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CRIME, PUNISHMENT AND PENAL POLICY

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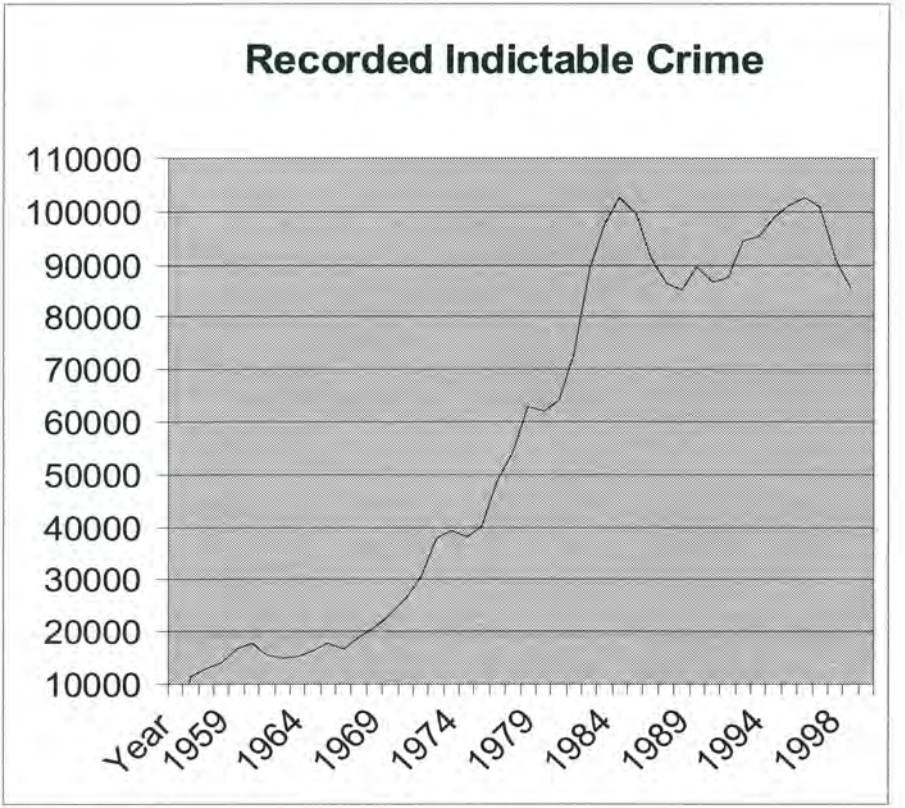
Crime, Punishment and Penal Policy

Abstract

Academic interest in crime and punishment in Ireland has grown in recent years and a number of important books have appeared (Bacik and O'Connell 1998, Brewer et al 1997, McCullagh 1996, O'Mahony 1993, O'Malley 2000). However any attempt to create a detailed understanding of the criminal justice process is frustrated by a lack of data. Statistical information is often published years in arrears, is of poor quality and is uncritically accepted as accurate and meaningful. The purpose of this paper is to give a snapshot of current understanding of the criminal justice system and to highlight a small number of key policy issues. The data presented are the most up to date available at the time of writing (August 2000) and an attempt is made to put the Irish situation into a European context.

Recorded Crime

The most recent official crime statistics relate to 1998 (An Garda Síochána 1999). They show that the total number of recorded indictable crimes stood at 85,627, a six per cent reduction on the previous year and the lowest level for ten years. The cumulative drop between 1995 and 1998 was 16 per cent and the indications are that the fall in crime continued throughout 1999. The ebbs and flows of the crime rate in recent decades are shown in Figure 1.



The great bulk of indictable crime recorded in 1998 involved larceny (54 per cent) or offences against property (43 per cent), with only two per cent involving offences against the person (see table 1). This overall distribution has changed little since 1988. Furthermore, much property crime is relatively minor. In most burglaries, robberies and larcenies recorded in 1998 the value of the property stolen was less than £300. The total value of property stolen amounted to £100m, of which £7m was recovered. It is salutary to compare this with the problem of crime by employees and others, where prosecutions are rare, but the scale of the financial loss is greater. It has been estimated that in 1999 shopkeepers lost £70m per annum to dishonest staff; organised fraud and bogus claims cost the insurance industry £50m; and small industries lost £75m through white collar crime (*The Examiner* 5 January 2000).

Table 1 Recorded crime

	1998	1988	Difference (%)
Offences against the person	1,907	2,144	-11
Offences against property	37,191	35,679	+4
Larcenies	46,127	51,291	-10
Other	402	430	-7
All	85,627	89,544	-4

[SOURCE: Annual Reports of An Garda Síochána]

Crime is predominantly an urban phenomenon. The number of indictable offences recorded per 1,000 population was 147 for Dublin North Central and 124 for Dublin South Central. The overall rate for the Dublin region was 42, compared with 18 for the Southern Region which includes Cork and Limerick. The lowest rate of recorded crime was found in Mayo (eight per 1,000), which also occupied the bottom of the table in 1988 when five crimes were recorded per 1,000 population.

In addition to 85,627 indictable crimes, a total of 413,340 non-indictable offences were processed by the Gardai. While most of these were motoring-related, proceedings were taken in 8,077 assaults and in 531 cases of begging. Almost 28,000 charges were brought under the Criminal Justice (Public Order) Act 1994. These are cases where the discretion of the individual police officer is wide, and the potential for discriminatory treatment is ever present. The Act covers behaviours such as intoxication in a public place (section 4), disorderly conduct (section 5), threatening or abusive or insulting behaviour (section 6), and failing to comply with the direction of a Garda (section 8). The working rules that individual police officers use to structure their decision-making when faced with potential public order incidents requires close study. There is a substantial international literature in this area (see for example, McConville, Sanders and Leng 1991) and it is beginning to receive a small amount of academic scrutiny in Ireland (Carey 1998).

Household Survey on Crime and Victimisation

National and local crime surveys and self report studies have been utilised to uncover the 'dark figure' of crime (i.e. the volume of criminal activity that goes unreported by the public or unrecorded by the police). Victimisation surveys focus on the extent to which individuals experience crime, but for various reasons do not report it to the police. This does not necessarily mean that such surveys provide a more accurate picture of the extent of crime, rather they provide a different perspective on the extent of crime. As Maguire (1997: p. 164) argues, such surveys give, *"an alternative, rather than a directly comparable overall picture of crime to that offered by police statistics: 'fuller' than the latter in some respects, but 'narrower' in others"*. One particular limitation of household victimisation surveys is that they exclude persons of no fixed abode and those in institutions. These groups may have atypical experiences of crime.

The Quarterly National Household Survey, conducted by the Central Statistics Office (CSO), included a special module on crime and victimisation in September-November 1998 (CSO 1999). A total of 39,000 respondents were asked about crimes against themselves or their households which had taken place during the previous twelve months. The data generated through these interviews provide a valuable point of contrast with the Garda statistics. The CSO survey allows us to estimate the magnitude of the 'dark figure of Irish crime.

Table 2
Unreported and unrecorded crime (1998)[1]

	Burglary	**Theft *of* motor vehicle**	**Theft *from* motor vehicle**
Estimated by CSO	52,900	16,500	47,200
Reported to gardaí	41,600	15,700	27,800
Extent of under-reporting	21%	5%	41%
Recorded by gardaí	26,547	5,152	12,377
Extent of under-recording	36%	67%	55%
Overlap	50%	31%	26%

[SOURCE: Central Statistics Office (1999) and An Garda Síochána (1999)]

Table 2 shows that very few motor vehicle thefts (five per cent) were not reported. This can be explained by the requirement to notify the police if an insurance claim is to be made. However the Garda statistics indicate that only about one in three of these reports from victims was officially recorded. It would seem that more than 10,500 disappeared from the books. With respect to burglaries, one third of the incidents which victims say they reported did not make it into the official crime statistics. This amounts to 15,000 missing burglaries. For theft from motor vehicles, more than half of all reports (15,400) do not appear to have been recorded.

In other words it would seem that the Garda statistics massively under-represent the level of crime and that in reality there are twice as many burglaries, three times as many thefts of cars and four times as many thefts from cars. This finding is in line with the results of victim surveys in other jurisdictions and it is important to identify the factors which might explain it.

According to the CSO survey the most common reasons for not reporting crimes were that the offence was not serious enough or a belief that the Gardaí could not, or would not, take any action. However we know nothing about why crimes are not recorded. It may be that incidents which respondents considered burglary, for example, would be defined (and recorded) otherwise by Gardaí, or that victims' recall was faulty, or that for a variety of valid operational reasons certain allegations did not become part of the official record. It may also be that offences which were unlikely to be detected were omitted. (See Watson (2000) for an account of the crime recording process and Brogden (2000) for an account of how crime statistics are socially constructed.).

[1] These figures must be interpreted with caution. The number of crimes reported to the gardaí is based on the reporting rate in the CSO report. The garda figure for burglary includes aggravated burglary and armed aggravated burglary. The garda figure for theft of motor vehicle includes larceny of cars, motor cycles, lorries and other vehicles (all indictable offences), and taking a vehicle without authority and unauthorised interference with mechanism of motor vehicle (both non-indictable). The reference period in the CSO survey was the twelve months to November 1998, while the garda statistics relate to the calendar year 1998.

This latter explanation might go some way towards explaining why the detection rate is so high. In 1998 it stood at 44 per cent compared with 33 per cent in 1988. This is much higher than found in police forces in other countries. Interpol data for 1994 showed that 39 per cent of crime in Ireland resulted in a detection compared with 21 per cent in Denmark, 26 per cent in England and Wales and 30 per cent in Sweden (Steering Group on the Efficiency and Effectiveness of the Garda Síochána 1997: p. 32). By 1997 the Irish detection rate had climbed to 43 per cent while in England and Wales it remained static at 26 per cent. This simple statistic may not be all that it seems. Research is required to tease out the extent to which it reflects differential recording rather than investigative excellence.

The CSO survey also contains useful information about risk of victimisation and fear of crime. Men aged 18-24 years were most vulnerable to theft or assault, with risk declining by age. However they did not feel fearful. Elderly women were a low risk group but reported feeling unsafe. The proportion who felt that crime was 'a very serious problem in Ireland today' was higher for women in every age group and increased with age for both men and women. At a time when there are significant reductions in crime rates (Figure 1) it is a matter of concern that people are so anxious. This finding is supported by a survey of public attitudes to crime which showed that 89 per cent of interviewees believed crime was on the increase (McDade 1999).

The mismatch between fear of crime and risk of victimisation may be explained by the lack of accurate public information about crime rates, a political debate which is mired in the rhetoric of 'zero tolerance', and media distortion. O'Connell (1999) gives an interesting account of how public perceptions of crime can be affected by newspaper coverage.

Victimisation surveys are carried out routinely in other countries to provide an alternative source of information to official statistics. Their value lies in their stability over time. Official crime statistics can be affected dramatically by changes in recording practice which are independent of changes in actual victimisation. One wonders for example to what extent the rate of recorded crime was affected by the introduction during 1999 of a new Garda computer system (PULSE). It would not be surprising if crime rates rose as a result of the more comprehensive recording that may be ushered in by new data collection methodologies. In this context recorded crime could increase even if the underlying rate of victimisation remained stable or even decreased. It is to be hoped that the CSO victimisation survey will be conducted regularly as its real value will only be revealed through repetition.

The Prison Population

The most up to date annual report on prisons and places of detention relates to 1994. This has been described as, "*so old as to be practically useless*" (O'Donnell 1999: p. 196). The introduction to the 1994 report, published three years in arrears, stated that the reports for 1995 and 1996 would be published during 1997, "*thereby eliminating the backlog*" (Department of Justice 1997: p. 5). This did not happen. When the prison statistics for 1995 are eventually published they will be at least five years late. The lack of current information presents an enormous handicap to any sensible discussion of what might be an appropriate level of imprisonment and calls into question the empirical basis of the Government's massive expansion of the prison system.

Although no detailed statistics have been published it is possible to provide an overview of the state of the prisons at the midpoint of 1999. This is shown in table 3. Cork was the most overcrowded institution followed by Limerick (male) and Mountjoy (male). The open centres (Loughan House, Shanganah Castle and Shelton Abbey) had some spare capacity but Portlaoise, the most secure prison in the country, enjoyed the least crowded conditions.

Table 3
Prison population – July 1999

	Design Capacity	Number in custody	Overcrowding (%)
Mountjoy (male)	547	765	+40
Mountjoy (female)	60	62	+3
St Patrick's	165	199	+21
Cork	150	271	+81
Limerick (male)	133	222	+67
Limerick (female)	12	16	+33
Castlerea	183	199	+9
Wheatfield	320	360	+12
Portlaoise	205	131	-36
Arbour Hill	138	139	+1
Fort Mitchel	102	103	+1
Training Unit	96	82	-15
Curragh	68	91	+34
Loughan House	85	78	-8
Shanganah Castle	60	49	-18
Shelton Abbey	58	52	-10
ALL	2,382	2,819	+18

[SOURCE: Department of Justice, Equality and Law Reform]

When the Irish prison population is compared with other European countries it is seen to have a number of unusual characteristics (table 4). The most recent comparative data show Ireland to have the lowest average (median) prisoner age, and the highest proportion of under 21-year olds. There are disproportionately few women – only Northern Ireland has a more extreme gender imbalance (Council of Europe 1999a). The average prison sentence is short (2.5 months). This explains why a high 'flow' of prisoners through the system over the year results in a low 'stock' of prisoners on any given day. The only country where the ratio of flow to stock is greater is Scotland, which boasts the shortest average prison sentence in Europe. In Portugal, because average detention periods are long (20 months) the stock is actually greater than the flow.

Table 4
European prison profiles (1 September 1997)

	Median age	% under 21 years	% Female	Rate per 100,000 inhabitants 'stock'	'flow'	Average Sentence (months)
Austria	29	3.7	5.9	86	n/a	n/a
Belgium	32	5.6	4.3	82	158	5.9
England & Wales	27	17.6	4.5	120	232	5.5
France	31	9.2	4.0	90	138	8.1
Finland	n/a	3.6	4.8	56	82	9.1
Germany	n/a	n/a	4.3	90	338	3.1
Ireland	24	24.2	2.3	68	302	2.5
Netherlands	32	7.4	4.2	87	190	4.5
Northern Ireland	24	13.5	1.9	95	327	3.5
Portugal	33	5.4	10.0	145	84	20
Scotland	27	17.6	3.2	119	634	1.9
Spain	33	6.4	9.3	113	139	10.1
Sweden	34	4.0	5.7	59	234	3.0

[SOURCE: Council of Europe (1999a)]

It is worth spelling out in a little more detail some of the key issues around the treatment of prisoners. There are particular concerns regarding the quality of medical care available. Prisoners are at the deep end of the criminal justice system. They are invisible and vulnerable. The way they are treated says a great deal about the priorities of the system and indeed of society as a whole.

The men, women and children held in Irish penal institutions suffer from high levels of serious illness according to a survey of 1,205 prisoners in nine establishments (Department of Community Health and General Practice, Trinity College Dublin 2000). The survey found that the prevalence of infection with hepatitis B was nine per cent, hepatitis C stood at 37 per cent and HIV reached two per cent. Infection rates were much higher among declared drug users (hepatitis B 18 per cent, hepatitis C 80 per cent and HIV four per cent). For the group of intravenous users, 21 per cent claimed to have begun injecting in prison. Of those who said they injected while in prison, 58 per cent shared equipment (needles, syringes, spoons and filters). The high level of drug use and infectious diseases raises serious questions about the health and safety of prisoners and staff. There can be little doubt that for many prisoners heroin is a way of life – and death (see Hunt (1999) for some harrowing prisoner narratives). Crowley (1999) has called for the provision of needles, bleach tablets, methadone maintenance programmes and intensive education as essential elements of any strategy to tackle prison drug use.

As well as the risk of disease there is the problem of suicide (National Steering Group on Deaths in Prisons 1999). There was a record number of suicides in 1999, five men and one woman taking their lives. The wider context is of therapeutic services under incredible strain. The Director of Prison Medical Services makes an annual report to the Minister. This report is not published but was obtained in part by the author under the Freedom of Information Act when he was director of the Irish Penal Reform Trust. The report for 1998 makes for shocking reading. It tells of a system of prison medicine which is, "*significantly under-resourced, both at a headquarters management level and at local prison level*", and sounds a clear warning: "*it is possible that in the near future a situation may arise where it is not possible to meet statutory or other obligations in the medical sphere*" (Director of Prison Medical Services 1999).

The third annual report of the Department of Justice Clinical Psychology Service showed how with seven staff (two of whom were temporary) it was impossible to provide a generic clinical psychology service for individual prisoners, let alone to develop group programmes or assist in the recruitment and training of officers (Department of Justice, Equality and Law Reform Clinical Psychology Service 1999). Indeed in 1998 clinical psychology services had to be withdrawn from some prisons. The mismatch between the demand for services and the available supply led to an internal review in 1998 and an external review in 1999. The external review recommended an immediate increase in staffing and the decentralisation of service provision. It also recommended that the Service play a greater role in developing the skills of prison officers in rehabilitative work (Group Established to Review the Psychology Service of the Department of Justice, Equality and Law Reform 1999).

If prisoners are found to require in-patient psychiatric treatment they may be transferred to the Central Mental Hospital. This institution, which holds about 80 patients, has been severely criticised. The Inspector of Mental Hospitals (1999) called for the closure of the main building which was in poor decorative repair and where patients had no access to sanitation at night other than a bucket in their room which was slopped out in the morning. Seclusion in a locked room was used frequently and often authorised retrospectively. There were serious industrial relations problems (Inspector of Mental Hospitals 1999).

Probation and Welfare

The mission statement of the Probation and Welfare Service is, "*To foster public safety and promote the common good by advancing the recognition and use of community based sanctions, thereby reducing the level of re-offending*". Much of this work is advanced through report writing for the courts.

The Probation and Welfare Service's annual reports for 1995 and 1996 were published in 1999 (Probation and Welfare Service 1999a, 1999b). They show that the number of pre-sanction reports has risen steadily in recent years (see table 5), doubling since 1990 when 2,058 were ordered by the courts. The number of referrals for community service reports was greater than 1990, when it stood at 1,731 but down from a peak of 2,381 in 1993. Community service is seen as a direct alternative to imprisonment that provides offenders with an opportunity to make some form of reparation for their law breaking. In 1996 a total of 202,653 hours of community service was ordered. This equates to 5,400 weeks worth of work, a tangible return for areas affected by crime.

Table 5
The work of the Probation and Welfare Service

	1996	1995
Court Reports		
Pre-sanction	4,161	3,743
Community service	1,910	2,032
Victim reports	51	58
Total	6,122	5,833
Court Orders		
Community Service	1,386	1,602
Probation	1,280	1,042
Supervision during deferment of penalty	1,815	1,575
Total	4,481	4,219

[SOURCE: Probation and Welfare Service (1999a, 1999b)]

The preparation of victim impact reports is a new area of activity for probation and welfare officers. The first report was drawn up in 1995, during which year a total of 58 were requested. A similar number was prepared in 1996. In addition, 40 reports were prepared for the Sentence Review Group in 1996 (compared with 53 in 1995).

In its final report, the Expert Group on the Probation and Welfare Service (1999) described an organisation under great strain. Despite declining crime the workload of the service seemed to be increasing relentlessly. The Expert Group's report is a rigorous and detailed account of current practice. It highlights the need for structural and operational change and is sensitive to the wider political context.

The Group's first recommendation was for, "*a significant shift in policy to facilitate the increased use of a much greater range of non-custodial sanctions. This will require significant additional staffing and other resources for the Service*" (Expert Group on the Probation and Welfare Service 1999: p. 36). Other recommendations included the creation of a new range of disposals such as treatment orders, mediation orders, and reparation orders; the establishment of a statutory Probation and Welfare Agency; and the creation of an Inspector of Probation and Welfare Services.

A survey of public attitudes to crime was carried out as part of the Expert Group's work (McDade 1999). This showed a high level of support for rehabilitation and counselling, rather than punishment, to deal with juvenile and drug-related crime. It showed little support for prison building as the solution to a rising prison population. Almost three out of four respondents believed fines, community service and probation would be more appropriate than prison for certain crimes. Public awareness of the Probation and Welfare Service was poor - two thirds of respondents did not know what the Service did. Somewhat bizarrely we are told that, "*respondents holding relatively more liberal views on sexual relations between two adults of the same sex were more likely to indicate being aware of the role of the Probation Service*" (McDade 1999: p. 29). One wonders at the implications of such a finding for the Expert Group's recommendation that the Service develop an expertise in corporate affairs so that its work can be more widely promoted!

Concluding Commentary

Eight weeks before Christmas 1999 a 25-year-old man from Limerick was given a three-month prison sentence at Carlow District Court for stealing a coat. The offence had taken place the previous day at a local shop. The culprit was sent to Mountjoy prison where a fortnight later his cellmate woke to find him hanging by a bed sheet from the window bars. He had never been in prison before and his previous record was slight – he had acquired convictions for larceny and possession of a small amount of cannabis. This case highlighted with dreadful clarity the consequences of a high custody rate for minor offenders and the lack of a realistic array of alternative penalties. It showed up the sometimes tragic implications of a lack of direction at the heart of criminal justice policy.

The development of the criminal justice system should be guided by an awareness of the interdependence of its component parts and the need for regulated growth. Despite the high level of spending – the overall Department of Justice, Equality and Law Reform budget reached £1 billion for the first time in 2000 – little attention has been paid to fundamental issues such as the way the crime problem is defined, and the methods by which crime is policed, prosecuted and punished. (For an account of the relationship between politics and crime control, see O'Donnell and O'Sullivan 2001). Essential safeguards are still not fixed in place, despite repeated calls over the years (see for example, Council of Europe 1999b). Without critical voices and public debate the huge edifice of the criminal justice system may be extended on shallow foundations. In such circumstances a slight tremor could cause widespread destabilisation.

When planning a modern criminal justice system the following considerations are important:

_ A transparent and fair system would emphasise external evaluation. It would encourage independent inspection of police, prisons and probation and create meaningful complaint mechanisms for those who felt they had been ill-treated in custody or on probation supervision. Accountability would be a guiding principle.

_ A confident system would operate with the minimum of political involvement. For example, elected representatives would not determine minimum sentences to be served or deny temporary release to certain categories of prisoner. Law and order issues would not be used to inflame passions during general elections.

_ A mature system would accept risk, stimulate research and inform public opinion. It would ask difficult questions such as how Gardaí exercise their discretion, why reported crimes go unrecorded, and why the detection rate is so high. It would review sentencing practice and seek to make the law more even in its application.

As things stand major policy changes are introduced after little consultation and debate is made unreasonably difficult by the absence of hard information. To make planned and principled development possible there is an urgent need for timely reports and common criteria for classifying crime and tracking cases. The most up to date probation statistics relate to 1996, the year when the downturn in recorded crime began. The most recent prison statistics relate to 1994. The Garda report for 1998 is available. There is no statistical report from the courts. This confusing state of affairs renders it impossible to investigate how the continuing fall in recorded crime is impacting on the demand for probation supervision and

prison accommodation. (For an account of how to build a criminal justice system on evidence and principle, see Faulkner 1998).

As the Director of Public Prosecutions put it in his first annual report (issued almost a quarter of a century after his office was established), "*Without a data base generating statistics from which a global overview of crime patterns and of the responses of the law enforcement agencies and the judicial and penal agencies to them could be reliably constructed, it is difficult to assess the efficiency of either the entire system or of any of its component parts. Those parts are interdependent and the operation of each of their functions fundamentally affects that of each of the others. Without the complete picture, statistical snapshots of the individual agencies involved are at best of limited significance*" (Director of Public Prosecutions 1999: p. 25).

It is to be hoped that a priority is accorded to 'joining up' the various elements of the system so that future researchers, commentators and policy makers are not unduly hampered in their search for acceptable solutions to the management of crime and punishment. For a period in the mid-nineteenth century the Irish penal system was admired in many countries for its willingness to innovate (Hinde 1977). The crime rate in Ireland remains low by international standards. If we can develop a detailed critical understanding of the system, and the context in which it operates, there is no reason why we should not once again attempt to put in place arrangements that would be the envy of other jurisdictions.

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Childcare in Ireland: Themes & Issues

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Abstract

In Ireland the policy has been to view childcare as parent's private responsibility resulting in a dearth of public provision, regulation or support for parents since the foundation of the state. Utilising current literature in the field, this paper discusses the need to develop a flexible and responsive childcare system for all children, with special consideration given to the preventive role of childcare for "at risk" children. The gradual emergence of state responsibility for childcare is explored as is the need that this be informed by parents and the often forgotten key stakeholder – children.

Key Words: Childcare; Prevention; Quality

Introduction

This article will examine how the childcare system in Ireland has evolved since the early 1990's with a particular emphasis on the issue of provision for those experiencing social exclusion. It will highlight the importance of childcare not just in terms of arguments about disadvantage and compensation but also in the broader terms of children's rights and equality.

Background

Increasingly we are learning of the importance of early experiences to the quality of later life experience and that investment at this stage can be beneficial not only to the