to the judiciary as an option when sentencing offenders. This chapter will explore the policymaking process and provide a detailed analysis of the data available, with a view to discovering the logic behind the legislation.

The methodology utilised here will involve analysing the data relevant to the legislation. This analysis will focus on the different stages or streams of the policy making process as set out by Jones and Newburn (2007). These are the problem stream, the policy stream, and the political stream.

This chapter will first identify what the policymakers viewed as the key problems within the justice system which led to the introduction of the community service order legislation.

There will be an examination of how the policy was generated with a focus on the role of policy entrepreneurs, civil servants, economic factors, and the role played by academic research and evidence in supporting and informing this policy.

The chapter will also scrutinize the influence of the political stream, including the effect that pressure groups had on persuading the policymakers to introduce the legislation. This section will conclude with an analysis of political styles such as symbolism, rhetoric and the possible role they have played in the introduction of the community service order legislation.

This chapter draws on content gathered from the Oireachtas debates, policy documents, and interviews conducted with member of the policy community in an attempt to establish the rationale behind the community service legislation.

4.2 Problem Stream

The analysis of the reasons for the introduction of the legislation has highlighted a number of

problems or issues which led to its introduction. In order to analyse the policy process behind the community service orders, one must identify the original problem which drew the attention of policymakers. Understanding the problems can provide the basic reason behind any policy (Dorey, 2005)

When Mr. Dermot Ahern, in his capacity as Minister for Justice announced plans to bring forward legislation aimed at encouraging the greater use of community service orders as an alternative to prison, it was seen as a response to a number of problems.

4.2.1 Bias towards custody

The Value for Money and Policy Review of the Probation Service 2009 provided information regarding the number and distribution of community service orders (CSO) made by the Courts. The accounted for just 60% of the total number of CSOs made in 2006 (VFMPR, 2009:39). This statistic provides concrete evidence that only a minority of Judges avail of community service as a sentencing option. The same report also highlighted the capability within the Probation Service to deal with a threefold increase in the number of people serving CSO. The report, in essence highlighted that the community service scheme was majorly underutilised as a sentencing option, and that there was great scope to increase its usage.

In a press release detailing the proposed community service legislation, the Mr. Ahern confirmed that the legislation evolved from a desire to focus the attention of the Courts on the alternative sentencing methods available to it. During a Seanad debate on prison overcrowding, Mr. Ahern, outlined his plans for community service order legislation.

In the future, there will be a mandatory requirement on judges who are considering imposing prison sentences of six months or less to examine the option of making community service orders (Seanad Debates 3rd November,2005).

These proposals will focus the attention of the courts to the availability of alternative sanctions of community service. I look forward to seeing an increase in the use of the community service scheme particularly in relation to those offenders convicted of minor offences (Department of Justice Press release, 9th November, 2010)

The literature review highlighted a bias towards custody among Judges. When questioned about the influence this had on the decision to introduce the legislation, Mr. Ahern noted that the issue had been emphasised in the Value for Money and policy review.

It also showed that only certain Judges were using community service, others were just going through the motions of considering it. When I announced the community service order Bill, I said I was determined that all those who were eligible to be considered for community service, would be considered. We were obviously aware of the separation of powers when drawing up the Bill with the Attorney General. We went as far as we could go, in attempting to increase the use of community service (Ahern, 19th September, 2011).

This statement clearly shows that the reluctance of the majority of Judges to impose community service orders, was a factor in the decision by Mr. Ahern to draft the legislation, in the hope that it would address the issue.

The tendency among the Judiciary to favour custodial sentences rather than the community service options was also noted by Minister Shatter in his Dáil speech.

From my inquiries, it clearly remains the case that a significant number of courts and judges only rarely involve themselves in making community service orders. Where community service orders might be more appropriate than short prison sentences there is a far greater need for them to be applied Dáil Debates, 7th April 2011).

Analysis of the Oireachtas debates and the interviews with both Mr. Ahern, and also Mr. Brennan of the criminal law division revealed that one of the guiding principles behind the Criminal Justice (Community Service) (Amendment) Act 2011 was the desire to address the bias towards custody which exists among some Irish Judges.

4.2.2Temporary release

An element which has proved to be significant in the decision to bring the legislation before the House was the broader concerns regarding the use of Temporary Release (TR). The literature review highlighted that TR has been utilised in Ireland since its introduction in 1960. It was not originally introduced to help ease prison overcrowding (O'Malley, 2008) but is now regarded as an essential mechanism to assist the prison authorities to deal with the number of offenders sentenced by the Courts to custodial sanctions. O'Malley remarks on this phenomenon in his research on imprisonment and early release decisions in Ireland,

There were allegations, probably well-founded, of a revolving door policy whereby many prisoners were released early simply to accommodate the influx committed by the courts (2008:9)

The use of temporary release as a safety valve to control the number in prison (O'Donnell

2004:254) was remarked upon by Mr. David Brennan.

There was a concern about the number of people on Temporary release. The use of temporary release as a method of ensuring the prisons could cope with the number of people being sent there, gave rise to worries (Brennan, 12th September 2011).

During the debates Minister Shatter pointed out that individuals who receive sentences for minor offences are sometimes given TR so that the prison can make space for other offenders which have been sent into the prison system.

I had particular concern about the number of prisoners on temporary release. There is a cohort of prisoners who are on temporary release for no other reason than a shortage of prison spaces (Seanad debates, 26th July, 2011).

We have a problem in that at present our prisons are not capable of accommodating the number of prisoners who are being sentenced to prison terms. There will be some change in this. They are released because there is a need to create an extra space for another sentenced person for whom a period in prison is necessary in the public interest (Seanad debates, 26th July, 2011)

The Irish Prison Service Annual Report 2009 outlined the average number of prisoners on temp for that year was 535 (Irish Prison Service Report, 2009: 16). During the Dáil debates Minister Shatter indicated that he was not in favour of the practice of temporary release as a method of dealing with the overcrowding in Irish prisons. This issue was raised with the official of the criminal law division who drafted the Bill. The Official was asked a question regarding the problems which prompted the Department to draft the legislation.

There was a concern within the Department about the number of prisoners on Temporary release. It was felt that it was not the most appropriate method of dealing with the overcrowding issue. It was felt that short term custodial sentences for minor offences were not the way to go. Those offenders who receive short term sentences could possibly end up on temporary release very soon after their committal to prison. The practice of granting temporary release so soon after committal means that there is very little chance of reforming these offenders. It was felt that a reliance on community service orders was a more appropriate sentencing policy, one which would also have a more rehabilitative effect' (Brennan, 12th September, 2011).

Therefore a driver of the policy behind the community service order legislation was the desire to ensure that temporary release was not the mechanism relied upon to clear room in the prisons for those who were awaiting committal.

4.2.3 Overcrowding

It is worth noting at this juncture the influence the problem of overcrowding had on the decision to introduce the legislation. The issue of overcrowding in Irish prisons is well documented (O'Donnell, 2004, 2005,2008) (Inspector of Prisons, 2009) (CPT, 2010). However the number of people in prison on short term sentences only accounts for a small percentage of the total prison population. On 4th December 2009 prisoners serving sentences of less than 12 months accounted for just 13% of total prison population (Irish Prison Service Annual Report 2009:13). The short nature of these prison sentences and the quick turnaround of the prisoners who serve them mean that there is little or no cumulative effect on prison numbers. The legislation may have an effect on prison numbers, but it is not viewed by the Department as a strategy to deal with the problem.

The issue of overcrowding was not a direct factor. We were conscious of the problem with overcrowding, but also aware that short term prisoners make up a very small percentage of the prison population. You could say it was indirectly a factor (Brennan, 12th September, 2011).

This point was made by Mr. Ahern,

It would be grossly misleading to suggest prison overcrowding is caused by the imprisonment of minor offenders or that the problems can be solved overnight by the greater use of alternatives to custody (Seanad Debates, 3RD November,2010).

It is an important to stress the lack of impact the legislation will have on overall prison numbers. Although a significant number of people are serving prison sentences, the bulk of the population consists of those who commit more serious offences. The policy analysis has highlighted that the Department did not view the legislation as addressing the issue of chronic overcrowding, and so despite what may have appeared to be the case at first glance, overcrowding was not the core problem which the policymakers sought to address here.

The identification of the problem stream has indicated that the legislation sought to address a bias towards custody which is perceived to exist among the Judiciary in the case of minor offenders, and to address the system's reliance on temporary release.

4.3 Policy Stream

The examination of the policy stream involves examining the manner in which problems, once identified or defined, are accompanied by the advocacy of a particular policy, deemed by its proponents to be the solution. While the policy stream involves policymakers and policy advocates seeking to develop ideas and policies in response to the emergence and identification of particular problems, it also involves policy makers and advocates searching for problems to which they can attach or apply a favoured idea or policy (Dorey, 2005).

4.3.1 Sentencing Policy

Both the analysis of policy documents and the interviews conducted have indicated that a significant element in driving the community service order legislation was the broader concerns regarding sentencing policy.

Mr. Ahern first attempted to address the issues relating to the sentencing of fine defaulters. When asked what motivated him to look at increasing the use of community service orders initially, Mr. Ahern noted that in October 2009 the Government were under pressure to change the law relating to fine defaulters following a ruling in McCann -v- Monaghon Credit Union. The plaintiff in the case had a history of psychological problems, alcohol abuse and literacy problems. She had borrowed from Monaghon credit union and had amassed a debt of €18,063. An order was obtained for her arrest in 2005, but she knew nothing of the order, given her difficulties with reading. The plaintiff instituted judicial review proceedings of the order and challenged the validity of the legislation under the Constitution and the European convention of Human Rights. The imprisonment order was quashed by Judge Laffoy who found the Debtors' law to be inconsistent with the constitution (Irish Times, 19/0/09).

We were under a lot of public pressure to react; there was a lot of hoo-ha over this case. I wanted to ensure that people were not sent to prison if they were unable to afford to pay a fine, and so the alternative of community service orders was looked at' (Ahern, 19th September 2011).

Whilst establishing if there was capacity to deal with fine defaulters through the community service order scheme of the Probation Service, it became apparent that there was huge scope for increasing the use of community service orders and that this did not have to be solely restricted to fine defaulters.

I was assured, during preparations and discussions relating to what has become the Fines Act, that the probation service has additional capacity and will be in a position to cope with the placing of extra people on community service. I have also indicated that I will be making an additional legislative change with regard to sentencing policy in order to make provision in respect of community service (Seanad Debates, 3rd November).

Mr. Ahern wished to ensure that there was a sequence of hurdles which the system had to overcome before it could send a fine defaulter to jail. This desire to overhaul sentencing policy relating to fines, led to discussions with the probation service which indicated that the service could cope with a threefold increase in the numbers serving community service orders. The discussions with Mr. Ahern indicate that it was through his desire to overhaul sentencing relating to fine defaulters that he was alerted to the scope for increasing non custodial sanctions generally. The Fianna Fáil policy document National Recovery Plan 2011-2014 discusses the importance of overhauling sentences for fine defaulters. The document briefly mentions the community services order legislation, but there is no other indications of a desire to introduce measures which would reduce the reliance on imprisonment as a sanction (NRP, 2011:70).

By way of contrast the Fine Gael and Labour plan for Government indicated that the use of non custodial options was part of a strategy which consisted of moving away from the usual sentence of imprisonment handed down for less serious offenders. The first indication of this is in the policy document Towards Recovery: A Programme for National Government 2011-2016.

We are committed to a sentencing system that provides a safer society at a lower cost to the taxpayer. We will ensure that violent offenders and other serious offenders serve appropriate prison sentences while at the same time switching away from prison sentences and towards less costly non-custodial options for non-violent and less serious offenders. This will result in a reduction in the prison population and alleviate overcrowding. We will fully implement the Fines Act 2010 and extend the use of Community Service Orders.. (NRP, 2011:48).

In recent years, a body of research had highlighted that the Irish justice system has an over reliance on short term custodial sentences (IPRT, 2003). The report of the Prison Service (2009) noted that 85% of committals were for sentences of six months or less. The negative effect of short term sentences has been noted by experts in the sentencing field.

Short term sentences involve considerable administrative costs and may also have avoidable detrimental consequences for those on whom they are imposed, especially at a time of prison overcrowding (O'Malley, 2010:2).

The desire to reform sentencing policies for less serious offences was confirmed by Mr. David Brennan, who noted the lack of scope for rehabilitating offenders who are given short term prison sentences by the courts.

There is a better chance of reforming offenders using community service orders, it is more rehabilitative. The legislation is about striking the right balance of appropriateness for sentencing (Brennan, 12th September, 2011).

The reasoning behind the legislation is driven by the belief that those convicted of minor offences should be dealt with using non custodial sentencing options, where possible. This was confirmed in the interview with Mr. Brennan

It was felt that an emphasis on community service orders was a more appropriate sentencing policy, and one which the Department wished to see increase' (Brennan, 12thSeptember).

There was concern and a recognition across the political divide that minor offences were being given inappropriate sentences, and policymakers wanted to minimise this to a degree (Brennan, 12th September, 2011).

It is also worth noting at this juncture that the Thornton Hall Project Review Group was tasked with looking at the wider potential for the use of alternatives to custody. This again reaffirms the finding that the community service order legislation signifies a desire to redress the imbalance in sentencing practices for minor offenders, on the part of the policy makers.

4.3.2 Fiscal efficiencies/Value for Money

The literature review indicated that fiscal issues have dictated that the Government cannot continue with plans for a prison at Thornton Hall on the same scale that was originally envisaged. The Thornton Hall Policy Review Project also noted that prison is an extremely expensive form of punishment, a point which is particularly relevant given that the financial resources of the State are under increased pressure. In this economic climate value for money policies are given increased attention. The policy analysis findings indicate that the community service legislation was brought about due to a desire to insure offenders were being managed in a cost effective manner.

The Value for Money and Policy Review of the Probation Service 2009 (VFMPR) highlighted the contrast between the cost of providing a prison place and providing a community service order. The VFMPR is a document which sets out to establish the effectiveness of the community service

scheme and in doing so conducted a cost/benefit analysis of the scheme. It found that community service orders were an attractive sentencing option from an economical perspective

CSO are more financially cost effective than the alternative cost of imprisonment. Sensitivity analysis on these costs suggests that the comparative cost of community service is unlikely to exceed 34% of the alternative cost of imprisonment' VFMPR:2009:9)

The VFMPR can be read as a policy document as it was mentioned by the previous Minister for Justice Dermot Ahern when he announced his intention to bring legislation to the house aimed at increasing the use of community service orders.

Minister Ahern said that the community service scheme as it currently operates is significantly under used. A Value for Money and Policy Review of the Community Service Scheme (published October 2009) found that operating at full capacity, supervision services could be provided to three times as many offenders (Department of Justice, 9/11/10).

The current Minister for Justice Alan Shatter also mentioned the value for money and policy review a number of times in his speech commending the Bill to the house.

Increasing the use of the community service scheme was one of the main recommendations of the value for money and policy review of the scheme that was published in October 2009'(Dáil debates, 7th April, 2011).

It is important to note the introduction of the legislation was influenced by a desire for cost effectiveness and efficiencies, rather than an aim of significantly reducing prison costs.

At a time of increased pressure on resources and staffing we must strive to look at ways of increasing efficiency' (Dermot Ahern, Seanad Debates 3rd November 2010).

This point was stressed by Mr. David Brennan. As there is a quick turn-over of those prisoners serving short term sentences, they do not impact on the overall prison numbers. Accordingly the Department did not expect a reduction in costs as a result of the legislation. It hoped, instead, to address the significant shortfall in the capacity utilisation of the community service scheme. It will provide a financial benefit to the tax payer as community service orders are cheaper sanctions that imprisonment. However the emphasis was on value for money policies which it was hoped would lead to a reduction in cost.

Cost played a very small role. As the legislation is not expected to have a huge impact on overall prison number, costs would be more or less the same. Efficiencies for the Probation Service was the priority' (Brennan, 12th September, 2011).

Therefore the policy findings illustrate that a desire to reduce costs was not the prevailing reason behind the legislation. They suggest, rather, that an increased appetite for value for money policies led to the legislation which will increase the use of community service orders.

4.3.3 Relationship of Civil Servant and Minister for justice

The findings of the literature review highlighted the scope for individuals to make changes affecting the prison system. Research by Rogan (2010) proposes that senior civil servants within the Department of Justice can play a considerable role in affecting change in the area of penal formation if they are so inclined. The research offers the example of Peter Berry and Charles Haughey in this regard. Consequently the role of played by civil servants in the formulation of the Criminal Justice (Community Service) (Amendent) Act 2011 was a point of interest for the research.

When discussing the rationale behind the legislation with Mr. Dermot Ahern, he noted how both the Fines Act 2010 and the Criminal Justice (Community Service) Bill 2010, as it was then, devised by the Department within a similar time frame. Mr. Ahern noted how he had worked closely with an Official within the Department on both Bills.

I worked very closely with a man named Jimmy Martin on the Fines Bill and the community service Bill. We both devised a set of hurdles of sequences which had to be overcome before you could send a fine defaulter to prison, and the community service bill came from this aswell. It would be well worth talking to him too as he played a big role in this'(Ahern, 19th September, 2011).

Jimmy Martin is assistant secretary of the Department of Justice with responsibility for criminal law reform, prison, probation and welfare policy, and as such, is a person of seniority and sway within the Department. The above quote by Mr. Ahern gives momentum to the notion that senior civil servants played a role in the policy-making process. Discussions with David Brennan indicated that people within the Department had been looking at non custodial options for quite some time.

I think it is safe to say that people within the Department must have been thinking along these lines when the decision to conduct the value for money and policy review was taken. So the ideas behind the legislation would have been coming down the tracks for a period of three or four years' (Brennan, 12th September, 2011).

It is also worth noting that the comments made by Mr. Ahern in his role as Minister (Seanad debates, 3rd of November) and the comments made by Minister Shatter (Seanad Debates, 26th July) in relation to the legislation are along similar lines. Both Ministers emphasise in speeches in the Oireachtas that the legislation will not alleviate overcrowding in prisons. Comments made by both individuals draw on the importance of diverting offenders from prison and the benefit this has for the community. This continuity in language could be perceived as evidence that officials within the Department played a central role in the legislation, and have influenced both Ministers in that regard.

The arguments outlined above suggest that civil servants have played a significant role in introduction of the legislation. The quote from Mr. Ahern indicates in particular that Jimmy Martin had an impact on the shape and direction of prison policy (Rogan, 2010). However it is acknowledged by the researcher that his exact involvement requires further research in order to establish the extent of it.

4.3.4 Policy entrepreneur

Research by Jones at al (2002) and Ismaili (2006) has drawn attention to the importance of certain individuals in policy formation. This idea has been put forward by Brangan (2009) in an Irish context, who noted the effect Michael McDowell had on prison policy during his tenure as Minister for Justice. The community service order legislation involved two ministers, Mr. Dermot Ahern, and Minister Shatter. Both played key roles in the introduction of the legislation. However their roles as policy actors differ somewhat, and so it is necessary to examine each individually.

The former Minister for Justice, Mr. Dermot Ahern announced in November 2010 his intention to bring a Bill before the House which would be aimed at encouraging greater use of Community Service Orders. His interest in increasing community service orders appears to have evolved from a desire to ensure the Fines Bill was passed through the Dáil. According to Mr. Ahern he was determined that fine defaulters who were in genuine difficulty would be considered for community service rather than imprisonment if they were unable to pay.

I met with the Probation service to discuss capacity. I was shown the value for money and policy

report, which indicated to me that the Probation Service could deal with far more offenders than the courts were sentencing to community service' (Ahern, 19th September, 2011).

Mr. Ahern indicated that he was originally preoccupied with getting the Fines Bill through the Dáil, and that the idea for the community service legislation came about during this process, and that it was his 'own initiative, I particularly put a stamp on it' (Ahern, 19th September, 2011). It is clear that Dermot Ahern in his role as Minister for Justice can be regarded as a key policy actor as

Ultimately it is the Minister who is democratically and legally responsible for all policy in the Department and so he/she has the final imprimatur on all legislative changes (Brennan, 12th September, 2011).

Under the Bill proposed by Mr. Ahern, courts were required to consider imposing a community service order for minor offences where it would otherwise be appropriate to sentence the offender to imprisonment for a period of up to six months. However it would appear that the Mr. Ahern envisioned that the community service order legislation would be used mostly by fine defaulters who genuinely could not afford to pay. There does not appear to be an ideological motivation on behalf of the Mr. Ahern to change how we deal with our offenders, except in relation to fine defaulters. As Mr. Ahern explained, he was under pressure to react to a controversial decision in a court case involving a fine defaulter. The potential for increasing the use of community service orders was highlighted to him, as a result of the reforms he attempted to introduce on foot of the aforementioned court case. It must be highlighted here that there is very little evidence to suggest that Mr. Ahern had a personal interest in prison issues. Indeed this lack of interest has been commented on by John Lonergan, former Governor of Mountjoy Prison.

Up to June 2010, Dermot Ahern did not visit Mountjoy, I never met him or spoke to him. I think that summarizes Dermot Ahern's interest in and commitment to prisons."(Lonergan, 2011:198).

This is in contrast with the approach taken by Minister Shatter.

The Act introduced to the Oireachtas by Minister Shatter, placed an obligation on the courts to consider community service order for minor offences where it would otherwise be appropriate to sentence the offender to imprisonment for a period of up to twelve months. It is clear, therefore that the two men viewed the potential of community service orders differently.

Minister Shatter was clearly a strong advocate of the use of non-custodial sanctions, having brought

a private members Bill before the Dáil in 1983, which would introduce community service orders as a non custodial sentencing option before the Irish Courts. It is also worth noting that Mr. Shatter, in his role as opposition spokesperson for Justice, proposed that Courts should be encouraged to make greater use of community service orders.

It was last July, when I, as Fine Gael justice spokesperson, first proposed that a greater obligation should be imposed on the courts to make provision for community service orders. (Dáil debates, 7th April, 2011).

The Minister for Justice also referred to meetings he held with the Probation Service prior to his appointment as Minister for Justice to ensure that there was sufficient capacity within the Probation Service to deal with this type of legislation. It is clear that Mr. Shatter took quite a proactive role in relation to the legislation even prior to his appointment as Minister for Justice. When discussing the role the successive Ministers played in the policy-making process, it became apparent that it was Minister Shatter who decided to extend the remit of the legislation to cover offences which would otherwise receive twelve months imprisonment.

The thinking in the Department was that twelve month sentences can be handed down for what could be considered serious crimes. That was why six months was originally chosen. Minister Shatter was in favour of extending it to twelve months. It was his idea. The thinking was that if an offender was unsuitable for a community service order, this would be made known to the Judge through the Probation Report, and in such an event the non-custodial sentence would not be handed down by the courts. Minister Shatter wanted to see that the greatest number of offenders who would be suitable for community service, considered for community service (Brennan, 12thSeptember, 2011).

The Criminal Justice (Community Service) (Amendment) legislation was the first Bill introduced by Mr. Shatter in his role as Minister for Justice. It is obvious that the legislation goes further in extending the use of community service than the Bill introduced by Dermot Ahern, due to the alteration from six to twelve months.

It should also be noted that when instructing the Thornton Hall Project Review Group Minister Shatter tasked them with looking at a number of issues including

The potential for alternatives to custody, including legislative measure such as the Fines Act 2010 and the Community Service (Amendment) Bill 2011 to reduce the prisoner population' (RTHPRG:2011:9)

It is clear that the Minister, has already, in setting out as a Term of Reference, that the review group should consider alternatives to custody, has gone further in his thinking than the limited aim of providing further prison places' (RTHPRG:2011:14).

Policy entrepreneurs can be motivated by a combination of ideological commitment and also a pragmatic desire to reform (Jones and Newburn,2007:148). The research analysis has proven that this description rings true for Minister Shatter in the context of the community service legislation. The proactive role taken by Minister Shatter in the area of community service in 1983, and again in 2011 signify he has a belief in its effectiveness as a sentencing option for minor offenders. His commitment to the use of non custodial sanctions for offenders is further cemented by reforms planned for the area of parole for long term prisoners. Both these and the decision to review the decision to build a prison at Thornton Hall, signify he has a genuine interest in changing how we manage our offenders. There is also a pragmatic desire on the part of Minister Shatter to solve the issues which were highlighted in the problem stream such as a bias towards custody, over reliance on temporary release, under utilisation of community service but also a desire to implement value for money policies.

4.3.5 Lack of research

The lack of evidence led policies in Irish criminal justice system has been noted by Ireland's leading criminologists. O'Donnell (2008) has noted that there has been little interest in researching penal issues in Ireland. O'Donnell (2005) also noted the lack of research divisions within the Prisons Service and the Department of Justice. Brangan (2009) has also noted that the original decision to build a prison at the Thornton Hall site is another example of a policy decision lacking in any criminological or academic expertise.

However it became evident at the data collection stage that this policy decision had been evidence led.

Evidence led policy-making involves greater rationality by policy makers whereby they consider more carefully and more explicitly their policy goals, and various ways by which these might best be achieved. The questions which ideally should dominate the policy making process in this context would be ‘What are our policy goals?’ and ‘What are the alternatives to our current policy approach?’ The original document which prompted the Minister for Justice into introducing the legislation was the Value for money and policy review of the Probation Service. The VFMPR was conducted by experts from the probation service, the department of justice, and a Judge of the District Court. The methodology employed by the review was extensive and involved analysing the

aims, objectives, and outputs of the probation service, whilst establishing the effectiveness of the community service scheme, all with a view to proposing improvements or potential areas for developments. A meeting was held with the head of operations of the community service division of the Probation Service who believed that the VFMPR was the main driver behind the legislation. This opinion was echoed by a representative from the Irish penal reform trust who stated

It should also be noted that the probation service also played a significant role by identifying that it could increase the amount of CSOs carried out without any increase in resources' (IPRT, 2011).

The level of recourse to academic or professional experts in policy formulation can reflect if a policy has been research based or evidence led. The interview stage of the policy analysis has indicated that the research conducted by the Probation Service was relied upon by the Department when formulating the legislation. The interview with the representative from the criminal law division indicated that academic research was not consulted in regards to this legislation, as in this instance research was not required.

The Probation Service have a fairly broad body of knowledge about practices and policies in other jurisdictions and I think it would be fair to say that the Department relies on the Probation Service knowledge and expertise in that regard. In this specific case the amendment to law we were looking at was so simple and obvious that there was no real need for much background research and I do not recall referencing texts on this occasion'(Brennan, 12th September, 2011).

While the analysis proves that the legislation is evidence based, it appears that O'Donnell's assertions regarding a lack of academic input in policy-making still ring true. Academics have warned of the risks of net widening when introducing legislation to encourage the use of community penalties (IPRT, Position Paper: Community Service). The interview with the justice official indicates a belief within the Department that the legislation is so straightforward that no academic input was necessary. The lack of academic input regarding this legislation may not give cause for great concern given the nature of the legislation. However, it does serve to reinforce a worrying trend which has been highlighted by a number of authors, that policy makers in Ireland do not recognise the benefit experts can give to the policymaking process.

4.4 Political Streams

Policy analysis has pointed to the influence elements of the political stream can have on the policy-making process. This includes developments in the public mood, political events such as a change

in Government.

Swings of national mood, vagaries of public opinion, election results, changes of administration, shifts in partisan ideological distributions (in parliament) and interest group pressure campaigns (Kingdon:1995:87).

Research into the policy making process has indicated the worth in assessing the effect these groups have had on the policymaking process.

4.4.1 Interest Groups

Stolz (2002) has written extensively on the role and impact interest groups can have on criminal justice policy making in the United States. Windelshom (1993) also discusses the role interest groups play in influencing what policies are given the backing of the Ministers in an English context. The research findings indicate the effect interest groups can potentially have on criminal justice policy in an Irish setting. The Irish Penal Reform Trust is the leading nongovernmental organisation campaigning for the rights prisoners in Ireland, and for penal reform. It is what Murphy (2010) deems a cause-centred group with a permanent mission. According to Murphy, who analysed interest groups in an Irish context, cause-centred groups pursue their goals through 'putting public and private pressure on government, including politicians, along with the use of mass media' (Murphy, 2010:345).

The IPRT has long been advocating the increased use of non custodial sanctions, such as community service orders

Since its establishment in 1994, IPRT has consistently called for a greater use of community sanctions as a more appropriate, cost effective and less damaging response to less serious offences.(One of the core pillars of IPRTs work is for imprisonment to be used only as a last resort, for the most serious offences. (IPRT, 2011).

The trust has released a number of position papers relating to community service orders these include the IPRT Position Paper on Community Sanctions and the IPRT Position Paper 5: Penal Policy with Imprisonment as a last resort. It is worth noting that the IPRT published its fifth position paper in September 2009, over a year before the Minister for Justice, Mr. Ahern noted his intention to bring forward legislation.

The IPRT has been zealous in its efforts to engage with the relevant criminal justice agencies, (through preparation of position papers, holding of conferences, and lobbying) with a view to

ensuring its vision of the Irish penal system (imprisonment as a measure of last resort) becomes a reality.

IPRT is a campaign organisation so we are constantly in contact with the relevant agencies, including the Minister for Justice, Dept of Justice officials, the IPS, TDs and Senators, and so on. Furthermore, IPRT engages with processes such as the White Paper on Crime. We also created and distributed to all TDs and Senators a Briefing on the Bill in advance of the Dáil and Seanad debates, and many TDs and Senators referred to our work during the debates.'(IPRT,2011).

The IPRT has been proactive in raising awareness within the Department of Justice regarding its proposals.

We were proactive in sending our proposals to them long in advance of the first appearance of the Bill!' (IPRT, 2011).

The IPRT has conducted research into what has worked internationally in managing the offender population in a more effective manner, and feels that it's research has had an impact in the decision to increase the use of non custodial sanctions (through measures such as the community services orders Bill 2011).

We feel strongly that our presentation of a cogent research-based proposal, which looks at international best practice and results, and makes a strong argument for less costly (in both economic and social terms) sanctions, has had significant impact – particularly in terms of 'arming' the legislators, along with their advisors and policy people, with relevant information. (IPRT, 2011).

This statement regarding 'arming the legislators' is an accurate one. The influence of the Irish Penal Reform Trust on the legislation was explored during the interview with the official from the criminal law division, who noted

The IPRT are in contact with the Department on a regular basis, and the Department pays attention to the research they produce. In this instance, not all recommendations of the IPRT (regarding written explanations) were accepted by the Department. However its research was given due time and consideration (Brennan, 12th September, 2011).

The work of the Irish Penal Reform Trust was also mentioned by the Minister for Justice Mr. Alan Shatter during the Dáil debates. This illustrates that the advocacy group succeeded in engaging

effectively with the political officials. It must be noted, however, that the Irish Penal Reform Trust has been calling for these measures for quite some time. The influence the group has had regarding the policy-making process must also be attributed to the willingness of the current Minister for Justice to engage with groups working in the area, and being open to their research findings. The Irish Penal Reform Trust also acknowledges that the role it has been able to play has been dependant on a number of factors (the individual policy actors, the economic circumstances, and the current pressures on the Irish prison system.

Arguably the crisis in prison numbers– combined with fiscal issues – is what has precipitated recent action by the government (of course, it was the previous Minister (Ahern) who introduced this Bill, although Minister Shatter's Bill went much further.) , IPRT, the IHRC and other agencies have long been making the argument that CSOs are cheaper, more appropriate and more effective than prison for more minor offences. It should also be noted that the Probation Service also played a significant role by identifying that it could increase the number of CSOs carried out without any increase in resources.'(IPRT, 2011).

The policy research findings concur with those of Stolz (2002) as it is clear that the Irish Penal Reform Trust has played a role in educating policy makers regarding the potential for use of non custodial sanctions in an Irish setting, this is evident from the debates in the Dáil and Seanad, in which the Irish Penal Reform Trust were mentioned by eight different members of the Oireachtas, and notably Minister Shatter was one of those, which serves to reaffirm the interest he has taken thus far in prison issues.

4.5 Political Styles

There is potential for political styles to have an effect on criminal justice policy.

4.5.1 Symbolism

It has been proposed by Tonry that some policies are more symbolic rather than substantive in nature. A similar warning about policy is proposed by Stolz (2002) whose findings suggest that some politicians rely on symbolic politics to gain electoral and public support once in office. When discussing overcrowding in prison at the publication of the annual prison service report 2010, the Minister for Justice Alan Shatter stated

Prison overcrowding cannot be solved solely by building more prisons and that further steps are required to reduce the prison population, although this obviously cannot be achieved overnight (25th August 2011).

The research findings would indicate that the community service order legislation is not merely symbolic in nature. The strategy statement for the Fine Gael/ Labour coalition states

> *We are committed to a sentencing system that provides a safer society at a lower cost to the taxpayer. We will time switch away from prison sentences and towards less costly non-custodial options for non-violent and less serious offenders. This will result in a reduction in the prison population and alleviate overcrowding (Government for national recovery 2011-2016)*

The legislation clearly sets out to encourage the judiciary (in as far as it can, given the separation of powers) to use community sanctions rather than custodial options. Symbolic politics assumes that certain political acts (such as legislation) are an attempt to be seen to be doing something about a certain problem regardless of how suitable the response to the problem is. The research findings indicate that the community service legislation was a common sense, evidence based response to a problem.

It is also worth noting that the community service legislation is among a number of initiatives proposed by the Government which hope to overhaul how the criminal justice system manages its offenders and lessen our reliance on prison. The approach the Department of Justice has taken, under the auspices of Minister Shatter in augmenting it's use of non custodial sanctions, reaffirms that the legislation is not merely symbolic in nature. During the Oireachtas debates Minister Shatter outlined other initiatives which are being considered in this regard.

> *There is a whole range of alternatives which we should use, some of which have started to be used and others are very much at an experimental stage. We are looking at a pilot scheme of releasing some prisoners, subject to the condition and on agreement that they would do community service (Seanad Debates, 26th July, 2011).*

The literature review focused on how criminal justice policies were sometimes more symbolic than substantive, and how politicians formulated these policies purely with a view to gaining electoral support. It is clear from the policy findings that the community service legislation was not an example in symbolic policy-making. Research indicates that the public have a tendency to prefer the more hard line 'zero tolerance' approach to criminal justice. Increasing the use of community service orders is not a policy which would be likely to win support from the public, as it could be viewed as a 'soft' approach to dealing with crime. Therefore the policy findings suggest that the while there may be some symbolism (language of diversion and rehabilitation) it is not meant in the

negative manner by which symbolism was described in the literature review.

4.5.2 Rhetoric

The literature review discussed the notion of rhetoric and how it has become more important than the actual efficacy of policies. Tonry (2004) notes how eloquent rhetoric is used describe policies, but when examined the rhetoric used regarding the legislation bares little relevance to the content of the policies themselves, and is devoid of any meaning.

The discourse on the community service order legislation has been rehabilitative in tone. The Minister for Justice emphasised the idea that the Justice system should aim to rehabilitate offenders rather than recycle them and expect them to commit crimes again.

What we need is to ensure that those who leave prison have some opportunity of leading a life that does not involve re-offending. It is my intention that we take substantial steps along that route' (Seanad Debates, 26th July, 2011).

The Minister for Justice has stated that the reasoning behind the increased use of community service orders is to promote the idea of diversion, reduce the use of short term prison sentences which tend to be detrimental to offenders and lastly increase the use of non custodial options. In proposing the Bill to the Dáil, the Minister emphasised the benefits to the community and to the offender of diversion from prison.

It is an important measure in the context of changing our approach, and in signalling a new method of dealing with criminal justice issues' (Dáil debates 21st April 2011).

As Minister for Justice and Equality I am committed to ensuring that the Irish Prison Service continues to fulfil its obligations under our criminal justice system and to implement crucial reforms necessary to broaden the options available to the judiciary when dealing with convicted offenders and to reduce the level of recidivism' (25thAugust, 2011, Launch of annual prison report 2010).

The analysis of the speech delivered to the Dáil by Minister Shatter shows that there has been no attempt to exaggerate the potential effectiveness of the legislation, and to describe it as a panacea for the problems facing the prison system. Minister Shatter was keen to point out that the legislation would have only a minor effect, if any, on the overcrowding problem in prisons. During the

interview with the Official of the criminal law division of the department of justice there was no attempt to misrepresent the potential benefits of the legislation. When questioned about the effects the legislation would have on prison spaces and on cost issues, the official described how the benefits to the exchequer would not be of a great magnitude, and that the effect on the number of prison spaces was not expected to be considerable.

The research findings would suggest that the language used by the politicians and policy makers regarding the community service order legislation is understated. Research by Tonry (2004) on policy making in an English context suggested that English crime control legislation should be viewed as examples of rhetoric rather than policies emulating from evidence based research, does not apply in this context. Instead the findings of the policy analysis indicate that the increased use of non custodial options is part of a wider range of sentencing options which the Minister for Justice seeks to implement through legislation. The desire expressed in strategy statements and speeches to divert offenders from prison, and reducing recidivism is matched by legislative action.

4.5.3 Policy outlook

The move towards increasing the use of non custodial sanctions to deal with offenders is indicative of an increased rehabilitative approach to penal policy.

> *Rehabilitation is a forward-looking justification for punishment that aims to reform an offender. Probation or community service sentence has a rehabilitative aim'(Shatter, IPRT, 16th September, 2011).*

In his speeches to both the Dáil and the Seanad, Minister Shatter has discussed the importance of diverting offenders (where suitable) from prison. He also discusses plans to expand on the use of non custodial offences for long term prisoners. These policies are recommended by Cavadino and Dignan (2007) to address a penal crisis.

Minister Shatter has also been vocal about the need for a consistent and coherent sentencing policy. The terms of the policy review of the decision to build a prison at Thornton Hall were wide in scope and indicated that the Minister was interested in discussing a wide variety of factors which affect penal policy in Ireland. The Minister announced at the annual lecture of the Irish Penal Reform Trust that a review group had been tasked with conducting a strategic review of all elements of penal policy, including sentencing policy and alternatives to custody. In this aforementioned speech Minister Shatter outlined aspects of future penal policy and practice.

Arguments of principle, of effectiveness in preventing crime, and of economics, all justify putting the task of modernising the prison system and developing community-based sanctions at the core of this project' (Shatter, IPRT, 16th September, 2011).

The policy behind the community service order legislation has been built on the premise that a more rehabilitative approach in dealing with offenders will benefit the community, the offender, the victim and society as a whole. It is clear from the analysis of the speeches given, the policies which have been embarked upon and the policies which have been promised by Minister Shatter that there appears to be a departure from the policies of old. The footprints of a policy of expansionism of the prison system as described by Branagan (2009) have disappeared. It has been replaced by policies which emphasise non custodial sanctions which give credence to the principle of punishment as a last resort. The change in approach to penal policy is evidenced by the initiative of the Minister to task a review group with conducting a strategic review of all aspects of penal policy. It would appear that kingdon's statement regarding the effect a change of administration or Government can have on a particular policy area, is relevant in this regard.

4.6 Conclusion

The most significant factors which led to the introduction of the Criminal Justice (Community Service) (Amendment) Act 2011 was the bias towards custody which exists among the Irish judiciary, an under utilisation of the community service scheme, and a reliance on temporary release.

Although Dermot Ahern introduced the original legislation, the interview stage of the policy analysis highlighted that the motivation to look at community service stemmed from a strong interest in ensuring fine defaulters were not imprisoned, rather than a genuine desire to increase the use of non custodial sentences on minor offenders generally.

In contrast, the role played by Minister Shatter in the introduction of the legislation is marked by a genuine to desire to see an end to the rise in the use of prison to deal with the crime problem. A belief in the ability of non custodial sanctions to deal effectively with offenders, and an interest in considering less punitive measures to deal with offenders appear to be cornerstones of his penal philosophy.

The rationale behind the community service legislation is that prisons cannot cope with a huge influx of minor offenders, a fact proven by the high numbers of temporary release. The policy of allowing temporary release to be granted in order to enable prison governors to free up prison

spaces for more committals must cease. It is clear from the evidence that policy-makers acknowledged that such a system was failing, and bringing the ability of the criminal justice system to punish offenders into disrepute.

The policy analysis highlighted another key driver of the legislation which is connected with the high use of temporary release; the bias towards custody which exists among Judges in the courts. The value for money and policy review highlighted the reluctance of some courts to consider community service order for minor offences, despite the fact that imprisonment is intended by the legislature to be the punishment of last resort. The legislation is a common sense approach to addressing the problem.

The current fiscal climate has forced policy-makers to look at alternative methods of dealing with offenders. As the super prison at the Thornton Hall site has been scaled back dramatically (although it is still going ahead) policy-makers have been forced to rethink the status quo in how the system deals with offenders.

O'Donnell (2008) noted that 'An opportunity exists for politicians and policy makers to declare a moratorium on prison building and review the proposed further expansion of the prison system (2008: 131). Additionally O'Donnell (2004) remarked that 'one consequence of this is that the bottom line rather than any desire for penal reform, may force a reconsideration of what constitutes an appropriate scale of imprisonment' (2004:264).

Whilst O'Donnell here is ignoring the potential for policy actors to have a genuine interest in penal reform, his main point is valid. The fiscal issues facing the government of the day have forced it to ensure value for money policies are pinpointed and implemented. The findings of the policy analysis support this point. The Value for Money and Policy Review of the community service scheme highlighted inefficiencies within the Probation Service which the legislation seeks to deal with, by way of increasing the use of community service orders.

The aforementioned Value for Money and Policy Review of the community service scheme has been found to be a key driver behind the legislation. It served to ensure that the legislation was evidence- based albeit not research led. The fact that no expert research was employed in the policy-making process is worth emphasising given the lack of expertise in past penal policy highlighted in the literature review. The analysis would suggest it is a trend that continues.

Another important element of the legislation which was uncovered during the analysis of the political stream, is the lack of symbolism and the change in rhetoric (the emphasis appears to be on rehabilitative rhetoric rather than the empty rhetoric associated with the tenure of John O’Donoghue in the department). This point is important when considered alongside the findings of the literature

review which found that symbolism and rhetoric become more important than the policy themselves, as politicians introduce legislation with a view to gaining electoral support. This is a key point in an Irish context, given past promises made by politicians to take a zero tolerance approach to law and order in an attempt to win general elections (O'Donnnell and O'Sullivan, 2001).

The findings serve to highlight the congested nature of policy formation. Many different elements (problems, issues, outlooks) influenced the decision to introduce the legislation, indeed the findings indicate that the both Ministers differed somewhat in their reasons for championing the legislation. However all potential elements of policy making must be explored as they have an equal possibility of having had an influence on the legislation.

The findings indicate an appetite within the Department for alternatives to custody. This fresh outlook on penal policy is being driven from the top down, and is spearheaded by Minister Shatter. It is worth returning to the policy framework set out in the methodology section. The policy analysis frame work as set out by kingdom and utilised by Jones and Newburn, sets out the concept of a 'policy window' which provides policymakers with a new way of viewing a particular problem or issue. These windows are opened by a particular set of circumstances. In this case the fiscal issues facing the Government coupled with the value for money and policy review of the community service scheme, served to provide policy makers with new ways of viewing the problem of temporary release and the reliance on custody which exists in the Irish justice system. Policy entrepreneurs play a role at this stage, through lobbying (Irish Penal Reform Trust) or through using the opportunity to pursue a specific agenda. In this case Minister Shatter, a proponent of the use of non custodial sentences (perhaps along with senior civil servants within the Department), used the 'policy window' to build on the legislation introduced originally by Dermot Ahern. Through the first step of introducing the Criminal Justice (Community Service) (Amendment) Act 2011 legislation, Minister Shatter is attempting to shift Irish penal policy away from its recent history of expansionism and towards a more rehabilitative approach to managing offenders, which emphasises community based sanctions.

CHAPTER 5

Recommendations and Conclusion

5.1 Recommendations

In light of the findings and the conclusion of the policy analysis this thesis offers some recommendations.

The Criminal Justice (Community Service) (Amendment) Act 2011 places an obligation on Judges to consider imposing a community service order rather than a custodial sentence on a convicted offender in certain circumstances. As sentencing is solely a matter for the judiciary, judges will, technically, be able to ignore this new legislation, and continue to grant custodial sentences, even in cases where a community service order would have been suitable, if they so wish.

For this reason the effectiveness of the legislation should be reviewed after a period of a year. If following the review, the pattern of community service orders has remained unchanged from the findings of the Value for money and policy review of the Probation Service 2009, then the Government should consider other measures to encourage judges to grant community service orders. The Irish Penal Reform Trust had been calling on the Government to attach an amendment on to the Bill which forced judges to provide written reasons for their sentence. Measures such as the one outlined should be revisited if the legislation fails to have the desired effect.

Previous work on policy analysis in Ireland suggests that due to a lack of penal ideology, politicians have been able to have a huge impact on the policy formation process. Rogan (2011) has looked at the impact individuals have had on policy from a historic perspective. The research found that Charles Haughey in his role as Justice Minister made some of the most progressive steps in the area of penal reform in this country.

The work of Brangan (2009) added to this body of research, noting that Michael McDowell was the key policy entrepreneur behind the decision to build a super prison at the site in Thornton Hall. The problem with this, as Rogan (2011) notes, is that any major reforms or areas which require attention are unlikely to be dealt with unless a particular Minister or civil servant is inclined to take up the cause. The policy analysis conducted here has added to that body of research, suggesting that the community service legislation was championed and amended by Minister Shatter due to a personal interest he appears to have in the area. The interview stages of this research project shed some light on the role senior civil servants play in the policy making process, although the extent of that influence was by no means uncovered in this body of research. Accordingly it is an area which the

researcher concurring with Rogan (2009) would recommend be investigated further. The potential for policy analysis exploration in an Irish contest is especially great, given the intention of Minister Shatter to bring legislation which will make further use of non custodial sentencing options. The attention given to academic expertise in the policy formulation process is a factor which should be given special attention, as it had no input in the context of the community service legislation examined here. The findings of the thesis suggest that policy analysis is a worthwhile area of research, and one which can provide fascinating insights into how policy is formulated in Ireland today.

5.2 Conclusion

The research findings appear to indicate a new beginning of sorts for Irish penal policy. The economic downturn has resulted in a lack of funds for the planned prison building programme. Although the plans for Thornton Hall Hall remain on the agenda, the number of prison spaces which will be made available has been scaled back dramatically. It would appear that the assertion by O'Donnell (2004) that a lack of funding would result in policymakers turning their back on an extensive prison building programme, and devising alternative measures to deal with our offending population are accurate.

The constraints on the public finances coupled with the appointment of a new and enthusiastic Minister for Justice, (seemingly with an appetite for penal reform) may result in some novel approaches to dealing with the problems which have permeated the prison system for years.

The community service legislation was the first Bill brought before the house by Mr. Shatter in his role as Justice Minister. Between the introduction of the Bill and its enaction into law, Minister Shatter has been active in devising legislation which will serve to lessen our reliance on prison. The problems which were identified by an analysis of the problem stream were by no means new. The problems of overcrowding, bias towards custody, and temporary release have been highlighted in academic literature before. What is different, however, is the manner in which the Department of Justice under the new Minister is attempting to deal with the problems. The findings of the policy analysis indicate that the first legislation introduced by Minister Shatter was evidence led, and driven by a desire to implement policies which fit with the rehabilitative ideal. The findings of the policy analysis were extremely favourable to Minister Shatter in his role as a policy entrepreneur in relation to the increased use of community service orders. However the true test of the Ministers role as a policy entrepreneur will be based not on this one particular Act, but on how successful his

plans to

'Take practical, joined up steps to reduce the size of our prison population, protect public safety, and increase fairness in the justice system' turn out to be.

BIBLIOGRAPHY

Ahern, D. (2011) [Personal Communication] September 19th.

Babbie, E. &Maxfiels, M. (1995) *Research Methods for Criminal Justice and Criminology.* California: Wadsworth Publishing Company

Baumer, E. Hughes, N. O'Donnell, I. (2008) Imprisonment and Penal Policy in Ireland *The Howard Journal,* 43(3), 255-266

Boone, M. (2006) Only for minor offences: Community Service in the Netherlands, *European Probation journal,* 2(1), (2010) 22-40

Brennan, D. (2011) [Personal Communication]. September 12th

Cavadino, M. Dignan, J. (2007) *The Penal System An Introduction.* London: SAGE

Criminal Justice (Community Sanctions)(Amendment) Bill 2011.

Coakley, J, & Gallagher, M. (Eds), (2010). *Politics in the republic of Ireland.* Oxon: PSAI press

Council for the Prevention of Torture, (2010). "Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010". Available online at [http://www.cpt.coe.int/documents/irl/2011-03-inf-eng.htm]

Carroll, S. (2011) *"Shatter appoints prison review team"* . Irish Times 05/04/11, Available Online at [http://www.irishtimes.com/newspaper/breaking/2011/0405/breaking48.html]

Davies, P. Francis, P. Jupp, V. (2011). *Doing Criminological Research.* London: SAGE.

Dáil Debates, 7th April, 2011

Dáil Debates, 21st April 2011

Department of Justice. (2010) White Paper on Crime Consultation Process *Discussion document No.2 Criminal Sanctions* . Available online at http://www.justice.ie/en/JELR/White%20Paper%20on%20Crime%20Discussion%20Document%202%20Feb%202010-%20Criminal%20Sanctions.pdf/Files/White%20Paper%20on%20Crime%20Discussion%20Docum

ent%202%20Feb%202010-%20Criminal%20Sanctions.pdf [Accessed on August 5th 2011]

Fianna Fáil (2011) *National Recovery Plan 2011-2014*. Available online at [http://www.budget.gov.ie/RecoveryPlan.aspx]

Fine Gael (2011) *Towards recovery: A programme for National Government 2011-2016* Available online at [http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.html]

Fine gael (2011) Election Manifesto *local Strength, National Recovery.* Available Online at [http://www.finegael.org/upload/file/Local%20Strength%20National%20Recovery%201.pdf]

Irish Times, (2009, October 19th) Debtors' law found incompatible with Constitution. Available Online at [http://www.irishtimes.com/newspaper/ireland/2009/1019/1224256967872.html]

Ismaili, K. (2006) Contextualising the Criminal Justice Policy-Making Process, *Criminal Justice Policy Review,* 17(3), 255-269.

Irish Penal Reform Trust (2010) *Position Paper on Community Sanction*s. Dublin: Irish Penal Reform Trust

Inspector of Prisons (2009) *Office of the Inspector of Prisons Annual Report.* Available Online at [http://www.inspectorofprisons.gov.ie/en/IOP/Pages/Annual_Reports?opendocument&start=0&year=2009]

Kingdon, J. (1995) *Agendas, Alternatives, and Public Policies*. New York: Harper Collins

Jones T. and Newburn, T. (2002) Policy Convergence and Crime Control in the USA and the UK: Streams of influence and Levels of impact, *Criminal Justice*, 2(2), 173-203.

Jones, T. And Newburn, T. (2007) *Policy transfer and criminal justice: Exploring US influence over British Crime Control Policy*. Berkshire:Open University Press.

Jones, T. And Newburn, T. (2006) Three Strikes and You're Out: Exploring Symbol and substance in American and British Crime Control Politics, *British Journal of Criminology, (*46), 781-802

Kilcommins, S. O'Donnell, I. O'Sullivan, E. Vaughan, B. (2004) *Crime, Punishment and the Search for Order in Ireland.* Dublin: Institute of Public Administration

Loader, I. And Sparkes, R. (2004) For an Historical and Sociology of Crime Policy in England and Wales since 1968, *Critical Review of International Social and Political Philosophy,* 7(2), 5-32.

Lonergan, J. (2011) *The Governor* Dublin: Penguin

McNally, G. (2011) [Personal Communication], August 2011

O'Donnell, I. (2004) Interpreting Penal Change: A research note. *Criminal Justice,* 4(2), 199-206

O'Donnell, I. (2008) Stagnation and Change in Irish Penal Policy, *The Howard Journal,* 47(2), 121-133

O'Donnell, I. O'Sullivan E. (2007) Coercive confinement in the Republic of Ireland: The waning of a culture of control, *Punishment & Society,* (9), 27-48

O'Donnell, I. O'Sullivan E. *Crime control in Ireland: The politics of Intolerance.* Cork: Cork University Press

O'Donnell, I. (2005) Crime and Justice in the Republic of Ireland, *European Journal of Criminology,* (2). 99-131

O'Mahony, P. (2002) *Criminal Justice in Ireland.* Dublin. Institute of Public Administration.

O'Malley, T. (2008) The ends of Sentence: Imprisonment and Early Release Decisions in Ireland. Fitzwilliam College,Cambridge: Speech

Pogrebin, M. (2003) *Qualitiative approaches to Criminal Justice. Perspectives from the field.* California. Sage.

Thornton Hall Project Review Group (2011) *Report of the Thornton Hall Project Review Group.* Available online at http://www.justice.ie/en/JELR/Pages/ThorntonHallReviewRpt [Accessed August 7th]

Roberts, J. (2005) Reducing the Use of Custody as a Sanction: A Review of Recent International Experiences, *Judicial Studies Institute Journal.* 21-39.

Rock, P. (1995) The Opening Stages of Criminal Justice Policy Making, *The British journal of Criminology.* 35(4), 1-16.

Rogan, M. (2010) Yes or No Minister: The importance of the Politician-Senior Civil Servant Dyad in Irish Prison Policy, *The Prison Journal,* Sage Publications.

Rogan, M. (2011) *Prison Policy in Ireland: Politics, penal-welfarism and political imprisonment*. Oxon. Routledge

Rubin, H. Rubin, I. (2005) *Qualitative Interviewing* California: SAGE

Seanad Debates, 3rd November, 2010

Seanad Debates, 26th July, 2011

Seanad Debates, 27th July, 2011

Seymour, M. (2006) *Alternatives to Custody in Ireland,* Dublin: Business in the Community and the Irish Penal Reform Trust.

Shatter, A. (2011) *Irish Penal Reform Trust Annual Lecture,* Department of Justice. http://www.justice.ie/en/JELR/Pages/SP11000177 [Accessed 19th September 2011]

Stolz, B. (2002) *Criminal Justice Policy Making: Federal Rules and Processes,* Westport: Praeger

Stolz, B. (2002) The Role of interest Groups in US criminal justie policy making: Who, when and how, *Criminology and Criminal Justice, (2),* 51-69.

Thornton Hall Project review Group (2011) *Report of Thornton Hall Project Review Group.* Dublin: Department of Justice (http://www.justice.ie/en/JELR/Pages/ThorntonHallReviewRpt)

Tonry, M. (2004) *Punishment and Politics: Evidence and emulation in the making of English crime control policy,* Devon: Willan.

Tonry, M. (2001) Symbol Substance, and Severity in Western Penal Policies, *Punishment and Society.* (3), 517-536.

The Probation Service (2009) *Value for money and Policy Review of the Community Service Scheme.* Dublin: The Probation Service

White Paper on Crime Consultation Process *Discussion document No.2 Criminal Sanctions* Dublin: Department of Justice (http://www.justice.ie/en/JELR/Pages/WPOC_Discussion_Doc_2)

Windleshan, L. (1993) *Responses to Crime Volume 2: Penal Policy in the making,* Clarendon Press: Oxford.