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POLICE ACCOUNTABILITY IN IRELAND:

An Analysis of the Problems Posed by the Legal, Constitutional and Political Dimensions and how They Might be Addressed.

volume: 3 of 3

By

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Ch.1 INTRODUCTION

1. Williams A The Police of Paris 1718-1789 (Baton Rouge: Louisianna State University Press, 1979) Introduction and Chapter 1; Cameron, I.A. Crime and Repression in the Auvergne and the Guyenne 1720-1790 (Cambridge: University Press, 1981) at pp 5-6.
2. Williams op.cit. at p.xvii.
3. Ibid. at pp.25.
4. Ibid.
5. Ibid. at pp.25-26.
6. Ibid. at pp.22-23.
7. Ibid. at p.7.
8. Ibid. at pp.39-40.
9. Ibid. at pp.29-39.
10. For general preventive policing purposes he had the watch, the company of the lieutenant criminel de la robe courte, certain companies of the marechausee, the archers of the hopital general, the gardes francaises and the gardes suisses and, most important of all, the Parisian Guard. For general intelligence gathering and criminal investigation the lieutenant could call on the services of the inspectors with their network of sub-inspectors and spies; and, indeed, the lieutenant also employed private individuals as informers reporting directly to him. In matters such as street lighting, fire fighting, garbage collection, child

care and the state run pawn brokerage he employed the services of suitable individuals. See Williams op.cit. at pp.67-119.

11. Williams op.cit. at pp.87-88.

12. Bayley D Police Function, Structure and Control in Western Europe and North America: Comparative and Historical Studies in N Morris and M Tonry Crime and Justice: An Annual Review of Research vol.1 (London: University of Chicago Press, 1979) at p.360.

13. Ibid.

14. Ibid.

15. Webb S and B English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County (London: Longmans. Green, 1906). at pp.294-364; 534; 550-1.

16. E Moir The Justice of the Peace (Harmondsworth: Penguin, 1969).

17. For the broader meaning see: Smith A Lectures on Justice, Police, Revenue and Arms....ed. by Carman E (Oxford: Clarendon Press, 1896); Blackstone's Commentaries 3rd ed., Bk.4 at pp. 162-175. For the narrower meaning see: Fielding J An Account of the Origins and Effects of the Police Set on Foot by His Grace the Duke of Newcastle in the Year 1753 upon a Plan Presented to His Grace by the Late Henry Fielding Esq. (London: A Millar, 1758).

18. See, for example, Colquhoun P A Treatise on the Police of the Metropolis 5th ed. (London: H. Foy, 1797);

Hanway J The Citizen's Monitor: Shewing the Necessity of a Salutary Police (London: Dodsley, 1780); Blizzard W Desultory Reflections on Police (1785).

19. Palmer S.H. Police and Protest in England and Ireland 1780-1850 (Cambridge: Cambridge University Press, 1988) at pp.191-2; D Ascoli The Queen's Peace 1829-1879 (London: Hamish Hamilton, 1979) at pp 27-52; J.J. Tobias Crime and Police in England 1700-1900 (London: St Martin's Press, 1979).

20. Palmer op.cit. at pp.56-69 and 163-192; Critchley T.A. A History of Police in England and Wales 900-1966 (London: Constable, 1967) at pp.18-29; Ascoli D op.cit. at pp.27-52; Tobias J.J. op.cit.

21. An attempt to introduce an official organised police force was made as early as 1785 when a Bill making provision for establishment of such a police force was introduced into Parliament. The Bill foundered in the face of intense opposition. The struggle for a new police was carried on in the intervening years by individuals such as Colquhoun, Fielding and Bentham. It was not until 1829, however, that the political will was found. See Palmer op.cit. at pp.277-315; Critchley op.cit. at pp.29-57; Ascoli op.cit. at pp.52-77.

22. The first example of an official organised police force in the British Isles was the Dublin metropolitan force which was established in 1786. It replicated the London model which had been rejected by the

Westminster Parliament in 1785. See Palmer op.cit at pp.92-116.

23. Palmer op.cit at pp.69-73, 89-92, 303-315, 438-454; Critchley op.cit. at pp.35-38; Ascoli op.cit. at pp.93-114; L Radzinowicz **A History of English Criminal Law** vol.3 (London: Stevens, 1956) at pp.108-121, 315-373.

24. The Police Act 1964, which is the current statutory basis for police forces in England and Wales outside London still refers to a police force as a body of constables under the direction and control of a chief constable; see ss.4-7. Halsbury's Laws of England states that "...in essence a police force is neither more nor less than a number of individual constables, whose status derives from the common law, organised together in the interests of efficiency." (vol.30, 1959) at p.43.

25. Reith C **The Police Idea: It's History and Evolution in the Eighteenth Century and After** (London: Oxford University Press, 1938).

26. There was local opposition to the style of the new police. Grattan, for example, objected strongly to the extent to which control over the police would swing from parishes etc to Dublin Castle. He even went so far as to propose an alternative arrangement based on an organised force under the control of the parishes and the Lord Mayor. This local Irish opposition, however, was always a minority when pitted against the

English dominated majority in the Irish Parliament. See Palmer op.cit. at p.131.

27. Palmer op.cit. at pp.121-122.

28. Ibid. at pp.92-116.

29. Ibid. at pp 97-103 and 148-159.

30. Palmer op.cit. at pp 292-312; 384-402; 409-450; 510-517; Critchley op.cit. at pp 51-139. See also C Reith The Police Idea op.cit.

31. Palmer op.cit. at pp 92-190; 198-269; 323-375; 403-408; 472-509; T Bowden Beyond the Limits of the Law (Harmondsworth: Penguin, 1978) at pp 169-173; T Salmon The Civil Power and Aiding the Civil Power: The Case of Ireland in J Roach and J Thomaneck Police and Public Order in Europe (London: Croom Helm, 1985).

32. Brady C Guardians of the Peace (Gill and Macmillan, 1974) at pp 106-122.

33. R Klein and P Day Accountabilities in Five Public Services (London: Tavistock, 1987) at p 5.

34. See for, example, L Lustgarten The Governance of Police (London: Sweet and Maxwell, 1986); S Spencer Called to Account: The Case for Police Accountability in England and Wales (NCCL, 1985); T Jefferson and R Grimshaw Controlling the Constable: Police Accountability in England and Wales (Cobden Trust, 1984); S Bundred Accountability and the Metropolitan Police in D Cowell et al Policing the Riots (London: Junction Books, 1984); GLC Police Committee A New Police Authority for London: A Consultative Paper on

Democratic Control of the Police (GLC, 1983).

35. See, for example, Lustgarten op.cit.; R Klein and P Day op.cit.

36. R Reiner Where the Buck Stops: Chief Constables Views on Police Accountability in R Morgan and D Smith Coming to Terms with Policing (London: Routledge, 1989); I Oliver Police, Government and Accountability (London: Macmillan, 1987); R Mark Policing a Perplexed Society (London: Allen and Unwin, 1977); Home Office Memorandum on the Police to the Royal Commission on Criminal Procedure (London: HMSO, 1981); Report of the Royal Commission on the Police (London: HMSO, 1962); Report of the Royal Commission on Criminal Procedure (London: HMSO, 1981).

37. See, for example, M Banton The Policeman in the Community (New York: Basic Books, 1964); Bayley D Police and Society (London: Sage, 1977); E Bittner The Function of Police in Modern Society (First Aronson Ed., 1973); Bordua D The Police: Six Sociological Essays (New York: John Wiley, 1967); J Brewer and K Magee Inside the RUC (Oxford: Clarendon Press, 1991); M Brogden et al Introducing Policework (London: Unwin and Hyman, 1988); M Cain Society and the Policeman's Role (London: Routledge, 1973); H Hahn Police in Urban Society (Beverly Hills, 1971); S Holdaway Inside the British Police (Oxford: Blackwell Press, 1983); C Klockars The Idea of Police (London: Sage, 1985); P Manning Police Work (London: M.I.T. Press, 1979); R

Mark In the Office of Constable (London: Fontana, 1979); D Pope and N Weiner Modern Policing (London: Croom Helm, 1981).

38. H Goldstein Police Discretion not to Enforce the Criminal Process Yale Law Journal vol.69 at p 543; H Goldstein Police Discretion: The Ideal Versus the Real Public Administration Review 23 (1963) 543; H Goldstein Policing a Free Society (Massachusetts: Ballinger, 1977).

39. D Pope and N Weiner op.cit.; S Manwaring-White The Policing Revolution (Sussex: Harvester, 1983).

40. L Leigh Police Powers in England and Wales 2nd ed. (London: Butterworths, 1985); Garda Siochana Guide 5th ed. (Incorporated Law Society of Ireland, 1981).

41. E Bittner op.cit.

42. A Silver The Demand for Order in Civil Society: A Review of Some Theories in the History of Urban Crime, Police and Riot in D Bordua The Police: Six Sociological Essays op.cit.; J Brewer and J Styles An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries (London: Hutchinson, 1980).

43. P Birkinshaw Grievances, Remedies and the State (London: Sweet and Maxwell, 1985); N Lewis et al. Complaints Procedures in Local Government vol.1 (Sheffield: Centre for Criminological and Socio-Legal Studies University of Sheffield, 1989).

44. R Baldwin and C McCrudden Regulation and Public Law

(London: Weidenfeld and Nicholson, 1987); D Swann **The Retreat of the State** (London: Harvester Wheatsheaf, 1988); W Maunder **Government Intervention in the Developed Economy** (London: Croom Helm, 1979); I Kenny **Government and Enterprise in Ireland** (Dublin: Gill and Macmillan, 1984).

45. For example: Revenue Commissioners, Director of Consumer Affairs and Fair Trade, Environmental Health Officers, Fisheries Officers and the Censor.

46. Police Forces in some totalitarian States have become notorious as instruments of State repression. However, the capacity of the police to function as a source of oppression on individuals and minorities is by no means confined to such special cases. P Chevigny in his book **Police Power: Police Abuses in New York City** (New York: Vintage Books, 1969) offers an insight into the threat which the police can pose to civil liberties even in democratic societies. See also J Brown **Policing by Multi-Racial Consent: The Handsworth Experience** (London: Bedford Square Press, 1982); M Punch **Conduct Unbecoming** (London: Tavistock, 1985).

Ch.2 THE GARDA SIOCHANA AS A POLICE FORCE

1. C Brady **Guardins of the Peace** (Dublin: Gill and Macmillan, 1974) at pp 11-30; T Bowden **Beyond the Limits of the Law** (Harmondsworth: Penguin, 1978) at ch.7; R Hawkins Dublin Castle and the RIC 1916-1922 in D Williams **The Irish Struggle 1916-1926** (London:

Routledge Kegan Paul, 1966).

2. Brady op.cit. at ch.3. In fact the disbandment of the DMP and the RIC had been countenanced as early as 1919 in the drafting of the Government of Ireland Bill; see J McColgan British Policy and Irish Administration 1920-1922 (London: George Allen and Unwin, 1983) at pp 42-43.

3. Brady op.cit. at chs.3 and 4; J Lee Ireland 1912-1985: Politics and Society (Cambridge: Cambridge University Press, 1989) at pp 56-69; J Curran The Birth of the Irish Free State 1921-1923 (Alabama: Alabama University Press, 1980) at chs.12-18.

4. Brady ch.3.

5. Michael Staines was the head of the Republican Police during the struggle against British rule. He became the first Commissioner of the Garda Siochana.

6. Ibid. at pp 38 and 43-45.

7. Ibid. at pp 45-49.

8. Ibid. at p 77.

9. S.7 reads:

> " Every act matter and thing which was on the 6th day of December, 1922 required or authorised by law to be done by or in the presence of or to be served on an Inspector, Sergeant, Constable or other member of the Royal Irish Constabulary at or in connection with or in relation to any Petty Sessions shall from and after the passing of this Act be required or authorised to be done by or in the presence of or to be served on an Inspector, Sergeant, Constable or other member (as the case may require) of the Civic Guard at or in connection with or in relation to a District Court."

10. Dail Debates vol.4 col.1696 (1923).

11. Police Forces Amalgamation Act, 1925, s.5(2). Dublin Police Act, 1836, s.11.

12. S.10(1) of 1925 op.cit.(see now the Garda Siochana Act, 1972). S.6 of 1836 op.cit.

13. S.8(1) of 1925 op.cit. S.5 of 1836 op.cit. Ss.6,7, and 10(4) of 1925 op.cit. Ss.5,7,8,9 and 10 of 1836 op.cit.

14. S.14(1) of 1925 op.cit. S.6 of 1836 op.cit.

15. Garda Siochana (Temporary Provisions) Act, 1923, s.2(1).

16. Garda Siochana Act, 1924, s.1(1). In the 1925 Act it is referred to as a police force; s.5(1) op.cit.

17. The legislation referred to here is the Garda Siochana (Temporary Provisions) Act, 1923.

18. S.1(1) of 1924 op.cit.; s.2(1) of 1923 op.cit.

19. Ss.1 and 2 of 1924 op.cit.; Ss.5 and 8 of 1925 op.cit.

20. See later under peace officer.

21. 2nd. schedule of 1923 op.cit.; 2nd. schedule of 1924 op.cit.; 4th. schedule of 1925 op.cit.

22. S.3 of 1923 op.cit.; s.2 of 1924 op.cit.; s.8(1) of 1925 op.cit.

23. S Bailey; D Harris; B Jones Civil Liberties: Cases and Materials (London: Butterworths, 1980) at pp 1-7. In Ireland the individual also enjoys certain rights and freedoms which are constitutionally protected; see J Casey Constitutional Law in Ireland (London: Sweet and Maxwell, 1987) at chs.12-19.

24. [1984] IR 36.

25. [1987] IR 587.

26. S.84.

27. S.98. S.110(10)b enables the Minister for Communications to issue directions in writing to An Post or An Bord Telecom to do (or refrain from doing) anything which he may specify from time to time as necessary in the national interest. Presumably, this would permit him to authorise the opening of postal packets and telephone tapping. Casey adds that under the practice currently obtaining (though not mentioned in the 1983 Act) a warrant from the Minister for Justice would precede any direction from the Minister for Communications. See Casey op.cit. at pp 309-314.

28. M Hale Summary of the Pleas of the Crown 1678 (London: Professional Books, 1972) at p 91; G Williams Arrest for Breach of the Peace at Common Law Criminal Law Review [1954] 578.

29. Wedick v Osmond [1935] IR 820; The State (Cronin) v Circuit Court Judge of the Western Circuit [1937] IR 34. Murphy v Cryan [1952] IR 225; The State (Ennis) v Farrell [1966] IR 107; The People v Roddy [1977] IR 177.

30. Report of the Royal Commission on Police Powers (London: HMSO Cmnd.3297, 1929) at para.15; Report of the Royal Commission on the Police (London: HMSO Cmnd.1728, 1962) at paras.30-31.

31. [1977] IR 177.

32. Unreported, Supreme Court 31.8.80.

33. Op.cit.

34. [1988] ILRM 724.

35. Ibid. at 735-736.

36. Ibid. at 736.

37. The difference was already apparent in the citizen's power of arrest. When the citizen exercises the power he must hand over the arrested suspect to the police; 2 Hawk. c.12, s.19; 1 Hale 589.

38. Garda Siochana Guide 5th ed. (Dublin: Incorporated Law Society of Ireland, 1981) at pp 25-27; E Ryan and P Magee The Irish Criminal Process (Dublin: Mercier Press, 1983) at p 97.

39. Garda Siochana Guide op.cit at pp 27-28; Ryan and Magee op.cit. at pp 100-101.

40. Leigh v Cole 6 Cox CC 329; R v Lockley 4 F And F 155.

41. (1862) VR 30.

42. O'Higgins C.J. in People (DPP) v Walsh [1980] IR 294 at 306.

43. Dunne v Clinton [1930] IR 336; People (DPP) v O'Loughlin [1979] IR 85; People (DPP) v Walsh op.cit. Frewen, Judgements of the Court of Criminal Appeal 1924-78: 564-567.

44. At common law a citizen may enter a dwelling house in order to terminate an affray (R v Walker (1854) Dears 358) or to prevent an occupier from causing harm to someone else on the premises (Hancock v Baker 2 Bos and P 260).

45. Davis v Lisle [1936] 2 KB 434; Morris v Beardmore

[1981] AC 446; Fox v Chief Constable of Gwent (1884) Crim LR 567.

46. R v Walker op.cit.; Timothy v Simpson (1835) 1 Cr M and R 757; Robson v Hallett [1967] 2 QB 939; R v Marsden (1925) 88 JP Jo 369; 1Hawk. Ch.14.

47. Thomas v Sawkins [1935] 2 KB 249.

48. Seymanne's case (1604) 5 Co Rep 916; Launock v Brown 2 B and Ald 593; Thomas, Execution of Warrants at pp.600-604.

49. L Leigh Police Powers in England and Wales 2nd ed. (London: Butterworths, 1985) at pp. 50-53.

50. Dillon v O'Brien and Davis 20 LR Ir 300.

51. Jeffrey v Black [1978] QB 490.

52. Now found in the Larceny Act, 1916, s.42(1).

53. [1968] 2 QB 299.

54. [1970] 1 QB 693.

55. [1968] 2 QB 299.

56. [1968] IR 305.

57. [1968] IR 305.

58. There is a problem in defining criminal activity. The expression "inherently criminal activity" is being used broadly to refer to those offences which the common law treats as criminal as opposed to those acts or omissions which statute has defined and subjected to minor fines or penalties as part of the ongoing process of economic, social etc. regulation.

59. Prevention of Offences Act, 1857.

60. Larceny Act, 1916 s.41.

61. The garda enjoys many pre 1922 statutory powers by virtue of the Garda Siochana Act, 1924, s.15.

62. Air Navigation and Transport Act, 1973, s.11(5).

63. Ryan and Magee op.cit. at appendix G.

64. Although s.30 of the Offences Against the State Act, 1930 is broad, it is confined to specified offences.

65. Criminal Justice Act, 1984, s.4.

66. Criminal Justice Act, 1984 s.6.

67. Ibid. s.15.

68. Ibid. s.16.

69. Ibid. ss.18 and 19.

70. See the list given in Ryan and Magee op.cit. at p.148 fn.19.

71. Ibid. at pp 147-153.

72. Ibid. at p 153.

73. Garda Siochana Code 3rd ed.(Dublin: Garda Siochana, 1984) at paras 3.10; 51.17.2.

74. Ibid. 38.10.3

75. Ibid. 44.19.1; 44.2.

76. Ibid. 45.4.8.

77. Ibid. 44.4.7.

78. Ibid. 51.17.

79. Ibid. 38.15.

80. Ibid. 51.15-17.

81. It is worth pointing out that the Garda responsibility for prisoners extends to imprisonment on remand or pursuant to a sentence. The Commissioner's instructions require gardai to supply the prison

governor with specific information on each individual prisoner.

82. Garda Siochana Code op.cit. at paras 46 and 47.

83. Glanville-Williams, "Arrest for breach of the peace" op.cit.

84. R v Howell [1982] QB 416.

85. Leigh op.cit. at pp 184-190.

86. A citizen can arrest for breach of the peace at common law; Timothy v Simpson op.cit.

87. 2 Hawk. c.13, s.8; Timothy v Simpson op.cit.; Cook v Nethercote (1835) 6 C and P 741; Price v Seeley 10 Cl and F 18.

88. Leigh v Cole op.cit.

89. R v Light (1857) Dears and B 332; R v Walker op.cit.

90. Price v Seeley op.cit.; Baynes v Brewster (1841) 2 QB 375; R v Birnie (1832) 5 C and P 206.

91. R v Dytham [1979] QB 722.

92. [1936] 1 KB 218. The Irish cases of O'Kelly v Harvey (1883) 14 LR Ir 105 and Humphries v O'Connor (1864) 17 ICLR 1 were cited as authorities.

93. [1985] IRLR 76.

94. R v Walker op.cit.; Timothy v Simpson op.cit.; Robson v Hallett op.cit.; R v Marsden (1925) 88 JP JO 369; 1 Hawk. ch.14.

95. Thomas v Sawkins [1935] 2 KB 249.

96. (1864) 17 ICLR 1.

97. See also: O'Kelly v Harvey op.cit.; Coyne v Tweedy [1898] 2 IR 167.

98. Report of the Select Committee on the Featherstone Riot 1893, Parliamentary Papers 1893-4, cited by J. Kelly, The Irish Constitution 2nd ed. (Dublin: Jurist Publishing Company, 1984) at p.591.

99. 1938] IR 382.

100. The current statutory framework in Britain is provided by the Public Order Act 1986.

101. Garda Siochana Code op.cit. para.3.10.

102. Ibid. para.73.21.

103. Ibid. para.73.7.

104. Ibid. para.73.24.

105. Ibid. para.73.6.

106. Ibid. para.73.14.

107. Originally intended to cope with subversive activity it has now been extended judicially to cover any offence within its scope irrespective of the circumstances in which it was committed; see Walsh J. in People (DPP) v Quilligan (1987) ILRM 606 at pp 625-628.

108. Offences Against the State Act, 1939 s.52.

109. See, for example, People v O'Leary Court of Criminal Appeal 29 July 1988.

110. Garda Siochana Code op.cit. para.51.31.3.

111. Licensing (Ireland) Act, 1836, s.12.

112. Indecent Advertisements Act, 1889, s.6.

113. Street Betting Act, 1906, s.1(2).

114. Gaming and Lotteries Act, 1956, s.40.

115. Misuse of Drugs Act, 1977, s.25.

116. Ibid. s.26.

117. Betting Act, 1931, s.25(3).

118. S.24(2).

119. S.12.

120. Intoxicating Liquor Act, 1927, s.22(2).

121. Betting Act, 1931, s.25(3).

122. Some officers are specifically designated as qualified weights and measures inspectors; see Garda Siochana Code op.cit. at ch.78.

123. Road Traffic Act, 1961 s.40(4).

124. Ibid. s.49(4).

125. Ibid. s.50(1).

126. Ibid. s.50(6).

127. Ibid. s.53(6).

128. Ibid. s.55(4).

129. Ibid. s.107(2).

130. Road Traffic Act, 1978, s.15(3).

131. Ibid. s.16(4).

132. Ibid. s.17(3).

133. Road Traffic Act, 1961, s.107(1).

134. Ibid. s.109(1).

135. Ibid. s.20.

136. Ibid. s.40.

137. Ibid. s.90. as amended.

138. Garda Siochana Code op.cit. at ch.37.

139. R McDowell The Irish Administration 1801-1914 (Connecticut: Greenwood Press, 1964) at p 144.

140. In the carrying out of his functions in the annual

endorsement of certificates for the registration of fishing boats.

141. With respect to wrecks and goods washed ashore.

142. In the completion of reference forms for would be adopters.

143. Garda Siochana Code op.cit. at para 50.8.

144. R v Dytham [1979] QB 722.

Ch.3: THE LEGAL, ADMINISTRATIVE AND POLITICAL STRUCTURES OF THE FORCE

1. Police Forces Amalagation Act, 1925, s.5.
2. Ibid. s.5(2).
3. Garda Siochana Act, 1924, s.1.
4. Dublin Police Act, 1836, s.1.
5. Dublin Police Act, 1786 (26 Geo.3, c.24 [IR]) ss.3-7.
6. Australian Federal Police Act, 1979, ss.6 and 13.
7. See, for example, J Roach and J Thomaneck Police and Public Order in Europe (London: Croom Helm, 1985); P Stead The Police of France (London: Macmillan, 1983); G Colombo The Spanish Police--Some Elements of Police Organisation in Spain (Bramshill: Police Staff College, 1986); Police Staff College, Bramshill Comparative Study between the British and Dutch Police Systems (Bramshill: Police Staff College, 1984).
8. Police Forces Amalgamation Act, 1925, s.5(1).
9. Ibid. s.10(1) and 3rd schedule.
10. Ibid. s.14.
11. Ibid. s.8(1).

12. Ibid. s.10(1) and 3rd schedule provides for ranks from Commissioner down to garda.
13. Garda Siochana Act, 1972, s.1 gives the government the power to determine the ranks and the complement of each.
14. The rank structure in place today has not changed since 1925. What has changed, however, is the statutory distinction between officers and men. The 1925 Act divided the ranks up into officers and men. The former consisted of ranks from Commissioner down to Superintendent (incl.), while the latter covered inspector to garda (incl.).
15. Garda Ranks Order, 1972.
16. Police Forces Amalgamation Act, 1925, s.8(1).
17. Ibid. s.9(1).
18. Ibid. s.8(2).
19. Ibid. s.9(2).
20. Garda Siochana Act, 1924, s.6(1).
21. Police Forces Amalgamation Act, 1925, ss.6(2); 7(2); and 10(4).
22. Garvey v Ireland [1981] IR 75.
23. Police Forces Amalgamation Act, 1925, s.10(5).
24. Garda Siochana (Designations, Appointments and Discipline) Regulations, 1924.
25. Garda Siochana Appointments Regulations, 1937.
26. Garda Siochana Appointments Regulations, 1945.
27. Garda Siochana (Admissions and Appointments Regulations), 1988.

28. Ibid. reg.5(1)c. There is a limited concession for applicants who have given satisfactory service in the permanent defence forces or the reserves; reg.5(4)-(7).
29. Ibid. reg.5(1)a.
30. Ibid. reg.5(1)d.
31. Ibid. reg.5(1)e.
32. Ibid. reg.5(1)b.
33. Ibid. reg.5(1)b(1).
34. Ibid. reg.5(1)b(2).
35. Ibid. regs.4 and 7.
36. Employment Equality Act, 1977, ss.17 and 17A, as amended by the European Communities (Employment Equality) Regulations, 1985.
37. Garda Siochana (Admissions and Appointments) Regulations, reg.7.
38. Ibid. reg.10.
39. Garda Siochana Act, 1972, s.1(2).
40. Garda Siochana (Admissions and Appointments) Regulations, 1988, reg.7
41. Ibid.
42. Ibid. reg.8.
43. Ibid. reg.11.
44. Ibid.
45. Ibid. reg.14.
46. This particular requirement is found in reg.11(3) which is prefaced by the words: "Notwithstanding any other provision of the Regulations ..." This suggests

that the Surgeon's certificate will be required even for reg.14 appointments. Reg.14, however, specifically provides for appointment, " without regard to the requirements of reg.11 of these Regulations." It is impossible to know which reg. takes precedence.

47. Garda Siochana (Admissions and Appointments) Regulations, 1988, reg.15.

48. Ibid. reg.16.

49. [1981] IR 75.

50. Section 5.

51. Garda Siochana (Promotions) Regulations, 1925.

52. Garda Siochana (Promotions) Regulations, 1987, reg.4(1).

53. Ibid. reg.4(2).

54. Ibid. reg.4(3).

55. Of whom at least one must be a chief superintendent whose duties are, or have been, particularly concerned with the training of members.

56. One of these must be a person having experience as a teacher or administrator in an institution for third level education, and another must be a person having knowledge of and experience in personnel management in an organisation other than the Garda Siochana or the civil service.

57. Garda Siochana (Promotions) Regulations, 1987, reg.7(1)a(1). Before a garda who joined the force on or after the 1st. June, 1959 can be eligible for promotion to sergeant he must have passed a test of

proficiency in the Irish language, the nature and standard of which shall be determined by the Civil Service Commissioners after consultation with the Commissioner (reg.10(1)). There is provision for the Commissioner to dispense with this requirement where he feels it is necessary in the interests of one of the specialised sections of the force (reg.10(2)).

58. Garda Siochana (Promotions) Regulations, 1987, reg.7(1)b(1).

59. Ibid. regs.7(1)a(2) and 7(1)b(2). An alternative route to promotion eligibility for the garda is to pass the class 2 promotions examinations provided for in the 1960 Regulations. The sergeant has a similar option through the class 1 promotions examinations provided for in the 1960 Regulations. It also seems that further alternative routes have been opened up by reg.8 of the 1987 Regulations. It prescribes that a garda who holds a degree, or its equivalent, and has completed his probation or three years service in the force, is eligible not just for the sergeants promotions examinations but also for the competition for promotion to sergeant. The same applies to a garda who has three years service in the force. This would seem to render the more complicated eligibility requirements practically redundant. In the case of promotion from sergeant to inspector it is stipulated that a sergeant who has passed his inspectors promotions examination is eligible for competition for

promotion to inspector. This renders the intelligence assessment superfluous. It is difficult to know what to make of this apparent conflict between regs.7 and 8. It is not helped by the fact that reg.7 is prefaced by the words " Subject to these Regulations, a garda shall be eligible to be a candidate for promotion if, but only if -...".

60. Garda Siochana (Promotions) Regulations, 1987, reg.7(3).

61. Ibid. reg.7(1)c(2).

62. There would seem to be no obligation on the Commissioner to confine himself to those selected by the interview board.

63. There is no specific stipulation to the effect that promotion above the rank of inspector can only be achieved one rank at a time. However, that is how the procedure works in practice.

64. Garda Siochana (Promotions) Regulations, 1987, reg.5(1).

65. Ibid. reg.5(5)c.

66. Ibid. reg.5(5)d.

67. Ibid. reg.5(2).

68. See, for example, Dail Debates 1972, col.1335.

69. Garda Siochana (Promotions) Regulations, 1987, reg.6(1)a.

70. Ibid. reg.6(1)b.

71. Ibid. reg.5(6). This does not apply where the promotional position in question is tenable by a

member of a rank not lower than inspector, and is not one which the Council determines that eligible members must have technical qualifications; reg.9(4).

72. Ibid. reg.9(1). He will be exempt from the sergeants promotions examination; reg.9(3).

73. Ibid. reg.9(2). Candidates for promotion to inspector in a section are exempt from the inspectors promotions examination where the Council determines that technical qualifications etc. are necessary for promotion; reg.9(3).

74. Ibid. reg.9(5)a.

75. Ibid. reg.9(5)b.

76. Garda Siochana (Discipline) Regulations, 1926.

77. Garda Siochana (Discipline) Regulations, 1971, reg.6 and the schedule.

78. Ibid. reg.1.

79. Ibid. reg.4.

80. Ibid. reg.8(6).

81. Ibid. reg.8(1).

82. Ibid. reg.8(2).

83. Ibid. reg.10(1).

84. Ibid. reg.10(2)b.

85. Ibid. reg.11.

86. Ibid. reg.13.

87. He must be of a rank not lower than Chief Superintendent; reg.14(1)b.

88. At least one must be of a rank not lower than Chief Superintendent and the implication is that the other

two must be officers; reg.14(1)c.

89. Reg.14(1)a. The member concerned is given the right to make three objections to the membership of the inquiry. The Commissioner must accept one and has a discretion with respect to the other two. In any event, the vacancy or vacancies left will still be filled by the Commissioner; reg.14(1)c.

90. Garda Siochana (Discipline) Regulations, 1971 Reg.16(a).

91. Ibid. reg.16(d).

92. Ibid. reg.14(1)c.

93. Ibid. reg.16.

94. Ibid. reg.16(h). A finding that the member is guilty of a less serious offence than that alleged can be reached only if the inquiry is satisified that it is not unfair to the member concerned, having regard to the fact that that breach is not the breach alleged; reg.16(h)3.

95. Ibid. reg.16(j).

96. Ibid. reg.17(1). This can be delegated to a Deputy or Assistant Commissioner, except where the inquiry's recommendation is for dismissal or reduction in rank; reg.17(2).

97. In respect of any breach arising out of the same set of circumstances this may not exceed, in amount, one weeks pay, and the amount deducted in any one week shall not exceed ten percent of weekly pay; reg.19(2).

98. Garda Siochana (Discipline) Regulations, 1971

reg.19(1).

99. Ibid. reg.20(1).

100. Ibid. reg.20(4)b(1).

101. Ibid. reg.20(4)b(2).

102. Ibid. reg.20(4)b(3).

103. Ibid. reg.20(4)a.

104. Ibid. reg.22(1).

105. Ibid. reg.22(2).

106. Ibid. reg.22(3).

107. Ibid. reg.24.

108. Ibid. reg.28(1)a. It can decide that the facts established constitute a less serious breach of discipline only where it is satisified that such a decision is not unfair to the member concerned, having regard to the fact that the lesser breach is not the breach alleged; reg.28(1)a.

109. Ibid. reg.28(2).

110. Ibid. reg.34.

111. Ibid. reg.34(2).

112. In such a case the Commissioner must consider whether, in the interests of the member concerned, a special inquiry can be held into the relevant breach of discipline which would not be liable to effect the security of the State or do serious and unjustifiable damage to the rights of some other person or have similarly grave consequences; reg.34(2)b.

113. Garda Siochana (Discipline) Regulations, 1971 reg.34(3).

114. State (Jordan) v Commissioner of the Garda Siochana [1987] ILRM 107.

115. Garda Siochana (Discipline) Regulations, 1971 reg.34(3). This limitation does not extend to members on probation.

116. Police Forces Amalgamation Act, 1925, s.7(2).

117. Ibid. s.10(4).

118. Police Forces Amalgamation Act, 1925 3rd Schedule.

119. The rule against bias would prevent the Commissioner conducting the investigation or sitting on the inquiry. Similarly the same Deputy Commissioner could not conduct the investigation and sit on the inquiry.

120. The Police (Discipline)(Senior Officers) Regulations 1985.

121. Art.6.

122. D. Morgan Constitutional Law in Ireland 2nd ed. (Dublin: Roundhall Press, 1990) at chs.5 and 6.

123. Ibid. at ch.4.

124. Art.28.1. Under the 1922 Constitution the Executive Council, as the government was known, could consist of a maximum of 12 and a minimum of 5.

125. Art.28.7.2.

126. Art.28.7.1.

127. Art.13.1.2.

128. Ibid.

129. Art.28.10-11.

130. Art.28.10.

131. Art.13.2.2.

132. Art.28.4.3.

133. Art.28.4.2.

134. Art.28.1.2. There is no obvious equivalent in the 1922 Constitution but Arts.54 and 56 clearly envisaged the continued existence of departments.

135. For a brief description of these see L. Kohn, The Constitution of the Irish Free State (London: Allen and Unwin, 1932) at pp. 301-323.

136. Up to 1939 the titles and remits of these departments could be changed and new ones established only by an Act of the Oireachtas. Now, however, this can be done simply by a government Order made pursuant to s.6 of the Ministers and Secretaries (Amendment) Act, 1939.

137. Ministers and Secretaries Act, 1924 s.2(1).

138. Attorney-General and Minister for Justice v Dublin United Tramways Co. (1896) Ltd [1939] IR 590.

139. McLoughlin v Minister for Social Welfare [1958] IR 1

140. Police Forces Amalgamation Act, 1925, s.8(1).

141. Ibid. s.14(1).

142. For a study of the Revenue Commissioners see S. Reamonn, History of the Revenue Commissioners (Dublin: Institute of Public Administration, 1981).

143. Ibid. pp.59-61.

144. Ibid. ch.5.

145. G. Hogan and D. Morgan, Administrative Law in Ireland 2nd ed. (London: Sweet and Maxwell, 1991) at ch.4.

146. For example: Aer Lingus; Bord Gais; ESB; Bord Telecom; RTE.

147. For example: IDA; CTT; ACC; Teagasc; IIRS; FAS.

148. For example: Bord na gCon.

149. For a study of the office of Attorney-General see J. Casey, The Office of Attorney-General in Ireland (Dublin: Institute of Public Administration, 1980).

150. Ministers and Secretaries Act, 1924, s.6.

151. J. Casey, Constitutional Law in Ireland (London: Sweet and Maxwell 1987) at p.198.

Ch.4: THE LEGAL AND CONSTITUTIONAL STATUS OF THE POLICE: THE BRITISH DIMENSION

1. Art.6.

2. Art.7.

3. Art.70.

4. Bunreacht na hEireann Art.30.

5. " Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in Saorstat Eireann immediately prior to the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas.

" Laws enacted before, but expressed to come into force after, the coming into operation of this Constitution, shall, unless otherwise enacted by the Oireachtas, come into force in accordance with the terms thereof.

6. [1958] IR 1 at p.

7. Ministers and Secretaries Act, 1924, s.6

8. Police Forces Amalgamation Act, 1925, s.6(1).

9. J Kelly The Irish Constitution 2nd ed. (Dublin: Jurist Publishing Co., 1984) at pp.193-204.

10. S. Palmer Police and Protest in England and Ireland 1780-1850 (Cambridge: Cambridge University Press, 1988) at pp.97-104.

11. See generally S. Palmer op.cit.

12. Lambard suggests that the name comes from two English words Cuning (or Cyng) and Staple which signify the stay or hold of the King; W Lambard The Office of Constable (1583) (Reprint. New York: Theatrum Orbis Terrarum and Da Capo Press, 1969) at p.4. The weight of opinion, however, is in favour of a Latin origin; see W Blackstone Commentaries on the laws of England 4th ed. vol.1 (London: John Murray, 1876) at p.317; H. B. Simpson The English Office of Constable English Historical Review (1895) 626. In particular, see R. Burn The Justice of the Peace and Parish Officers 18th.ed. (London: Straken and Woodfall, 1793) at p.394 where the etymology of the word is discussed and traced back through several continental languages to ancient Latin and Greek roots.

13. Madox History of the Exchequer vol.1 (London: Owen, 1769) at p.42; W Hawkins A Treatise on the Pleas of the Crown Bk.2 (Reprint. New York: Arno Press, 1972) Ch.4 S.1.

14. There are frequent references to the court of the constable: Madox op.cit. p.41; Dy. 285.b; 4 Inst. 127; For. 125.
15. 13 Richard 2, c.2.
16. 1 Henry 4, c.14.
17. Madox op.cit. vol.2, pp.281-284.
18. H. Cam **The Hundred and the Hundred Rolls** (London: Methuen, 1930) at pp.131-132.
19. Ibid. at pp.131-133; Willard, Morris and Dunham **The English Government at Work 1327-1336, vol.3** (Massachusetts: Medieval Academy of America, 1940-50) at pp.165-166; Magna Carta para.29.
20. Madox op.cit. vol.1, at p.40; vol.2 at p.112.
21. C Stephenson and F Marcham **Sources of English Constitutional History** (London: Harrap, 1938) at p.82; Willard, Morris and Dunham op.cit. at pp.165-166.
22. Magna Carta para.24.
23. Madox op.cit. vol.2, at pp.281-284.
24. Madox refers to instances of constables witnessing charters of Henry 2, at vol.2, pp.40,41 and 112.
25. Blackstone op.cit at p.356.
26. This ordinance is cited as 1252 in Simpson and other authorities. It would appear, however, that the citation results from an error of dating in Stubbes. Stephenson and Marcham point out (op.cit. at p.139) that it is wrongly dated as 1252 in the 7th.ed. of Stubbes at p.371, although they overlook the fact that the error is corrected in the 9th.ed. Stubbes Select

Charters at p.362. Simpson, however, follows the 7th.ed. and dates it as 1252 (op.cit. at p.630) and this error is followed by subsequent authorities.

27. J.Ritson The Office of Constable (1791).

28. Simpson op.cit. at pp.630-632.

29. Also styled: reeve, borsholder, head-borough, third-borough and chief pledge among others depending on the locality and period in question.

30. See generally: B Lyon A Constitutional and Legal History of Medieval England (New York: Harper and Bros., 1960) at pp.80-81; H. M. Jewell English Local Administration in the Middle Ages (Newton Abbot: David and Charles, 1972) at pp.158-169; L Radzinowicz A History of the Criminal Law and Its' Administration from 1750 vol.3 (London: Stevens and Sons, 1948-68); J.W. King Vagrancy and Local Law Enforcement: Why be a Constable in Stuart Lancaster? The Historian (1980) 17 264-283.

31. G.R. Radcliffe and Lord Cross The English Legal System 3rd.ed. (London: Butterworths, 1954) at pp.7-8.

32. Lyon op.cit. at p.197.

33. Ibid. at pp.195-197; H. Cam op.cit. at p.186; W.A. Morris The Frankpledge System (New York: Longmans, 1910) at p.103.

34. See, generally, G,M. Trevelyan History of England 3rd ed. (London: Longman, 1945) at pp.159-279.

35. Assize of Arms 1181; Statute of Winchester 1285.

36. Richard 1, 1195; C.A. Beard The Office of Justice of

the Peace in England (New York: Columbia University Press, 1904).

37. Ordinance of 1242 op.cit.; Statute of Winchester 1285; London had a separate one of the same year.

38. T Critchley A History of the Police in England and Wales 900-1966 (London: Constable, 1967) at p.4; H.R.T. Summerson The Structures of Law Enforcement in Thirteenth Century England American Journal of Legal History 23 313-327.

39. Simpson op.cit. at pp.630-636.

40. Lambard op.cit. at p.10.

41. There is a connecting thread between the conservators of the peace appointed by Richard 1 in 1195 and the justices of the peace who were an established institution by 1361. The Statute of Winchester 1285 provided for the appointment of keepers of the peace to arrest wrongdoers and assist in keeping the peace. In 1327, 1 Edward 3 st.2 c.16 provided for good and lawful men in every shire to be assigned to keep the peace. In 1329 a commission of the peace was created and it conferred powers to try and to punish offenders as well as arrest them. See also Beard op.cit. at pp.33-44.

42. 34 Edward 3, c.1.

43 Justices of the Peace Through 600 Years (Chichester: Justice of the Peace, 1961) at p.23.

44. Simpson op.cit. at pp.636-639; Webb at pp.463-473.

45. F.W. Maitland Justice and Police (Reprint. New York:

AMS Press, 1974) at p.80.

46. S and B Webb English Local Government from the Revolution to the Municipal Corporations Act: The Parish and the County (London: Longmans Green, 1906) at pp.294-301; E.G Dowdall A Hundred Years of Quarter Sessions: The Government of Middlesex from 1660-1760 (Cambridge: Cambridge University Press, 1932).

47. The Sheriff's staff included: under sheriff; greater, middle and lesser bailiffs; itinerant sergeants; sergeants of hundreds; bedels and sub bedels; see Cam, op.cit. at p.193.

48. In that year the holding of the office of sheriff and justice of the peace simultaneously was prohibited. From that point onward the status and authority of the justices increased at the expense of the sheriffs; P Stenning Legal Status of the Police (Ottawa: Law Commission of Canada, 1981) at p.25.

49. O'Dowdall op.cit. at pp.2-3.

50. These matters would not be confined to the keeping of the peace but would include public nuisances which are associated today with local government.

51. Lambard gives a detailed account of the duties of the constable in the maintenance of the peace at the direction of others, primarily the justice of the peace, at p.19 et seq. He also gives a detailed account of the wide range of statutory duties unconnected with the peace.

52. Webb op.cit. at p.535.

53. Hawkins Bk.2 op.cit. at ch.10, s.35; see also Lambard op.cit at p.19; Bacon in The Works of Francis Bacon vol.7 (1608) ed by Spedding (Reprint. New York: Frohman Verlag, 1963) at pp.751-752; M Hale History of the Pleas of the Crown (London: Gyles, 1736) at p.88; Burn op.cit at pp.403-404; Webb op.cit. at pp.28, 412, 480.

54. 13 and 14 Charles 2, c.12; Simpson op.cit. at p.639.

55. Simpson op.cit. at pp.629-630 and 635-636.

56. Lambard op.cit.; Bacon op.cit at pp.751-752; Hawkins Bk.2 op.cit at p.62; Hale op.cit. at p.88; Burn op.cit.at pp.403-404; Blackstone Bk.1 op.cit. at p.356; Simpson op.cit.

57. Lambard op.cit.

58. 10 Geo.4, c.44, s.4; Police (Ireland) Act, 1836, s.11; 2 and 3 Vict. c.93, s.8; see also fn.113.

59. Stenning op.cit. at p.68.

60. Report of the Commission of Inquiry Relating to the Security and Investigation Services Branch within the Post Office Department (Ottawa: Minister of Supply and Services, 1981) at Appendix D.

61. Royal Canadian Mounted Police Act, RSC 1970 c. R-9, s.17.

62. Police Act, R.S.B.C. 1979, c.331, s.17(2).

63. Constabulary Act, R.S.N. 1970, c.58.

64. Police Act, R.S.Q. 1977, c.P-13, s.2.

65. Police Act, S.A. 1973, c.44, s.31.

66. Police Act, R.S.S. 1978, c.P-15, s.37.

67. Police Act, S.N.B. 1977, c.P-9.2, s.2(2).

68. Fisher v Oldham Corporation [1930] 2 KB 364; Attorney-General for New South Wales v Perpetual Trust Guarantee Company [1955] AC 457; R v Commissioner of the Police of the Metropolis, ex parte Blackburn [1968] 2 QB 118.

69. Royal Commission on the Police (London: HMSO Cmnd.1728, 1962) at paras.61-65.

70. See, for example, Royal Commission on the Police op.cit.; Committee on Police Conditions of Service Pt.2 (London: HMSO Cmnd.7831, 1949); Home Office Memorandum to the Royal Commission on Criminal Procedure (London: HMSO, 1980); I Oliver Police, Government and Accountability (London: Macmillan Press, 1987).

71. Many of these cases are reviewed by Stenning op.cit. at pp.100-112.

72. See, for example, the judgement of Taylor J. in Wishart v City of Brandon (1887) 4 Man R 453 (QB) 458.

73. Ibid. 457-458.

74. Stenning explains that this principle of non-liability also extends to other public officers who exercised statutory powers and performed statutory duties for the benefit of the public at large; op.cit. at p.104. He also gives a brief overview of similar decisions handed down by the Supreme Court of Canada and the courts in other provinces concerning the absence of vicarious liability of different levels of government

for the torts of their constables; op.cit. at pp.104-112.

75. [1930] 2 KB 36.

76. Buttrick v City of Lowell (1861) Mass (Allen) 172.

77. Mc Cleaver v City of Moncton (1902) 32 SCR 106.

78. (1884) 14 QLR 376.

79. (1906) 3 CLR 969.

80. Op.cit.

81. (1884) 14 QLR 376 at p.378.

82. At p.372.

83. Clerk and Lindsell The Law of Torts 8th ed. (London: Sweet and Maxwell, 1929) at pp.64-67.

84. See the "Hospital Cases" in Clerk and Lindsell 11th ed. (London: Sweet and Maxweel, 1954) at pp.117-118.

85. Clerk and Lindsell 16th ed, (London: Sweet and Maxwell, 1989) at pp.202-204.

86. [1955] AC 457.

87. At p.479.

88. Royal Commission on the Police op.cit. at p.66.

89. G. Marshall Police and Government (London: Methuen, 1965) at pp.44-45. See also Inland Revenue Commissioners v Hornibrook [1956] 2 QB 641.

90. Marshall op.cit. at pp.21-32.

91. Ibid. 25-38.

92. Ibid. 25.

93. S.A. de Smith Judicial Review of Administrative Action 4th ed. edited by J.M. Evans (London: Sweet and Maxwell, 1980) pp.278-279; 298-309.

94. Police Act 1964, s.5(1).

95. Police Forces Amalgamation Act, 1925, s.8(2).

96. Police Regulation Act, 1899-1947 (N.S.W.)

97. Constables Protection Act, 1751.

98. Royal Commission on the Police op.cit. at paras.61-65.

99. [1968] 2 QB 118.

100. Ibid. 136.

101. [1980] 1 All ER 797.

102. Times Law Reports 1.12.79.

103. Ibid.

104. [1985] 1 All ER 1.

105. Northern Ireland (Emergency Provisions) Act 1978, s.11(1).

106. Re McElduff [1972] NI Rep 1, interpreting a comparable power conferred by regulations issued under the now repealed Civil Authorities (Special Powers) Act (Northern Ireland) 1922-33.

107. Re McElduff op.cit. at p.3.

108. Ibid. at p.4.

109. In Ireland the Garda Commissioner occupies the office of garda. The Chief Constable of British police forces, apart from those in the metropolitan and city areas of London, occupy the office of constable at common law. The Commissioner of the LMP is a justice of the peace (10 Geo.4, c.44, s.1) and as such has the status of a peace officer at common law.

110. Police Act, 1856.

111. Metropolitan Police Act, 1829 s.5.

112. Ibid. s.1.

113. Ibid. ss.1 and 5.

114. Marshall op.cit. at pp.29-32.

115. See Royal Commission on the Police op.cit. at para.44. Marshall in his essay Police Accountability Revisited in Police, Policy and Politics ed. by D. Butler and A.H. Halsey (London: Macmillan, 1978) says that in the nineteenth century there was never any doubt about the Home Secretary's right to issue instructions on matters of law enforcement. R. Plehwe in Police and Government Public Law (1974) 316-335 lists a number of examples of the Home Secretary issuing clear and explicit instructions to the Commissioner about specific matters of law enforcement. For example, in 1913 the Home Office told the Commissioner that proceedings were not to be instituted against whist drives except where there was evidence of serious gambling or profiteering. See also, J.M. Hart The British Police (London: Allen and Unwin, 1951) at p.86; J. Pellew, The Home Office 1848-1914 (London: Heineman, 1982) at pp.47-50.

116. The Secretary of State was first conferred with a power to amalgamate police forecs in England and Wales by section 5 of the County and Borough Police Act, 1856. Even by the outbreak of the First World War, however, there were 183 separate police forces in England and Wales. Since then, however, the number has been reduced to 43.

117. Municipal Corporations Act, 1835 s.76.

118. Ibid.

119. Ibid. ss.77 and 86.

120. County and Borough Police Act, 1856 s.7.

121. Municipal Corporations Act, 1835 s.76.

122. Converted into an obligation by County and Borough Police Act, 1856 s.1.

123. County Police Act, 1839 s.4.

124. Ibid. s.6.

125. Ibid. s.4.

126. Ibid. s.3.

127. Ibid. s.2.

128. Ibid. s.4. Oddly enough his approval was not required for the dismissal of a chief constable.

129. County and Borough Police Act, 1856 s.5.

130. Local Government Act, 1888 s.1.

131. Ibid. s.30(1).

132. Ibid.

133. Ibid. s.9.

134. For the statutory powers of justices of the peace in these matters see County Police Act, 1839 ss.1, 2, 4, 6, 12, 17, and 24.

135. Local Government Act, 1888 s.9(3).

136. See: L Lustgarten The Governance of Police (London: Sweet and Maxwell, 1986) at pp.37-42; H. Parris The Home Office and Provincial Police in England and Wales 1856-1870 Public Law (1961) 251.

137. M. Brogden The Police: Autonomy and Consent London:

Academic Press, 1982) at p.62.

138. See observations of Lord Esher M.R. in Andrews v Nott-Bower [1895] 1 QB 888 at 894 to the effect that a resolution by the watch committee, directing the head constable to compile a report detailing information his force had gathered concerning the conduct of all public houses in the city, amounted to an order under s.7 of the County and Borough Police Act, 1856 which he was required to obey.

139. Royal Commission on the Police op.cit. at para.82. Lustgarten explains that the role of the watch committee had receded by the 1850's as the pattern of policing became routinised; op.cit. at p.38.
In the counties, he suggests, the social status of the chief constable was such that neither the standing committees nor the justices would have taken the initiative to treat him as a subordinate; op.cit. at pp.41-42. It is worth noting that the standing joint committees, in contrast to the watch committees, had no power to appoint, promote or discipline members of their forces; and this contributed to their weakness vis-a-vis their chief constables. Furthermore, they met only once every three months.

140. Brogden op.cit. at pp.66-71.

141. Critchley op.cit. at pp.176-195; Royal Commission on the Police op.cit. at para.40.

142. The growing independence of chief constables from their police authorities was neither uniform nor

sudden. Writing in 1951 J.M. Hart comments " at one extreme one will find the chief constable who runs his police authority; at the other extreme a chief constable who is hamstrung by them. " (op.cit. at p.95.)

143. London Metropolitan Police Act, 1829 ss.23-33; County and Borough Police Act, 1856 s.20.

144. County and Borough Police Act, 1856 s.16.

145. The Police (Expenses) Act, 1874.

146. T Critchley op.cit. at pp.192-3. See now, Police Grant Order, 1951.

147. County and Borough Police Act, 1856 s.15.

148. Ibid.

149. Ibid. s.16.

150. J.J. Tobias Crime and Police in England 1700-1900 (New York: St. Martins Press, 1979) at p.101.

151. Lustgarten op.cit. at p.45.

152. Police Act, 1919 s.4.

153. The significance of the pay factor in the police service is emphasised by the fact that no less than three official Inquiries into the police in this century have been concerned wholly or partly with pay; Desborough, Oaksey and Willink.

154. Royal Commission on the Police op.cit. at para.113.

155. Ibid.

156. Lustgarten suggests that the increasing centralisation of police in Britain went hand in hand with the development of the notion that the chief constables

were independent from political control; op.cit. at pp.43-48.

157. [1930] 2 KB 364.

158. In the case of the county forces his position in this regard is given explicit statutory recognition by s.6 of the County Police Act, 1839.

159. Royal Commission on the Police op.cit. at para.102.

160. Marshall op.cit. at p.66.

161. Report of the Committee on Police Conditions of Service op.cit. at para.185.

162. Contrast his response to the Nottingham watch committee in the Popkess affair (recounted in Lustgarten at pp.49-50) with that to the Liverpool watch committee in the Nott-Bower case.

163. Marshall op.cit. at pp.55-56.

164. Ibid.

165. Royal Commission on the Police op.cit. at paras.88-91.

166. Police Act 1964 s.5(1).

167. Ibid. s.4(1). More specifically they were given the power, subject to the approval of the Home Secretary, to provide buildings and equipment for their forces, appoint their chief constables and require them to resign in the interests of efficiency and to determine the numbers in each rank. In addition, they were given the power to call for reports from their chief constables and were under an obligation to keep themselves informed as to the manner in which complaints from members of the public against members

of their forces were dealt with.

168. [1968] 2 QB 118.

169. Ibid. 769.

170. Ibid. 771.

171. In reference to the first paragraph quoted Lustgarten comments " seldom have so many errors of law and logic been compressed into one paragraph. " he proceeds to highlight these "errors" at pp.64-65 op.cit.

Ch.5: THE LEGAL AND CONSTITUTIONAL STATUS OF THE GARDA SIOCHANA

1. There used to be a statutory distinction between "officers" and "men". The Police Forces Amalgamation Act, 1925 adopts this distinction throughout. The ranks from Commissioner down to, and including, Superintendent are composed of officers, while the ranks of inspector down to garda are composed of men. The dictinction was abolished by s.2 of the Garda Siochana Act, 1972 which repealed s.5(2) of the 1925 Act.

2. See the 1st Schedule of the 1925 Act which gives a table of corresponding ranks for the DMP, the Garda Siochana and the Amalgamated force. The position of constable in the DMP is given as the equivalent of garda in the Garda Siochana and the Amalgamated force.

3. Police Forces Amalgamation Act, 1925 ss.6(2), 7(2) and 10(4).

4. Ibid. s.10(5).

5. [1964] IR 642.

6. It overruled an earlier decision of the High Court in Attorney-General and Minister for Justice v Dublin United Tramways [1939] IR 590 which held that a garda was a servant of the State for the purposes of the action per quod servitium amisit.

7. [1955] AC 457.

8. In Carolan v Minister for Defence [1927] IR 62 the High Court, in the context of vicarious liability, ruled that a soldier was a servant of the State. The decision was followed in the Dublin United Tramways case which further held that no distinction could be drawn between the status of a garda and a soldier in this context.

9. Op.cit. at p 481.

10. In Britain it has been firmly established at common law that a constable enjoys the status of an officeholder as opposed to that of a mere employee; see ch.4.

11. See, for example, Prohibition of Incitement to Hatred Act, 1989 s.10 (to arrest for offences created by the Act); Animals Act, 1985 s.4 (to impound any animal found wandering on a public road etc); Casual Trading Act, 1980 s.11 (to enter premises where he has reasonable grounds to believe that casual trading is being carried on); Criminal Law Act, 1976 s.8 (search); Prohibition of Forcible Entry and Occupation Act, 1971 s.9 (to arrest for offences under the Act);

Extradition Act, 1965 s.45 (to execute an extradition warrant); Dogs (Protection of Livestock) Act, 1960 s.3 (to seize dogs worrying livestock); Gaming and Lotteries Act, 1956 s.37 (to seize prohibited gaming instruments); Criminal Justice Act, 1951 s.13 (to arrest anyone whom he reasonably suspects of being in possession of stolen goods); Mental Treatment Act, 1945 s.165 (to take a person of unsound mind into custody); Offences Against the State (Amendment) Act, 1940 s.4 (to arrest any person in respect of whom a warrant has been issued under the Act by the Minister); Criminal Law Amendment Act, 1935 s.19 (to enter and search a brothel under warrant); Game Preservation Act, 1930 s.25 (to enter and inspect game dealers licence); Firearms Act, 1925 s.21 (to enter and inspect any premises where firearms are stored).

12. S Palmer Police and Protest in England and Ireland from 1780-1850 (Cambridge; Cambridge University Press, 1988) at pp.75-76, 80-81. It is also worth noting that the existence of these independently appointed constables was not terminated even by the establishment of the RIC; see s.45 of the Constabulary (Ireland) Act, 1836.

13. It also extends s.19(1) of the 1924 Act to the Amalgamated force and to any reference to the Civic Guard or the Garda Siochana or officer or member thereof in any Act of the Oireachtas (Apart from the 1924 Act or Orders made thereunder) in force at the

commencement of the 1925 Act or Order made thereunder.

14. English equivalents can be found at: 10 Geo.14 c.44,s.4; 5 and 6 William IV c.76,s.76; 2 and 3 Vict. c.93,s.8; 19 and 20 Vict. c.69,s.6. Other Irish equivalents are: 26 Geo.3 c.24,s.7; 39 Geo.3 c.56,s.4; 3 Geo.IV c.103,s.5; 6 and 7 William IV c.29,s.4.

15. Such provisions are also common features of police forces in other common law jurisdictions today. See, for example: Ontario Police Act (RSO 1980 c.381) s.47; Quebec Police Act (RSQ 1977) s.2; Philadelphia Home Rule Charter s.5.5-201 Australian Federal Police Act, 1979 s.9; Royal Canadian Mounted Police Act ch.R-9 s.17(3).

16. The wording in s.22 of the 1925 Act is slightly different. It refers to provisions contained in any statute etc "in force at the commencement of this Act". Although it is by no means absolutely certain that this automatically excluded provisions repealed by the 1925 Act itself there is a very strong implication that it does. To hold otherwise would lead to a very messy conflict with the 1924 Act. Before such an interpretation could be adopted very clear words would have to be used.

17. A perusal of the Garda Siochana Guide 5th ed. (Dublin: Incorporated Law Society of Ireland, 1981) reveals that the vast bulk of specific powers derive from statute. However, some important general powers still inhere in the garda by virtue of his status as a

citizen.

18. Garda Siochana Guide op.cit. at pp.25-27.

19. S.19 of the 1924 Act and ss.21 and 22 of the 1925 Act.

20. S.1 of the 1924 Act and s.5(1) of the 1925 Act.

21. Palmer op.cit. at pp.69-71.

22. S.11(1) of, and the 4th Schedule to, the 1925 Act.

23. [1985] ILRM 349.

24. In People (DPP) v Roddy [1977] IR 177 it emerged that the DPP had authorised members of the Garda Siochana to take prosecutions in his name without prior reference to him. It was held in that case that prior authority was not necessary. In the Ruane case, however, it was explained that where the garda was acting on prior express authorisation he would be acting on behalf of the DPP and not as a common informer.

25. Op.cit. at p.353.

26. Police Act, 1964 s.5(1).

27. Home Office Memorandum to the Royal Commission on Criminal Procedure (London: HMSO, 1980) at para 8.

28. Police Forces Amalgamation Act, 1925 s.8(1).

29. Such an Order must be laid before both Houses and subject to annulment within 40 days but without prejudice to the validity of anything done thereunder.

30. It also makes provision for the continuance in force, subject to any variation by an Order made under this section, the Garda Siochana Pay Order 1924, the Dublin Metropolitan Police Pay Order 1924 (suitably

modified), the Dublin Metropolitan Police Allowance Order 1920 (suitably modified) and the Garda Siochana Allowances Order 1924.

31. Such an Order must be laid before each House and must be approved before it comes into operation.

32. It also makes provision for the continuance in force, subject to any variation by an order under this section, any statute, order or regulationauthorising the grant or payment of pensions, allowances or gratuities to members of the DMP, or regulating or prescribing the amount or conditions of such payments. Note that anything previously required or authorised to be done by the Commissioner under any such statute, order or regulation is now done by the Minister. It also provides for the continuance in force, subject to any variation by an order under this section, of orders made by the Minister for Justice under s.8 of the 1924 Act (These concern the grant and payment of pensions, allowances and gratuities, the conditions that attach thereto and penalties for fraudulent applications).

33. At that time he was Minister for Local Government and Public Health.

34. It also makes provision for the continuance of all orders and regulations made under all enactments relating to the Dublin police rate which were in force at the commencement of the 1925 Act, subject to such modifications as the Minister for the Environment may

make by order for the purpose of giving effect to s.16.

35. Police Forces Amalgamation Act, 1925 s.14(5).

36. Garda Siochana Act, 1924 s.6 as continued by s.19 of the 1925 Act.

37. P Stenning Legal Status of the Police (Ottawa: Minister of Supply and Services, 1982) at p.80.

38. Further evidence of this is apparent in municipal policing; see Stenning op.cit. at pp.81-94.

39. S.250 Administrative Code, s.710 Pennsylvania State Police.

40. Para 46121, ch.8 Police Force and Firemen 53 para 738.

41. Ibid.

42. Ibid.

43. Constabulary (Ireland) Act, 1836 s.5.

44. Ibid. s.6.

45. Ibid. s.27.

46. Palmer op.cit. at pp.356 and 360.

47. Police (Ireland) Act, 1822 s.1.

48. Ibid. s.12.

49. Ibid. s.1.

50. Ibid.

51. Ibid. s.12.

52. Ibid. s.11.

53. Ibid. s.14.

54. Ibid. s.16.

55. Palmer op.cit. at p.244.

56. Ibid. at pp 262-267.

57. According to Palmer this conflict resulted in legal opinion being sought on the lawful use of the force. 1. Legal opinion of J Townsend, 14th June, in reply to letter from Col. J Bagot to Gregory, 13th June 1823; Chief Secretary's Office Registered Papers ISPO DC. 2. Opinions of Attorney-General and Solicitor-General 3rd October 1824; CSORP 8870 ISPO DC.

58. Palmer op.cit. at p.325.

59. Constabulary (Ireland) Act, 1836 ss.11 and 12.

60. Ibid. s.51.

61. Palmer says that the first Inspector-General found that he had so little independence in the control of his force that he resigned; op.cit. at pp.363-365.

62. Palmer op.cit. at p.365

63. Palmer op.cit. at pp.366-367.

64. Dublin Police Act, 1786 s.3.

65. Ibid. s.4.

66. Ibid. s.16.

67. Ibid. s.7.

68. Ibid. s.4.

69. Palmer op.cit. at pp.101-104.

70. Ibid. at pp 119-136.

71. Dublin Police Act, 1795 ss.3-5.

72. Ibid. s.14.

73. Ibid. ss.16 and 32.

74. K Boyle Police in Ireland Before the Union Irish Jurist 8 (1973) 323 at 340.

75. Palmer says that the Magistrate was appointed by the

Lord Lieutenant (op.cit. at p.149), but the Act is silent on exactly where the power of appointment actually lies.

76. Police (Ireland) Act, 1799 s.3. Palmer ascribes this power of appointment to the magistrate; op.cit at p.149.

77. Ibid.

78. Ibid.

79. Ibid. s.5.

80. Police (Ireland) Act, 1808.

81. Ibid. s.2.

82. Ibid. ss.3 and 10.

83. Ibid. ss.4 and 11.

84. Ibid. s.5. In 1824 the justices were reduced to 8 and 4 respectively; 5 Geo.IV c.102,s.3.

85. Police (Ireland) Act, 1808 s.8.

86. Ibid. ss.19-23.

87. Ibid. s.19.

88. Police (Ireland) Act, 1836 s.1.

89. Ibid.

90. They were known as the Commissioners of the DMP from 1841 onwards.

91. Police (Ireland) Act, 1836 s.4.

92. [1968] 2 QB 118.

93. V Delany The Administration of Justice in Ireland (Dublin: Institute of Public Administration, 1975) at pp.8 and 11-12.

94. The LMP Commissioner is a justice of the peace; London

Metropolitan Police Act, 1829 s.1.

95. (1972) 7 CCC (2d) 393.

96. (1980) 17 CR (3d) 193 (Quebec Court of Appeal).

Ch.6 GOVERNMENT CONTROL OF GARDA OPERATIONS

1. Seanad Debates 1985: 107, 1152.
2. Dail Debates 378: 1752-62.
3. Ibid. 369: 2557-8.
4. Ibid. 357: 1432-3.
5. Ibid. 357: 1433.
6. Ibid. 357: 2594-5.
7. Ibid. 361: 2533.
8. Ibid. 361: 3107-8.
9. Ibid. 362: 305-9.
10. Ibid. 362: 337-40.
11. Ibid. 362: 1678.
12. Ibid. 363: 875-886.
13. Ibid. 365: 1269-73.
14. Ibid. 369: 1236-7.
15. Ibid. 357: 116-234.
16. Ibid. 359: 591 et. seq.; 368; 373: 1788 et. seq.
17. Ibid. 362: 2578 et seq.; 366: 739 et. seq.; 368: 1827 et. seq.
18. Ibid. 369: 593-4.
19. Ibid. 369: 2771-2.
20. Ibid. 374: 2048.
21. Ibid. 373: 2985.
22. Ibid. 356: 2006.

23. Ibid. 358: 2537-47, see also 357: 2595-6.

24. Ibid. 355: 1577.

25. Ibid. 359: 104-106.

26. Ibid. 357: 1432-3.

27. Ibid. 355: 965.

28. Ibid. 365: 1269-73.

29. Ibid. 357: 2594-5.

30. An unusual example was reported recently in the Irish Times (31.8.91) to the effect that the Minister for Justice had called a meeting in his office with a Chief Superintendent from the Dun Laoghaire district. During the meeting the Minister let it be known to the Chief Superintendent that he was not happy with the crime situation in Dun Laoghaire, and that he wished to see a distinct improvement. The Chief Superintendent's Association subsequently lodged a complaint with the Minister to the effect that the Minister's concern should have been communicated directly at Commissioner level only; as was the normal practice.

31. Ibid. 362: 2589.

32. Ibid. 393: 2047-56.

33. Ibid. 359: 89-93.

34. Ibid. 378: 1220-62.

35. Ibid.

36. Ibid. 373: 228.

37. Ibid. 376: 1473-80.

38. An Outline of Irish Financial Procedure (Dublin:

Government Publications) at paras, 3(c) and 6(c).

39. Ibid. para. 4(b).

40. Ibid. 4(c).

41. Dail Debates 393: 2047-56.

42. See, for example, Dail Debates at: 378: 1760-2; 375: 247.

43. Dail Debates 365: 276-86.

44. Ibid. 368: 1648-52.

45. See the debate on the estimates in vol. 368 and the debate on Garda overtime in the same volume.

46. See, for example, Dail Debates 368: 1843-44.

47. Government Accounting 11/1989 at 6.1.5.5.

48. Ibid. 6.1.5.8.

49. Ibid. 6.1.5.7.

50. Ibid. 6.1.5.10.

51. Ibid. 6.1.2.

52. Ibid. 6.1.5.19.

53. Ibid. 6.1.5.21-22.

54. S.21(4).

55. While the subsection is not unequivocal on the point, the legislative intention would appear to be that the government is actually under a duty to appoint a Commissioner when the office becomes vacant from time to time. The power of removal, however, is expressed in terms which suggest that it may be exercised peremptorily and unconditionally.

56. C. Brady Guardians of the Peace (Dublin: Gill and Macmillan, 1974) at pp. 226 and 240.

57. [1981] IR 77.

58. Ibid. at p. 97.

59. Ibid. at p. 102.

60. Ibid at p. 109.

61. Darley v. The Queen (1846) 12 CL & F 520; R (Fitzmaurice) v. Neligan (1884) 14 LR IR 149; R (Riall) v. Bayly [1898] 2 IR 335; R (Jacob) v. Blaney [1901] 2 IR 93; R (McMurrow) v. Fitzpatrick [1918] 2 IR 103.

62. Examples cited include: ill-health; to improve the efficiency of the force; because the Commissioner has lost the confidence of the government; it would be in the interests of the force for a younger man to be appointed; in the prevailing circumstances the Commissioner was unsuitable for office; the incapacity of the Commissioner.

63. The Evelyn Glenholmes case arose out of the unsuccessful attempt to secure an extradition order against a woman of the same name in Dublin District Court. After complaining that she could not leave the court by the main door because gardai were blocking the entrance she was given permission to leave by the District Justices door. As she and her supporters made their way through crowded streets gardai attempted to keep them under surveillance. One officer, who claimed subsequently that he believed his life was in danger or at least that he was going to be disarmed, fired shots over the heads of the people in

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the street.

64. Examples of other State sponsored bodies which are under a statutory duty to supply information include: Amalgamated Railway Companies, Railways Act, 1924 s. 69; Prison Visiting Committee, Prison (Visiting Committees) Act, 1925 s.3(1)(d); Electricity Supply Board, Electricity (Supply) Act, 1927 s.32(2); Industrial Credit Co., Industrial Credit Act, 1933 s.11(3); Pigs Marketing Board, Pigs and Bacon Act, 1935 s. 137(3); Aer Lingus, Air Navigation and Transport Act, 1936 s.81(5); Racing Board, Racing Board and Racecourses Act, 1945 s. 19(4); CIE, Transport Act, 1950 s.16; Fogra Failte, Tourist Traffic Act, 1952 1st sched. para. 14; An Foras Tionscal, Undeveloped Areas Act, 1952 1st sched. para. 12; Great Northern Railways Board, Great Northern Railways Act, 1953 s. 19(3); Bord na gCon, Greyhound Industry Act, 1958 s. 19(5); An Bord Bainne, Dairy Produce Marketing Act, 1961 s. 47; Bord na gCapall, Horse Industry Act, 1970 s. 19(2); National Agricultural Advisory Board, Education and Research Authority Act, 1977 s.21; Director of Consumer Affairs and Fair Trading, Consumer Information Act, 1978 s. 19(2)(b); Central and Regional Fisheries Boards, Fisheries Act, 1980 s. 19(3); An Post, Postal and Telecommunications Services Act, 1983 s. 33; National Social Services Board, National Social Services Board Act, 1984 s. 12(2); Industrial Development Authority,

Industrial Development Act, 1986 1st sched. para 8; Independent Radio and Television Commission, Radio and Television Act, 1988 1st sched. para. 17(3); Official Censor of Films, Video Recordings Act, 1989 s. 29(2); Central Bank, Central Bank Act, 1989 s. 20(2).

65. Some examples from 1986 alone can be found in the Dail Debates at: 363: 501-2, 364: 384-5, 639-40, 2193-4, 365: 598-9, 1255, 1282-3, 366: 2130-1, 2138-40, 2146, 2147-9, 367: 1856-7, 368: 1646-8, 1758, 369: 593-4, 833, 2801, 2810-11; 370: 1208.

66. See, for example, Dail Debates at: 366: 752-765; 368: 1823-36, 2118-27; 357: 183-190. See also, Seanad Debates at 107: 1119-54.

Ch.7 ACCOUNTABILITY TO THE LAW

1. See, for example, G Hogan and D Morgan Administrative Law in Ireland 2nd ed. (London: Sweet and Maxwell, 1991); J Casey Constitutional Law in Ireland (London: Sweet and Maxwell, 1987); J Kelly The Irish Constitution (Dublin: Jurist Publishing Co., 1984); S.A. de Smith and M Brazier Constitutional and Administrative Law (Harmondsworth: Penguin, 1989); H Wade and A Bradley Constitutional and Administrative Law 10th ed. (London: Longman, 1985); J Garner and B Jones Garner's Administrative Law 6th ed. (London: Butterworths, 1985); D Foulkes Foulkes' Administrative Law 6th ed. (London: Butterworths, 1986); P Birkinshaw Grievances, Remedies and the State (London: Sweet and

Maxwell, 1985).

2. A V Dicey Introduction to the Study of the Law of the Constitution 10th ed. (London: Macmillan, 1965).
3. Ibid. at pp. 187-188.
4. Ibid. at pp. 188-193.
5. Ibid. at pp. 193-195.
6. Ibid. at pp. 195-202.
7. Ibid. at p. 193.
8. P Hogg Liability of the Crown (London: Law book Company of Australia, 1971).
9. H Street Governmental Liability (Cambridge: Cambridge University Press, 1953).
10. [1972] IR 241.
11. See Wade's introduction to Dicey's Study of the Law of the Constitution op.cit. at pp. xix-cxcviii.
12. See, for example, D Fraser The Evolution of the British Welfare State 2nd ed. (London: Macmillan, 1984); R.M. Titmuss Essays on the Welfare State 2nd ed. (London: Unwin University Books, 1963).
13. P Birkinshaw op.cit. ch.1.
14. See references in fn 1.

TORT

15. See generally: B McMahon and W Binchy Irish Law of Torts (Abingdon: Professional Books, 1981); W Rogers Winfield and Jolowicz on Tort (London: Sweet and Maxwell, 1989); M Brazier Street on Tort (London: Butterworths, 1988).

16. McMahon and Binchy op.cit. at pp 463-473.

17 Ibid. at pp 127-148.

18. Ibid. at ch.12.

19. Ibid. at ch.18.

20. Other examples of common law torts include: malicious prosecution; inducing breach of contract; conspiracy; detinue; conversion; passing off. See generally, McMahon and Binchy op.cit.

21. McMahon and Binchy op.cit. at ch.15.

22. Ibid. at pp. 6-9.

23. Courts Act, 1991 s.4.

24. Ibid. s.2.

25. Bunreacht na hEireann Art.34.3.1.

26. D.B Casson Odgers on High Court Pleadings and Practice 23rd ed. (London: Sweet and Maxwell, 1991) at pp. 225-291; 324-337.

27. B McMahon Judge or Jury? The Jury Trial for Personal Injury Actions in Ireland (Cork: Cork University Press, 1985).

28. Courts Act, 1988 s.1.

29. A.I Ogus The Law of Damages (London: Butterworths, 1973) at pp. 17-20.

30. Ibid. at pp. 26-38.

31. Ibid. at pp. 22-23.

32. Casson op.cit. at pp. 431-436.

33. See generally, R Clayton and H Tomlinson Civil Actions Against the Police (London: Sweet and Maxwell, 1988).

34. Cross, Jones and Card An Introduction to Criminal Law

11th ed. (London: Butterworths, 1988) at p. 56 and, for example, 213, 214-5, 230-4, 243-260, 271.

35. Ibid. at pp. 118-122.

36. Woolmington v DPP [1935] ALL ER Rep 1; People v Byrne [1974] IR 1. See generally, E Ryan and P Magee The Irish Criminal Process (Dublin: Mercier Press, 1983) at pp 358-359.

37. Cross, Jones and Card op.cit at pp. 103 and 108.

38. N Walker Sentencing: Theory, Law and Practice (London: Butterworths, 1985) at ch.7.

39. Minnesota Law Review 39 (1935) 493 at 516.

40. Ibid.

41. See, for example, J.A. Robilliard; J McEwan Police Powers and the Individual (Oxford: Blackwell Press, 1986).

42. Byrne v Ireland [1972] IR 241 at p 279.

43. Kane v Governor of Mountjoy [1988] ILRM 724.

44. D Foulkes Foulkes' Administrative Law 6th ed. (London: Butterworths, 1986) at pp 393-400; A Mullis Tort in Butterworths ALL ER Annual Review 1990 (London: Butterworths, 1991) at pp 303-307, 312-316.

45. [1978] AC 728.

46. The decision itself was overruled by the House of Lords in the exercise of its 1966 Practice Direction in Murphy v Brentwood District Council [1990] 2 ALL ER 908.

47. Governors of the Peabody Donations Fund v Sir Lindsay Parkinson [1984] 3 ALL ER 529; Yuen Kun-yeu v

Attorney-General of Hong Kong [1987] 2 ALL ER 705; Rawling v Takaro Properties [1988] 2 ALL ER 238; Hill v Chief Constable of West Yorkshire [1988] 2 ALL ER 238. See also: Leigh and Sullivan v Aliakmon Shipping Co. [1986] 2 ALL ER 145; Curran v Northern Ireland Co-Ownership Housing Association [1987] 2 ALL ER 13.

48. Yuen Kun-Yeu v Attorney- General of Hong Kong op.cit.

49. [1986] ILRM 43 and [1989] ILRM 400.

50. [1990] ILRM 658.

51 Op.cit.

52. Other examples are: Yuen Kun-Yeu v Attorney-General of Hong Kong op.cit.; Governors of the Peabody Donations Fund v Sir Lindsay Parkinson op.cit.; Curran v Northern Ireland Co-Ownership Housing Association op.cit.; Clough v Bussan [1990] 1 ALL ER 431; Davis v Radcliffe [1990] 2 ALL ER 536.

53. See generally, Police Liability for Negligent Failure to Prevent Crime Harvard Law Review 94 (1981) 821.

54. South v Maryland 59 US (18 How.) 396 (1856); Coffey v City of Milwaukee 74 Wis. 2d. 526, 247 NW 2d. 132 (1976).

55. Shuster v City of New York 5 NY 2d. 75, 154 NE 2d. 534, 180 NYS. 2d. 265 (1958); Swanner v US 309 F. Supp. 1183 (M.D. Ala. 1970); Gardner v Village of Chicago Ridge 71 Ill. App. 2d. 373, 219 NE 2d. 147 (1966); Tanasijevich v City of Hammond 383 NE 2d. 1081 (Ind. Ct. App. 1978); Christy v City of Baton Rouge 282 So. 2d. 724 (La. Ct. App.).

56. Morgan v County of Yuba 230 Cal. App. 2d. 938, 41 Cal. Rptr. 508 (Dist. Ct. App. 1964); Warren v District of Columbia Nu 79-6 (D.C. Dec. 24, 1980); Silverman v City of Fort Wayne 171 Ind. App. 415, 357 NE 2d. 285 (1976); Bloom v City of New York 78 Misc. 2d. 1077, 357 NYS 2d. 979 (Sup. Ct. 1974).

57. **Police Liability for Negligent Failure to Prevent Crime** op.cit. at pp 826-828.

58. Peck v US 470 Supp. 1003 (SDNY 1979); Hartzler v City of San Jose 46 Cal. App. 3d. 6, 120 Cal. Rptr. 5 (1975); Doe v Hendricks 92 N.M. 499, 590 P.2d. 647 (Ct. App. 1979); Riss v City of New York 22 NY 2d. 579, 240 NE 2d. 860, 293 NYS 2d. 897 (1968).

59. An alternative route has emerged in the U.S. based on 42 U.S.C. s.1983 (1976) which reads:

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the U.S. or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

See **Police Liability for Negligent Failure to Prevent Crime** op.cit. at pp 829-831.

60. P Atiyah **Vicarious Liability in the Law of Torts** (London: Butterworths, 1967) at pp 31-33.

61. (1858) 27 LJMC 207, 208.

62. (1946) 42 TLR 427, 429.

63. (1864) 16 CBNS 310, 351.

64. [1930] 2 KB 364.

65. Mackalley's case (1611) Co Rep Pt ix 656, 686; Coomber v Berkshire Justices 9 App Cas 61, 67.

66. Op.cit. at 372-373.

67. Ibid.

68. [1955] AC 457.

69. Ibid. at p 488, quoting Latham C.J. in Quince's case at 68 CLR 227, 238.

70. Ibid.

71. Ibid. at pp 489-490.

72. Ibid. at p 489.

73. (1906) 3 CLR 969.

74. Op.cit.

75. [1905] 2 KB 838.

76. [1927] IR 62.

77. 1 Ld Raym 616.

78. Cowp 754.

79. [1939] IR 590.

80. Ibid. at pp 596-597.

81. [1965] IR 642.

82. 68 CLR 227.

83. [1956] 2 QB 641.

84. Op.cit. at p 663.

85. Op.cit. at p 47.

86. Walker v Crystal Palace F.C. [1910] 1 KB 87; Zuijis v Wirth Bros. Ltd (1955) 93 CLR 561; Stagecraft Ltd v Minister for National Insurance [1966] 3 ALL ER 531; Cassidy v Minister for Health [1951] 2 KB 343; Mersey

Docks and Harbour Board v Coggins and Griffith [1947] AC 1.

87. Atiyah op.cit. at p. 48.

88. Ibid. at p. 78.

89. Police Act, 1964 s.48.

90. Section 48 of the Police Act, 1964 also makes provision for costs or damages awarded against the chief constable to be paid out of the police fund.

91. [1972] IR 241.

92. Ibid. at p. 264.

93. Ibid.

94. Ibid. at pp. 279-280.

95. Ibid. at p. 286.

96. Ibid. at p. 305.

97. Ibid. at pp. 280-281.

98. Ibid. at p. 280.

99. Ibid. at p. 285.

100. Ibid. at p. 286.

101. Ibid. at pp. 285-286.

102. O'Loughlin v Minister for Social Welfare [1958] IR 1.

103. In both People v Roddy [1977] IR 177 and The State (DPP) v Ruane (Unreported, 8th July, 1983) it was accepted that, in the absence of specific provision to the contrary, a garda prosecutes in his capacity as a common informer and not on behalf of the State; even when the prosecution arises out of his duties as a garda and is pursed using State resources. By analogy, he is not acting on behalf of the State when he

effects an arrest pursuant to his common law powers even if the arrest is effected in the course of his duties as a garda and while using State resources.

104. The Byrne decision is analysed in some detail by N Osborough in The State's Tortious Liability: Further Reflections on Byrne v Ireland Irish Jurist 11 (1976) 11.

105. P Stenning The Legal Status of the Police (Ottawa: Minister of Supply and Services, 1982) at pp. 101-112.

106. 94 DLR 3d. 636 (1979).

107. (1902) 6 CCC 219.

108. (1915) 24 CCC 327.

109. (1979) 94 DLR 636 at p. 638.

110. (1974) 17 CCC 2d. 241.

111. Ibid. at p. 247 quoting from Boufford J in St. Pierre v City of Three Rivers (1936) 61 Que KB 439 who in turn is quoting from Associate CJ Challis in Allain v Attorney-General for Quebec (1971) Que SC 407 at 409-410.

112. Ibid. at p. 248 quoting from Miquelon J in Fortin v The Queen (1965) Que SC 168 who in turn is quoting from Associate CJ Challis op.cit.

113. (1906) 3 CLR 969 at p. 977.

114. G Hogan and D Morgan Administrative Law in Ireland 2nd ed. (London: Sweet and Maxwell, 1991) at pp 717-718.

115. Walsh J in Byrne op.cit. at p 289.

116. Ker v Illinois 119 US 436, 444 (1886).

117. C Foote op.cit. at pp 501-502.

118. Foote op.cit.

119. Ibid. at p 501.

120. Ibid. at pp 504-506.

121. J Hall Police and Law in a Democratic Society Indiana Law Journal 28 (1952) 133 at pp 152-154.

122. Op.cit. at p 500.

123. Department of Justice Scheme of Civil Legal Aid and Advice (Dublin: Department of Justice White Paper Prl. 8543, 1979).

124. See G Whyte And Justice for Some Dublin University Law Journal (1984) 88.

125. Irish Times 6.3.90. at p 8.

126. Irish Times 28.4.89.

THE CRIMINAL PROCESS

127. Royal Commission on the Police (London: HMSO Cmnd.1728, 1962) at para.100.

128. Ibid. at paras.30-31; Royal Commission on Police Powers and Procedure (London: HMSO Cmd.3297, 1929) at para.15.

129. G Marshall Police and Government (London: Methuen, 1965) at pp. 15-21; and see, generally, T Bunyan The History and Practice of the Political Police in Britain (London: Quartet Books, 1977).

130. A garda can arrest a person under s.30 if he suspects that person of having committed or of being about to commit or of being or of having been concerned in the commission of an offence under any section of the 1939

Act or an offence which is scheduled for the purposes of Part 5 of the Act. The power also extends to the arrest of any person whom the garda suspects of carrying a document relating to the commission or intended commission of any such offence or any person whom he suspects of being in possession of information relating to the commission or intended commission of any such offence.

131. See ch.2 under the sub-heading (e) Economic and Social Regulation (v) Road Traffic.

132. S.11 of the Casual Trading Act, 1980 gives a garda the power to enter, inspect and examine premises, and to compel the production of relevant licenses and information including names and addresses, for the purpose of ensuring that the Act is obeyed. S.12 gives him a power of arrest where he has reasonable cause to believe that a person is contravening the provisions of the Act.

133. The Wildlife Act, 1976 confers a range of powers on the garda to stop, search, enter, inspect and seize in order to secure the enforcement of the Act.

134. A garda can detain a suspect arrested under s.30 of the Offences Against the State Act, 1939. Similarly, by virtue of s.4 of the Criminal Justice Act, 1984 a garda can detain a suspect arrested for an offence which carries a possible sentence of imprisonment of five years or more on first conviction.

135. For a detailed discussion on police powers of arrest

see L.H. Leigh Police Powers in England and Wales 2nd ed. (London: Butterworths 1985) at chs.3 and 4.

136. Cross, Jones and Card op.cit at p. 207.

137. R v Robinson (1984) NIJB no.4.

138. For a treatise on police powers in Ireland see Garda Siochana Guide 5th ed. (Dublin: Incorporated Law Society of Ireland, 1981).

139. E Ryan and P Magee The Irish Criminal Process (Dublin: Mercier Press, 1983) at pp.68-73.

140. Police discretion in this matter has been eclipsed by s.6(1)a of the Garda Siochana (Complaints) Act, 1986 which imposes an obligation on the Garda Commissioner to have certain complaints against the police investigated.

141. From April 1987-December 1989(incl.) a total of 1754 citizen complaints were disposed of by the complaints machinery. One hundred of these were referred to the DPP. (There is an obligation on the Complaints Board to refer all cases where the complaint alleges the commission of a criminal offence.) Only one prosecution resulted.

142. See, for example, D Smith and J Gray Police and People in London vol.4: The Police in Action (London: Policy Studies Institute, 1981) at pp. 71-72; W Gellhorn Police Review Boards--Hoax or Hope? Columbia University Forum, Summer 1966 1-7.

143. D Epstein The Complaint: Advisory Reflections to the Law Enforcement Agencies Head Police Chief May 1982

58-60; R Bennett and R Corrigan Police Occupational Solidarity: Probing a Determinant in the Deterioration of Police Citizen Relations Journal of Criminal Justice 8,2 at pp. 11 et seq.

144. See fn.142.

145. See fn.99 in ch.8.

146. It is quite rare for the perpetrator of a serious criminal offence either to give himself up voluntarily or to be proceeded against by summons.

147. See, for example, D. Walsh The Use and Abuse of Emergency Legislation in Northern Ireland (London: Cobden Trust 1983) at pp.74-7. Also, P Softly et al. Police Interrogation: An Observational Study in Four Police Stations (London: HMSO Royal Commission on Criminal Procedure Research Study No.4, 1980) at p. 80.

148. E Ryan and P Magee op.cit. at pp.77-83.

149. Garda Siochana (Complaints) Act, 1986 s.7(1).

150. Prosecution of Offences Act, 1974 s.2.

151. The most notorious recent example must be the jury in Los Angeles who acquitted four police officers of inflicting grevious bodily harm on a black citizen despite being shown a video-tape of the officers beating the victim mercilessly even after he was lying defenceless on the ground.

152. The background to this episode is chronicled in J. Stalker STALKER (Harmondsworth: Penguin, 1985).

153. Hansard Parliamentary Debates (Commons) vol.126

cols.21-23.

EXCLUSIONARY RULE

154. See, for example, Welsh White Defending Miranda: A Reply to Professor Caplan Vanderbilt Law Review 39,2 (1986) 7-9, 17-22; Herman The Supreme Court, the Attorney-General and the Good Old Days of Police Interrogation Ohio State Law Journal 48 (1987) 733.

155. 232 U.S. 383; 34 S.Ct. 341 (1914).

156. 367 U.S. 643; 81 S.Ct. 1684, 6 1081 (1961).

157. In Wolf v Colorada 338 U.S. 25; 69 S.Ct. 1359; 93 L.Ed. 1182 (1949) the Supreme Court ruled that the 4th. Amendment right of privacy was enforceable against the State through the due process clause of the 14th. Amendment. However, it also ruled that the exclusionary rule formulated in Weeks was not applicable to State prosecutions; but it was overruled on this point by Mapp.

158. 367 U.S. 643 (1961) at 655.

159. 384 U.S. 436; 86 S.Ct. 1602; 16 L.Ed. 2d. 694 (1966).

160. See list at fn.164.

161. See fn 154.

162. See, for example, G.M. Caplan Questionning Miranda Vanderbilt Law Review 38 (1985) 1417 at pp. 1455-76.

163. Michigan v Moseley 423 U.S. 96; 96 S.Ct. 321; 46 L.Ed. 313 (1975)-- the suspect's right to terminate questionning must be honoured scrupulously; Edwards v Arizona 451 U.S. 477; 101 S.Ct. 1880; 68 L.Ed. 378

(1981)--waiver of the right to counsel must not only be voluntary but also must constitute a knowing and intelligent relinquishment or abandonment of a human right or privilege; Rhode Island v Innis 446 U.S. 291; 100 S.Ct. 1682; 64 L.Ed. 2d. 297 (1980)--interrogation is not confined to express questionning, but extends to any words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating statement from the suspect; Brewer v Williams 430 U.S. 387; 97 S.Ct. 1232; 51 L.Ed. 2d. 424 (1977)--waiver of right to counsel requires not only comprehension but also a positive act of relinquishment.

164. Harris v New York 401 U.S. 222 (1971)--statements inadmissible pursuant to a defective Miranda warning could be used to impeach the defendant's credibility in the witness box; Oregon v Hoss 420 U.S. 714 (1975)--statement could also be used for impeachment purposes even though defendant's request for a lawyer was denied; Oregon v Mathiason 429 U.S. 492 (1977)--suspect who goes voluntarily on his own to the police station is not in custody; California v Beheler 463 U.S. 1121 (1983)--suspect who voluntarily accompanies police to police stations is not in custody; Michigan v Tucker 417 U.S. 433; 94 S.Ct. 2357; 41 L.Ed. 2d. 182 (1974)--a Miranda warning is not a constitutional right, it merely sets prophylactic standards designed to provide practical reinforcement for the privilege

against self-incrimination; State v Mc Knight 243 A. 2d. 240 (NJ 1968)--suspect's waiver of lawyer is no less voluntary, knowing and intelligent because he has misconceived the inculpatory thrust of the facts he admitted; California v Prysock 453 U.S. 355; 101 S.Ct. 2806; 69 L.Ed. 2d. 696 (1981)--a precise formulation of Miranda warning is not required; Duckworth v Egan 109 S.Ct. 2875; 106 L.Ed. 2d. 166 (1989)--Miranda does not require that attorneys be producible on call, only that the suspect be informed of his right to one; Colorada v Spring 479 U.S. 504; 107 S.Ct. 851; 93 L.Ed. 2d. 954 (1987)--a suspect does not have to know the possible subjects of questionning in advance in order to waive his 5th. Amendment privilege voluntarily, knowingly and intelligently; Beckwith v U.S. 425 U.S. 341--IRS officers interviewing the suspect at private home where he often stayed did not amount to custodial interrogation; Berkemer v Mc Carty 468 U.S. 420; 104 S.Ct. 3138; 82 L.Ed. 2d. 317 (1984)--questionning a motorist at a traffic stop did not amount to custodial interrogation.

165. In New York v Quarles 467 U.S. 649 (1984) it was held that the need for answers in a situation posing a threat to public safety outweighs the need for the prophylatic rule protecting the 5th. Amendment privilege against incrimination. In Oregon v Elstad 470 U.S. 298 (1985) it was held that a failure to comply with the Miranda warning does not have the same

irremediable consequences as an infringement of the 5th. Amendment itself.

166. See G Caplan op.cit.

167. R v Warickshall (1783) 1 Leach CC 263; Sir William Scott in Williams v Williams (1798) 1 Hog Con 299 at 304.

168. Kennedy C.J. in People (Attorney-General) v Mc Cabe [1927] IR 129 at 134 quoting Lord Sumner in Ibrahim v Rex [1914] App Cas 599 at 609.

169. Martin Priestly 51 Cr App Rep 1 (1965); see also Walsh J. in People (DPP) v Quilligan [1987] ILRM 606 at 624.

170. Cave J. in R v Thompson [1893] 2 QB 12 at 18.

171. Ibrahim v R op.cit.

172. Lord Reid in Harz v Power [1967] 1 AC 760 at 820; Lord Diplock in DPP v Sang [1980] AC 402 at 436.

173. Lord Fraser in Sang at pp.449-450; and Lord Scarman ibid. at p.455.

174. Lord Hailsham in Wong Kam-Ming v R [1980] AC 247 at 261.

175. See, for example, P McLaughlin Legal Constraints on Criminal Investigation Irish Jurist xiv (1981) 217; R Mark Policing a Perplexed Society (London: Allen and Unwin, 1977) at ch.5.

176. 72 ILTR 84.

177. R Cross and C Tapper Cross on Evidence 6th ed. (London: Butterworths, 1985) at p.535.

178. DPP v Ping Lin [1976] AC 574.

179. E Ryan and P Magee The Irish Criminal Process (Dublin:

Mercier Press, 1983) at pp. 132-133.

180. R v Priestly 51 (1967) Cr App Rep 1.

181. E Ryan and P Magee op.cit. at pp. 169-176.

182. [1965] IR 142.

183. [1990] ILRM 569.

184. [1982] IR 1.

185. Op.cit. at p.167.

186. Ibid. at p.169.

187. People (Attorney-General) v O'Brien op.cit.; People (Attorney-General) v Cummins [1972] IR 312; People (DPP) v Lynch [1981] ILRM 389; People (DPP) v Shaw [1982] IR 1; People (DPP) v Healy [1990] ILRM 313.

188. [1972] IR 312 at 325.

189. Op.cit. at p.160.

190. Op.cit. at p.61.

191. [1981] ILRM 389.

192. [1990] ILRM 313.

193. Ibid. per Finlay C.J. at p.320.

194. Report of the Royal Commission on Police Powers and Procedure (London: HMSO Cmd.3297, 1929) at pp. 69-71.

195. Home Office Circular 89/1978 App. B.

196. They are listed in Mc Carrick v Leavy [1964] IR 325.

197. For a commentary on the Judges Rules see E Ryan and P Magee op.cit. at pp.114-120.

198. R V Bass [1953] 1 QB 600; People (DPP) v Farrell [1978] IR 13.

199. Mc Carrick v Leavy [1964] IR 225; People (Attorney-General) v Cummins [1972] IR 312.

200. R v Voisin [1918] 1 KB 531; R v Smith [1961] 3 All ER 972; People (Attorney-General) v Cummins [1972] IR 12; People (Attorney-General) v Regan [1975] IR 367; Travers v Ryan [1985] ILRM 343.

201. [1978] IR 13; The court explained that in deciding whether or not to exercise the discretion the trial judge must look at the breach, the explanation and the entire circumstances of the case.

202. Unreported, May 1981.

203. Unreported decision of the Court of Criminal Appeal, April 1982; Supreme Court decision (unreported) handed down 29th. October 1982.

204. 62 ILTR 24.

205. People v Lawlor [1955-58] IR JUR REP 38 at 41; see also Home Office Circular S26059/29.

206. If a suspect is arrested under s.30 of the Offences Against the State Act, 1939 or detained under s.4 of the Criminal Justice Act, 1984 the clear implication is that he can be questionned. The Garda, however, normally question a suspect irrespective of the particular power of arrest or detention used.

207. The exclusionary rule has provoked a huge volume of literature for and against it as well as merely commenting on it. A few examples are: Inbau, Reid and Buckley Criminal Interrogation and Confessions 3rd ed. (1986); Herman The Supreme Court, the Attorney-General and the Good Old Days of Police Interrogation Ohio State Law Journal 48 (1987) 733; Stone The Miranda

Doctrine in the Burger Court Supreme Court Review (1977) 99; Tomkovicz Standards for Invocation and Waiver of Counsel in Confession Contexts Iowa Law Review 71 (1986) 975, 1049; Elsen and Rosett Protections for the Suspect under Miranda v Arizona Columbia Law Review 67 (1967) 645; M Berger Compromise and Continuity: Miranda Waivers, Confession Admissibility and the Retention of Interrogation Protections University of Pittsburgh Law Review 49 (1988) 1007; Graham What is Custodial Interrogation? University of California Los Angeles Law Review 14 (1966) 59; Smith The Threshold Question in Applying Miranda South Carolina Law Review 25 (1974) 699; Israel Criminal Procedure, the Burger Court and the Legacy of the Warren Court Michigan Law Review 75 (1977) 1320.

JUDICIAL REVIEW

208. S A de Smith Judicial Review of Administrative Action 3rd ed. (London: Stevens, 1973); G Hogan and D Morgan Administrative Law in Ireland 2nd ed. (London: Sweet and Maxwell, 1991) at ch.8.

209. G Hogan and D Morgan op.cit. at pp. 319-353.

210. Ibid. at ch.9.

211. See fn 2.

212. Ibid. at ch.10.

213. See, for example, Liversidge v Anderson [1942] AC 206; In re Art.26 and the Offences Against the State

(Amendment) Bill [1940] IR 470; In re O'Laighleis [1960] IR 93; Savage and McOwen v DPP [1982] ILRM 385.

214. G Hogan and D Morgan op.cit at pp. 551-563.

215. R v London Transport Executive, ex parte Greater London Council [1983] QB 484 at p. 490.

216. [1948] 1 KB 223.

217. Ibid. at p 230.

218. G Hogan and D Morgan op.cit. at pp. 515-519.

219. Ibid. at pp. 511-515.

220. Ibid. at pp. 545-551.

221. Ibid. at pp. 549-551.

222. Ibid. at pp. 545-548.

223. In re Art.26 and the Offences Against the State (Amendment) Bill [1940] IR 470 at p. 479.

224. [1942] AC 206.

225. [1960] IR 93.

226. [1970] IR 317.

227. [1982] IR 337.

228. Ibid. at p. 361.

229. See comments of C Gearty in Dublin University Law Journal 4 (1982) 95.

230. [1982] ILRM 385.

231. Police Forces Amalgamation Act 1925 s.6(2).

232. [1981] IR 75.

233. See, for example, s.22A of the Prices Act, 1958 (inserted by s.1 of the Prices (Amendment) Act, 1965 which reads:

> Whenever and so often as the government are satisfied that the condition of the national

> economy is such that it is necessary to maintain stability of prices generally, the government may by Order authorise and empower the Minister to do from time to time any or all or some of the following, that is to say...

234. G Hogan and D Morgan op.cit. at chs.11 and 12.

235. Admittedly, an individual may be able to circumvent the lack of locus standi by seeking the Attorney-General's permission to take a relator action; i.e. an action on behalf of the general public. The decision whether or not to accede to such a request is at the discretion of the Attorney-General. Even if this was to prove merely a technical hurdle it would not follow that relator actions would constitute a satisfactory means of rendering a public authority accountable to the law. The liklihood is that they would be pursued primarily by committed narrow interest groups with access to the necessary resources. The net result would be that the exercise of powers affecting matters of public interest would be subjected to close supervision and scrutiny when they infringed upon certain narrow areas or interests, whereas the exercise of such powers in most other contexts would be subjected to lesser judicial scrutiny.

236. G Hogan and D Morgan op.cit. at pp. 611-626.

237. For time limits see G Hogan and D Morgan op.cit. at pp. 597-603.

238. Ibid. at pp. 595-611.

239. [1968] 2 QB 118

240. Ibid. at pp. 136, 138, 148-149.

241. Ibid., Denning at p. 136; Salmon at p. 139.

242. [1973] QB 241; Times 1.12.79; Times 7.3.80.

243. Transcript Association 30.10.86.

244. Ibid.

245. Op.cit. at pp. 137, 145 and 149.

246. Op.cit. at p. 136.

247. Ibid. at p. 136.

248. [1973] 1 QB 241 at pp. 254, 256-257 and 258.

249. Op.cit.

250. [1984] 1 ALL ER 1054.

251. C Ryan and K Williams Police Discretion Public Law [1986] 285.

252. [1981] QB 128.

253. Middleweek v Chief Constable of the Merseyside Police [1990] 3 ALL ER 662.

254. Transcript Association 26.3.91; see also R v Coxhead [1986] RTR 411.

Ch.8 CITIZEN COMPLAINTS AGAINST THE POLICE

1. Procedures for dealing with citizen grievances about various services provided by local government officials in housing, social services, education, planning and environmental health in Britain are analysed by N. Lewis, M. Seneviratne and S. Cracknell in Complaints Procedures in Local Government vol.1 (Sheffield: Centre for Criminological and Socio-Legal Studies University of Sheffield, 1989). It is clear from their work that the greater volume of such

grievances concern matters which can be resolved higher up the bureaucratic hierarchy; in other words the action or inaction of an officer can be reversed by his superiors simply by re-interpreting existing policy or by formulating new policy. The substance of most complaints, therefore, is the incorrect application of policy or the policy itself as opposed to intentional misconduct on the part of the official.

2. N Lewis et al op.cit.

3. 26 Geo. 3, c.24, section 4.

4. For a study of the arrangements in early British police forces see, J.V. Boothman Facing the Music: Modern Police Discipline and Primitive Police Discipline 1829-1879 II Liverpool Law Review 1 (1985) 7-28.

5. For an outline of the traditional internal disciplinary model in American police forces, see H. Beral and M. Sisk The Administration of Complaints by Civilians against the Police Harvard Law Review 77 (1964) 499 at 500-509.

6. Garda Siochana (Designations, Appointments and Discipline) Regulations, 1924.

7. Ibid. reg. 8(22).

8. Ibid. reg. 8(24).

9. Ibid. reg. 8(8).

10. Ibid. regs. 12 and 13.

11. Ibid. reg. 17.

12. The Regulations did make provision for an appeals

board consisting of two senior officers and chaired by a district justice or a barrister or solicitor of seven years standing, all nominated by the Commissioner. The inclusion of the independent chairman, however, did not reflect any concern to cater for accountability to the public. The aim was to provide the accused with a more professional and impartial appeals board.

13. Garda Siochana (Discipline) Regulations, 1971.

14. A similar failure to make the code of offences more accountability orientated is evident in the major revision of the complaints procedure for England and Wales effected by The Police (Discipline) Regulations 1965, made pursuant to the Police Act 1964, s.33. It may be that the British conservatism has rubbed off on the Irish because the offences in the 1971 Garda Siochana regulations appear to be based closely on their British counterparts. The latter, laid out in the first schedule to the 1965 regulations, are more detailed and have an even stronger emphasis on internal discipline. This is illustrated by the inclusion of offences such as: insubordination by word, act or demeanour (para. 2(a)) and idling or gossiping while on duty (para. 4(b)).

15. Garda Siochana (Discipline) Regulations, 1971 reg. 8(1).

16. See, Garda Siochana (Complaints) Act, 1986.

17 In England and Wales provision was first made for an

independent element in the handling of citizen complaints against the police by the Police Act 1976, which came into force on the 1st. June 1977. Similar provisions were introduced into Northern Ireland by The Police (Northern Ireland) Order 1977. The main innovation effected by those measures was the establishment of a police complaints board composed of government appointed civilians. Where the police decided not to prefer a disciplinary charge, or where the accused denied the allegation, the report of the investigation was referred to the complaints board, which had the power to decide whether any disciplinary action should be taken and, if so, whether the hearing should be by the chief officer of police or by a tribunal consisting of the chief officer of police as chairman and two members of the Board. For a brief survey of the background leading up to the introduction of an independent element in Britain, see D.G.T. Williams **Complaints Against the Police: The Cambridge-Tilburg Law Lectures, 1978** (London: Kluwer, 1979) at pp. 41-45.

18. See, **Report of the Working Party for Northern Ireland: The Handling of Complaints Against the Police** (London: HMSO Cmnd. 6475, 1976) at paras. 8-13. In one respect the Royal Ulster Constabulary (RUC) was first to be subjected to an independent element in that section 13 of the Police Act (Northern Ireland) 1970 provides that when a complaint relates to "a matter affecting

or appearing to affect the public interest" a tribunal may be constituted, either on the initiative of the chief constable or at the discretion of the Secretary of State or the police authority, to consider and report on the complaint. The tribunal is to consist of a barrister or solicitor of ten years standing and two policemen as assessors. The power to constitute the tribunal has been exercised only once and, on that occasion, the High Court found that the tribunal had no inherent powers to subpoena witnesses. For a brief outline of the complaints procedure in Northern Ireland up to 1977, see Ivan Topping The Police Complaints System in Northern Ireland The Police Journal LX 3 (1987) 252 at 252-254.

19. This has been particularly true in Britain. Even when an independent element was first introduced into the procedure the relevant legislation accepted the principles, propounded in 1973 by the working group on the handling of complaints against the police, that: 1. Complaints investigations must not be taken out of the hands of the police; 2. the chief officer's responsibility for discipline should not be undermined; and 3. a police officer should not be put in jeopardy twice in respect of the same complaint. For an individual example of the power of the police lobby in Britain, see R. Mark In the Office of Constable (London: Collins, 1978) at pp. 202-211; for New York see, D. Abbot, L. Gold, E. Rogowsky

Police, Politics and Race: The New York City Referendum on Civilian Review (Boston: Harvard University Press, 1969); W.H. Hewitt New York City Civilian Complaint Review Board Struggle Police 11, 5 (1967); 11, 6 (1967); 12, 1 (1967). The ICAP estimates that only about 1% of all American police departments' internal affairs bureaux are scrutinized by a civilian review board. Kevin Krajick suggests that this is a reflection of police success in campaigning against them. Police Magazine (1980) at 8-12.

20. The statistics reveal an inexorable rise from 1969 to 1977. The figures for complaints pending each year are as follows: 11,814; 12,044; 12,271; 15,543; 16,155; 17,454; 19,205; 22,738; 27,450.

21. The fact that the Royal Commission on Police Powers and Procedures in 1929 found it necessary to consider (and reject) the option of the DPP investigating complaints against the police using his own staff suggests that the case for an independent input into the handling of citizen complaints had become an issue even then. (It is also worth noting that this Commission officially endorsed the practice of all non-criminal complaints being handled as internal police disciplinary matters with appropriate steps being taken to respect the complainant's interest in the matter). It was not until the report of the Willink Commission in 1964, however, with the

dissenting opinion of three members who advocated a totally independent procedure based on a Scandinavian style ombudsman that the debate really took off.

22. See, A. Gross and A. Reitman **Police Power and Citizen's Rights: The Case for an Independent Police Review Board** (New York: ACLU, 1967); D.H. Bayley **Accountability and Control of the Police: Lessons for Britain** (Paper presented at the 15th Cropwood Conference on future of policing, 1982).

23. It would seem that this argument took a firm grip in Britain subsequent to the publication of the Willink Commission report and the enactment of many of its proposals into law by the Police Act 1964. Prior to the 1st. April, 1965, when the new disciplinary regulations come into effect, the chief constable was recognised as the disciplinary authority in a county police force, but with respect to a borough police force it was the watch committee. In the LMP it was more complicated again. There the Deputy Commissioner was responsible for internal discipline while the Commissioner was responsible for criminal matters involving police officers. The Willink Commission came down heavily in favour of vesting disciplinary authority in the chief officer. This was accepted and implemented by the 1964 Act. When the question of introducing an independent element into the handling of citizen complaints was considered by the working party for England and Wales the chief officer's

responsibility for discipline was viewed as sacrosanct; see Report of Working Group on the Handling of Complaints Against the Police (London: HMSO Cmnd. 5582) at para.14. See also the Report of the Working Party for Northern Ireland (London: HMSO Cmnd. 6475) at para. 22. For a similar attitude in the USA see, J.J. Fyfe, Police Management Today: Issues and Case Studies (International City Management Association, 1985) at pp. 77-78.

24. See R. Mark, op. cit. at pp. 212-214.

25. O.W. Wilson summed up this view when he said:

> A review board in this city would destroy discipline in the Chicago police department. If we would have a civilian review board, it would create a situation where I, as head of the police department, would be confronted by an adversary group, which the entire department would tend to unite against. Therefore, if we had a civilian review board, my discipline would be less effective than it is today".

(Quoted in G.F. Stowell Civilian Review Boards Police Chief April 1977, 63 at 64.

26. This attitude is implicit in Mark's attitude in R. Mark op. cit. at pp. 207 and 215. See also, Baldwin and McKinsey Police Powers and Politics (London: Quartet Books, 1982); W.A. Geller: Police Misconduct: Scope of the Problem and Remedies ABA Research Reporter (1983) 2.

27. In Mark's case rooting out police corruption was one of the primary objectives of his police leadership, see T. Jefferson and R. Grimshaw Controlling the

Constable: Police Accountability in England and Wales (London: Cobden Trust, 1984) at pp. 71-72.

28. Gross and Reitman op. cit.

29. See, for example, D.J. Smith and J. Gray Police and People in London IV: The Police in Action (London: Policy Studies Institute, 1983) at pp.71-71; W. Gellhorn Police Review Boards--Hoax or Hope? Columbia Univeristy Forum Summer (1966) 1-7.

30. D.G. Epstein The Complaint: Advisory Reflections to the Law Enforcement Agency Head Police Chief May (1982) 58-60; R.R. Bennett and R.S. Corrigan: Police Occupational Solidarity: Probing a Determinant in the Deterioration of Police Citizen Relations Journal of Criminal Justice 8, 2 at 11 et seq.

31. P. Hain, I. Humphrey and B. Rose-Smith Policing the Police vol.1 (London: Platform Books, 1979) at pp. 46 & 52. See also, R. Mark op. cit. at p.210; and G.F. Stowell op. cit. at pp.63-65.

32. R. Weitzer Accountability and Complaints against the Police in Northern Ireland Police Studies 9 (1986) 99 at 105-106.

33. On the question of police work being highly complex see E. Cray The Enemy in the Streets (1972) for a view that it is mostly common sense or the application of administrative procedures. On the question of police morale being undermined by the introduction of an independent element in the complaints procedure see Beral and Sisk op. cit. at 517 for a view that this

was not the case with the police advisory board in Philadelphia.

34. In England and Wales, for example, out of a total of 1631 complaints in 1982 only 301 came from citizens, Home Office White Paper Police Complaints and Discipline Procedures (London: HMSO Cmnd. 9072, 1983) at para. 39.

35. For a discussion on the differing perspectives of the police and the citizen with respect to the significance of a citizen's complaint, see J.R. Hudson Organisational Aspects of the Internal and External Review of the Police Journal of Criminal law, Criminology and Police Science 63 (1972) 427-433.

36. Thousands of pages have been written both in Britain and abroad on the need for an independent input in the handling of complaints against the police. The following is a small selection of material arguing the need for a substantially independent procedure: M. Jones The Police and the Citizen (London: NCCL, 1969); Police Monitoring and Research Group Police Complaints: A Fresh Approach (London: London Strategic Policy Unit, Briefing Paper No.4, 1987); Gross and Reitman op. cit.; Beral and Sisk op. cit.; Littlejohn Civil Liability and the Police Officer: The Need for New Deterrents to Police Misconduct University of Detroit Journal of Urban Law 58 (1981) 365.

37. Appendix 3 to the Report of the Working Party for Northern Ireland op. cit. reveals that in 1972 850

citizen complaints were lodged against the RUC. Of these 52 were substantiated, 272 were referred to the DPP and only 7 resulted in prosecution. Equivalent figures for 1973 were: 765, 51, 322 and 6; for 1974: 823, 61, 348 and 9. For similar statistics for Britain in 1982 see appendix C of the Home Office White Paper on Police Complaints and Discipline Procedures op. cit.

38. O. Kerner Report of the National Advisory Commission on Civil Disorders (Washington D.C.: U.S. Government, 1968).

39. The American literature reveals not only that distrust of the police is stronger among minority communities but also that much of the distrust is fuelled by a lack of confidence in the police investigation of complaints against themselves; see O. Kerner op. cit.; E. Cray op. cit.; P. Chevigny Police Power: Police Abuses in New York City (New York: Pantheon, 1969); Gross & Reitman op. cit.; Gellhorn op. cit.; and Littlejohn op. cit.

40. Even where there is a limited independent element this scepticism is still present. A survey conducted by the NCCL in Britain found that 32% of complainants who were dissatisfied with the outcome of their complaint (75% of the total sample) felt that the independent complaints board assisted the police in covering up wrongdoing by police officers. (NCCL submission to the Royal Commission on Criminal Procedure, at 6,

Police Complaints Procedures, 1979).

41. J.H. Culver: Policing the Police: Problems and Perspectives Journal of Police Science and Administration 3 (1975) 125-135; G. Barton Civilian Review Boards and the Handling of Complaints Against the Police University of Toronto Law Journal 20 (1970) 448-469.

42. When a special procedure was introduced to deal with citizen complaints against the gardai (Garda Siochana (Complaints) Act, 1986) the internal model was retained for complaints emanating from other sources (Garda Siochana (Discipline) Regulations, 1971).

43. Great Britain; Northern Ireland; Ireland; Toronto; New Zealand; Hong Kong; Australian Federal Police and Victoria to name some examples outside the USA.

44. In the Garda Siochana, for example, the internal complaints procedure has been subject to severe criticisms from the lower ranks on account of its perceived unfairness; see M. Flanagan Are Disciplinary Inquiries Kangaroo Courts? Garda News 7,1 (1988) 11-13.

45. See Pennsylvania State Police, Special Order 87-11 (Jan. 15th, 1987); also New Jersey State Police, Internal Investigation Manual (1984).

46. Washington, District of Columbia Law 3-158 (Civilian Complaint Review Board).

47. Police Act 1976, s.1 stipulates that the board shall consist of not less than nine members who may be

either full-time or part-time.

48. Ibid. s.1(2).

49. The Police (Complaints)(General) Regulations 1985, reg. 13.

50. Police Act 1976, s.3.

51. Ibid. ss. 4 and 2(1)b(iii).

52. Ibid. s.8(2).

53. The Board itself grew increasingly uncomfortable with its role; see 1980 Triennial Report op. cit. at paras. 23-43 and 77-120 and 1983 Triennial Report of the Police Complaints Board for England and Wales (London: HMSO, 1983) at paras. 3.3-3.27.

54. See, for example, the white paper describing British government proposals for change, Police Complaints Procedures (London: HMSO Cmnd. 9072, 1983).

55. See P. Hain et al. op. cit. at pp. 60-63; K. Russell, Complaints Against the Police: A Sociological View (Leicester: Milltak, 1976); NCCL Submission on Police Complaints Procedure to the Royal Commission on Criminal Procedure op. cit.

56. Like the Police Complaints Board it was confined to England and Wales. However, a similar body was established in Northern Ireland to replace the complaints board there.

57. Police and Criminal Evidence Act 1984, s.89.

58. Ibid. s.87.

59. Ibid. s.89(4).

60. Ibid. s.89(6).

61. Ibid. s.89(7)-(14).

62. Ibid. s.90(5)-(8).

63. Ibid. s.90(9).

64. For a more detailed account of the complaints procedure and PACE see: J. Baxter, P. Rawlings and J. Williams Police Complaints under PACE Journal of Criminal Law 178; B. Cohen Police Complaints Procedure--Why and for Whom? in Police--The Constitution and the Community (London: Professional Books, 1985) pp. 246-267. R. Clayton and H. Tomlinson claim that the current procedure has not been any more successful in engendering public confidence. This is indicated by the increasing number of civil actions being taken by citizens against the police and the higher rate of success relative to complaints. See Police Misconduct and the Public Policing 3, 4 (1987) 309 at 310.

65. David Brown Civilian Review of Complaints Against the Police: A Survey of the U.S. Literature (London: HMSO Research and Planning Unit, Paper 19, 1983); S. Coxe The Philadelphia Police Advisory Board Law in Transition Quarterly 2 (1965) 179-185; R.J. Bray Philadelphia's Police Advisory Board: New Concepts in Community Relations Villanova Law Review 7 (1962) 657-680; J.R. Hudson Organisational Aspects of Internal and External Review of the Police Journal of Criminal Law, Criminology and Police Science 63 (1972) 427-433; J.R. Hudson The Dynamics of Their Relationship in a

Changing Society in J.D. Lohman and G.E. Misner The Police and the Community (1966) pp. 205-284; S. Coxe Police Advisory Board: The Philadelphia Story Connecticut Bar Journal 35 (1961) 138-150; H. Beral and M.Sisk The Administration of Complaints by Civilians Against the Police Harvard Law Review 77 (1964) 408-519; J.R. Hudson The Civilian Review Board Issue as Illuminated by the Philadelphia Experience Criminolgica 6 (1968) 16-29.

66. President's Commission on Law Enforcement and the Administration of Justice The Police: The Challenge of Crime in a Free Society (Washington D.C.: U.S. Government Printing Office, 1967).

67. D. Brown Civilian Review of Complaints Against the Police: A Survey of the U.S. Literature (London: HMSO Research and Planning Unit, Paper 19 1983).

68. That was the experience of both Philadelphia and New York although the latter has since reverted back to a form of civilian review, see D. Brown op. cit. The Presidents Commission on Law Enforcement and Administration of Justice favoured an internal procedure, see: The Challenge of Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice (Washington D.C.: Goverment Printing Office, 1967) at p.103.

69. Metropolitan Toronto Police Force Complaints Project Act, 1981. The experiment was made permanent by the Metropolitan Toronto Police Force Complaints Act,

1984. For a summary of its contents and an early assessment of its operation see, A. Goldsmith and S. Farson Complaints Against the Police in Canada: A New Approach Criminal Law Review (1987) 615-623.

70. (1981) Reform 50. Australian Federal Police (Amendment) Act 1981 and Complaints (Australian Federal Police) Act, 1981.

71. For a summary of the weaknesses in American experiments with citizen complaints review boards see R. Goldman and S. Puro Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct Hastings Constitutional Law Quarterly 15, 1 (1987) 45-80 at 60. The authors discuss the potential of a decertification procedure to overcome many of the weaknesses inherent in the traditional remedies for police misconduct. Decertification would require the establishment of a State board with the power to set minimum standards for law enforcement personnel. Its potential is premised on the fact that before a department could employ an individual as a law enforcement officer he would have to satisfy these minimum standards. A certificate or licence of competence could be withdrawn or suspended temporarily or permanently if the officer engaged in certain forms of misconduct. The board would have the responsibility for investigating such allegations and for deciding whether or not an individual should be decertified. Among the attractions attributed to this

approach over the traditional remedies is the fact that the procedure is in the hands of a body which is concerned exclusively with professional standards and is independent of all police departments in the country. As such, it should be free of suspected bias on the part of citizen or police. Furthermore, since the object of the investigation is to assess whether an officer is maintaining the minimum standards expected of him, as opposed to whether he is guilty of a criminal or disciplinary offence the procedure can be less expensive and free from many of the legal formalities that encumber the traditional procedures. However, the authors' study of Florida reveals that the decertification process does not appear to be any more successful in coping with the sort of citizen complaints that strike at the very heart of public confidence in the police. In any case, the decertification approach has little relevance to Ireland where there is only one police force for which standards are set nationally. Failure to live up to these can result in suspension or dismissal under the traditional procedure. The question of decertification, therefore, resolves itself to the basic issue of what form the investigative and adjudicative procedures should take.

72. All these examples are taken from the schedule to the Garda Siochana (Discipline) Regulations, 1971. Almost identical provisions can be found for police forces in

England and Wales in the first schedule to the Police (Discipline) Regulations 1965.

73. These example are also taken from the schedule to the Garda Siochana (Discipline) Regulations, 1971 but they are common to British police forces. One offence that seems to be peculiar to the Irish police is identifying actively or publicly with a political party.

74. For examples in other situations see: Police Complaints Board for England and Wales Triennial Review Report 1980 op. cit. at paras. 21 and 48, and Triennial Review Report 1983 op. cit. at para. 5.3.

75. See Hudson in Law and Contemporary Problems op. cit.

76. Ben Whitaker The Police in Society (London: Eyre Methuen, 1979) Ch. 6; also R.R. Bennett and R.S. Corrigan op. cit.; D.J. Smith and J. Gray Vol. 4 op. cit.

77. Garda Siochana (Complaints) Act, 1986 4th schedule para. 4(a).

78. This has been in the Garda Siochana discipline code since 1924; see Garda Siochana (Designations, Appointments and Discipline) Regulations, 1924 reg. 8(1). It is now found in the Garda Siochana (Complaints) Act, 1986 4th schedule, para. 8.

79. For a useful illustration of what is intended here see Philadelphia Police Study Task Force Philadelphia and Its' Police: Toward a New Partnership (1987); also National Advisory Commission on Criminal Justice

Standards and Goals Report of Task Force on the Police, Standard 19.1. (U.S. Government, Washington D.C.).

80. See, Philadelphia Police Study Task Force op. cit. at pp. 140-148 for how this can be applied to police corruption and the use of minimum force.

81. Garda Siochana (Discipline) Regulations, 1971 reg. 8(1) reads: "... where it appears that there may have been a breach of discipline the matter shall be investigated by an officer who is in these regulations referred to as an investigation officer". See also, The Police (Discipline) Regulations 1965 (England and Wales) reg. 2(1).

82. See later under "unmeritorious complaints".

83. In metropolitan Toronto between 1981-1984 locus standi to complain was extended to persons who read about or viewed an incident in the media. Since 1984 such third parties can complain only if they were involved in the incident (that includes eye witnesses); see A. Goldsmith and S. Farson op. cit. at 620.

84. The Australian Law Reform Commission (No. 9) Complaints Against the Police--Supplementary Report.

85. Garda Siochana (Complaints) Act, 1986 s.4(1)a specifically permits a complainant to lodge his complaint with the independent complaints board. In England and Wales, although there is no specific provision to this effect, The Police (Complaints)(General) Regulations 1985 reg. 3 implies

that a complainant can channel his complaint through the independent complaints authority.

86. In the LMP Force, for example, the Deputy Commissioner is officially recognised as head of discipline while in the provincial forces it is normal practice to delegate this responsibility to deputy chief constables. Authority for doing this is to be found in The Police (Complaints) (General) Regulations 1985 reg. 13.

87. See, for example, Garda Siochana (Complaints) Act, 1986 s.6(1); Police and Criminal Evidence Act 1984 s.85(3). In American police forces the complaints machinery is usually framed in departmental regulations as opposed to law. Nevertheless it would appear that in a large majority of forces these regulations specifically require that all formal complaints be investigated, see Beral and Sisk op. cit. at p.502.

88. In all cases where the accused officer denies the substance of the complaint the Irish board and its counterpart for England and Wales will see the investigation report.

89. See later at 4b.

90. See, for example, R Mark Policing a Perplexed Society (London: Allen and Unwin, 1977) at pp. 49-50.

91. Home Office White Paper on Complaints and Discipline Procedures op.cit. at para. 7.

92. The Times 8th. April, 1981.

93. A MORI opinion poll commissioned in February 1984 by the Police Federation for England and Wales revealed that 66% preferred that complaints by the public about the conduct of police officers should be dealt with by someone other than the police rather than the police themselves. The poll also showed that 50% would be more likely to complain if a complaint was handled by some other body. (Public attitudes towards police complaints procedures, MORI 1984). On the latter point see also J.S. Campbell et al. op. cit.

94. The following are examples of police departments which rely either wholly or partly on independent investigation: Washington D.C., see Dawning of a New Day: CCRB Annual Report 1987 (Washington D.C.: Government of District of Columbia, 1988); New York, see New York CCRB Annual Report 1987 at p.17; Detroit, see E. Littlejohn The Civilian Police Commission: A Deterrent of Police Misconduct Journal of Urban Law 59 (1981) 5-62; Berkeley, see A. Grant Complaints Against the Police: The North American Experience Criminal Law Review (1976) 338-343; Chicago, see S.T. Letman Chicago's Answer to Police Brutality: The Office of Professional Standards Police Chief 1 (1980) 16-17; S.T. Letman The Office of Professional Standards: Six Years Later Police Chief 3 (1981) 44-46; Brent Redress of Alleged Police Misconduct: A New Approach to Citizen Complaints and Police Disciplinary Procedure University of San Francisco Law Review 11 (1977) 587

at 606; B. Loveday A Review of Civilian Investigation in Three American Police Departments Policing 4, 3 (1988); Toronto, see A. Goldsmith and S. Farson op. cit.; and Victoria, see W.J. Horman Victoria Police Internal Investigation Department in Government Ilegality ed. by P. Grabosky (Austrialian Institute of Criminology, Seminar Proceedings No. 17, 1986).

95. For some American police departments, police lobbying of government and action in the courts even succeeded in removing civilian oversight of police investigation. The cause celebre was Philadelphia where Mayor Goode's "Christmas present" to the police department was the abolition of the civilian review board; see generally D. Brown op. cit. at pp. 6-19. In Britain and Ireland it is looking increasingly likely that opposition is confined to government and top police management. In November 1981 the Police Federation and the Chief Superintendents Association for England and Wales in a major policy change towards the investigation of complaints announced that both bodies were now in favour of one totally independent investigatory body. It is not clear, however, just how significant a change this is. The Police Federation clarified their policy to the Home Affairs Committee (1981-82) to relate only to disciplinary complaints and not criminal offences. For a clarification of the Police Federation view see, Police Review 22.7.88. It is also worth taking stock

of the small but growing number of chief constables in Britain who have accepted that independent investigation may be necessary to satisfy public opinion, see Guardian 19.10.811.

96. See: Police Complaints Board for England and Wales Triennial Review Report 1980 op. cit. at paras. 65-67; G. Bilkey The New Zealand System for Dealing with Complaints Against the Police: A Comparative Evaluation Auckland University Law Review (1981) 151-169 at 161.

97. See, for example, Police Complaints Board for England and Wales Triennial Review Report 1980 op. cit. at paras. 65-67.

98. See Mark op. cit. at pp. 206-207 and 215-216.

99. There have been a number of highly publicised cases in Northern Ireland and Britain where police investigators have been frustrated by a "wall of silence" among police ranks in their attempts to get to the bottom of serious allegations. In the "Rafferty" case in Northern Ireland the "wall of silence" went so far as officers refusing to give evidence to an independent tribunal set up by the Police Authority for Northern Ireland under s.13(2) of the Police Act (Northern Ireland) 1970. The cause celebre was the "Stalker" affair where the deputy chief constable for Greater Manchester felt that he was being frustrated by senior officers all the way up to the chief constable of the RUC in the course of his

inquiry into a number of deaths at the hands of the RUC. (See, J. Stalker Stalker (Harmondsworth: Penguin Books, 1988). In Britain the failure of the Sheffield police to investigate satisfactorily the conduct of their own officers in the Sheffield Rhino whip affair was partly responsible for the setting up of the Royal Commission on the Police which reported in 1962. This was followed in the seventies by the disappointing failure of the Operation Countryman investigation into corruption in the London Metropolitan police. More recently there was the case of the five London schoolboys who were severely beaten up in an unprovoked attack in 1983 by officers from a district service unit van. There were only three vans in the area at the time, but the DPP decided against prosecution and the independent police complaints authority decided that no disciplinary action could be taken since all the officers involved and all the police witnesses hid behind a wall of silence. Commissioner Newman set up a confidential telephone hotline for information and the DPP promised immunity for officers giving information where they had witnessed but not taken part in the assault. Less than six weeks later five officers had been charged with offences including assault occasioning actual bodily harm and conspiracy to pervert the course of justice. (They came to trial in 1987). Since 1989 there has been a startling series of revelations of

police misconduct and corruption which had gone undetected in some British police forces for many years. Examples include: the release, on appeal, of the "Guildford Four" who had been convicted in 1974 on the bases of confessions which, fifteen years later, were held to be unsafe; and the disbandment of the entire serious crimes squad of the West Midlands police on suspicion of falsifying evidence in cases going back at least to April 1984. Other British police forces investigated for systematic malpractice within their ranks were: Greater Manchester, South Yorkshire, Essex, London Metropolitan, Surrey and Kent.

100. See, for example, the attitude of a uniformed sergeant in the LMP in a conversation with a researcher from the Policy Studies Institute in Police and People in London Vol. 4 op. cit. at pp. 71-72.

101. This is already the case in many American police forces. However, it has not been developed there to the same extent proposed here. Generally, it takes the form of making it a simple disciplinary offence for the member to refuse to co-operate. In practice it seems that members get around this inadequate provision by denying that they were guilty of the conduct alleged or that they did not see any other member engaging in the conduct alleged. That is accepted as co-operation and is sufficient to avoid the disciplinary penalty (Washington D.C. Metropolitan

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police department is an exception. It prescribes that a suspect member "may be disciplined if he refuses to answer fully and truthfully, "General order No. 201.26 and 1202.1). A more sophisticated version has been introduced in Ireland by the Garda Siochana (Complaints) Act, 1986 s.7(8). It stipulates that where the independent review board has received an investigation report into a complaint which concerns conduct in the exercise or purported exercise of a member's functions or powers, and it appears that in the course of the investigation the member has refused to answer a question, furnish information or produce documents or things relevant to the investigation the Board may give a direction to the member requiring him to answer the question etc. A direction can be given to any other member to the same effect. Failure to comply is a disciplinary offence in itself, although evidence so produced cannot be used against the member in any proceedings other than disciplinary proceedings.

102. See the response of the GRA and AGSI to proposals in the 1986 Act to impose an obligation on suspect members to answer questions; Garda News 6, 10 (1987-88) 12.

103. American law distinguishes between the rights of an individual as the suspect of an internal, disciplinary inquiry by his employer, and as the suspect in a criminal investigation; see J.R. Davis Interview of

Public Employees Regarding Criminal Misconduct Regulation: Constitutional Considerations, Pt.1 FBI Law Enforcement Bulletin (1980) 26-31. This also deals with the difficulties that can arise when the same agency is vested with the responsibility for investigating criminal and disciplinary offences committed by personnel in the course of their duties, and how these can be overcome.

104. H. Street Freedom, The Individual and the Law (London: Pelican Books, 1982) at p. 12.

105. K. Lidstone Human Rights in the English Criminal Trial in Human Rights in Criminal Procedure: A Comparative Study ed. by J.A. Andrews (London: Martinus Nijhoff, 1982) at pp. 87-92; See also A.V. Dicey Law of the Constitution (London: Macmillan, 1959) at pp. 206-237.

106. See, for example, Criminal Justice Act, 1984 ss. 15, 16 & 20.

107. A similar provision already applies to police forces in Ireland, England and Wales; see Garda Siochana (Complaints) Act, 1986 s.4(5), and Police and Criminal Evidence Act 1984 s.84(1). In Metropolitan Toronto the person in charge of the police station must take "all reasonable steps to ensure that all evidence is gathered that may be lost if not secured immediately..." (Metropolitan Toronto Police Force Complaints Act 1984 s.6(3).

108. In Metropolitan Toronto the independent police complaints commissioner may enter police stations and

examine documents and items pertinent to the complaint and, if considered necessary, remove such materials from the police station when he has reasonable grounds to believe that it is necessary to do so in furtherance of the investigation of certain complaints against the police.

109. L.H. Leigh Police Powers in England and Wales 2nd ed. (London: Butterworths, 1975) at pp. 29-30.

110. See footnote 37.

111. This approach is adopted by a number of American police departments.

112. The office of DPP was established in Ireland by the Prosecution of Offences Act, 1974 primarily to discharge the functions of the Attorney-General with respect to criminal prosecutions.

113. See, for example, Garda Siochana (Discipline) Regulations, 1971, regs. 8-13; The Police (Discipline) Regulations 1965 (England and Wales) regs. 2-4.

114. The old Police Complaints Boards for England, Wales and Northern Ireland adopted the timid approach; see Police Act 1976 (England and Wales) s.3, and The Police (Northern Ireland) Order 1977, art.6. Although this arrangement has been strengthened under the new PCA's the initial decision whether or not to charge still lies with the police; see Police and Criminal Evidence Act 1984 (England and Wales) s.93 and The Police (Northern Ireland) Order 1987 art.13. This

contrasts with the Republic of Ireland where the Board has primary responsibility for preferring charges in those complaints which come within its remit; see Garda Siochana (Complaints) Act, 1986 s.7. In the Toronto Municipal Police the Chief of Police is primarily responsible for deciding on charges but in those cases where the complainant has expressed dissatisfaction with how his complaint has been handled the Police Complaints Commissioner can initiate a full hearing on the matter before the Board; see Metropolitan Police Force Complaints Project Act, 1981 (Ontario) s. 15(2).

115. It would appear that under the old, internal, disciplinary model in England and Wales (pre 1977) about 90% of all complaints were found "unsubstantiated" after investigation; see K. Russell Complaints Against the Police: A Sociological View (Milltak, 1985) p. 61. See also Police Complaints Board for England and Wales Triennial Review Report 1980 op. cit. at paras. 35-38.

116. The Police Complaints Board for England and Wales, Triennial Review Report 1980 op. cit. reveals that between 1st. Jan. 1978 to 31st. Mar. 1980 it dealt with 31,252 complaints. Of these a mere 9% resulted in disciplinary charges (less than 1%) or advice to the officer or officers involved (just over 8%). The London Strategic Policy Unit reported in 1987 that the board disagreed with the chief officer's decision on

only 210 occasions out of more than 50,000 cases from 1977-1985; see Briefing paper No. 4 op. cit.

117. An example of a public lack of confidence in some quarters in the old complaints boards for England and Wales is presented by the case of the death of a black woman following a raid on her home at Broadwater Farm by the police in 1986. Rather than relying on the Complaints Board to see that the police investigation was full and fair, local interested parties established their own inquiry under the chairmanship of Lord Gifford Q.C. See L.H. Leigh The Police Act 1976 British Journal of Law and Society 4 (1975) 115 for defects in the Board which made it unlikely that the Board would achieve its objectives.

118. This is currently the case in England and Wales, Northern Ireland, Ireland and in most of the American police departments which have citizen complaints review boards.

119. R. Mark, op. cit. at pp. 212-213.

120. Virtually all the traditional supervisory boards rely on a chief executive with the necessary expertise to perform this task. In some cases he is even provided for in the legislation; see, for example, Garda Siochana (Complaints) Act, 1986 1st. schedule para. 4(2).

121. For example, Toronto Metropolitan Police, Australian Federal Police, Victoria Police.

122. D.C. Rowatt ed. The Ombudsman (London: George Allen &

Unwin, 1965); for an account of the local government ombudsman in England and Wales see. N. Lewis et al. op. cit. at pp. 19-60.

123. See F. Stacey **Ombudsmen Compared** (Oxford: Clarendon Press, 1978).

124. In Ireland the decision whether or not disciplinary charges should be preferred in an admissible citizen's complaint already rests in independent hands; see Garda Siochana (Complaints) Act, 1986, s.7.

125. J.J. Fyfe op.cit. at p. 81.

126. The Police Executive Research Forum has suggested that there should be an input from the complaints process into the recruitment, training and policy-making processes. In particular, it advises that where the complaints process reveals organisational conditions which foster or encourage unsatisfactory conduct there should be some mechanism through which they can be addressed. It may mean alterations in recruitment, training or operational policies. See **Police Agency Handling of Citizen Complaints: A Model Policy Statement in Police Management Today: Issues and Case Studies** op.cit. at pp. 88-91.

127. "Unsubstantiated" is a term used to denote a complaint in which there is insufficient evidence to determine whether it is sustained or unfounded. If a complaint is unfounded it means that the authorities have not accepted the complainant's account.

128. See J.J. Fyfe op. cit. at pp. 82-83.

129. See, for example, the approach of the New York Civilian Complaint Review Board in their Annual Report for 1987 at pp. 14-15. See also, N. Lewis et al. op.cit. pp. 220-221.

130. The Toronto police complaints commissioner performs a similar function. When he forms the view, following a review, that a police practice or procedure requires amendment he is obliged to report his opinion and recommendation to the Toronto police authority, the Chief of Police and the police association. Similarly, where he believes a practice, procedure or law affecting the resolution or prevention of complaints should be altered or amended, he is obliged to forward his opinion and recommendations. The police authority is required to forward the commissioners report, together with its comments and any from the chief or the police association, to the attorney-general, solicitor-general and the commissioner. See A. Goldsmith and S. Farson op. cit. at p. 621. A variation on this is provided by the Victoria police complaints authority. Its functions include performing an analysis and appraisal of groups of police internal investigations, selected on the basis of such factors as: substance of allegation, neighbourhood and characteristics of the complainant. It will report on these to the chief of police in the expectation that such reports will advance improvements in policing. See W.J. Horman op. cit.

131. See, for example, Garda Siochana (Discipline) Regulations, 1971 regs. 14-16; The Police (Discipline) Regulations 1965 (England and Wales) regs. 8-11.

132. It can be argued, of course, that the converse is also true; i.e. a police tribunal will be inclined to find a member guilty in certain situations where a lay tribunal would see no real harm in the member's conduct. The possibility that such individuals may "get-off" if they appear before a lay tribunal can hardly undermine the effectiveness of accountability since their behaviour is not viewed as unacceptable by the public in the first place. If their behaviour does pose a disciplinary problem there are always informal means available to the chief officer to take action against them.

133. R.M. Jackson The Machinery of Justice in England 7th ed. (Cambridge: Cambridge University Press, 1977) at pp. 162-166; see also, G. Williams The Proof of Guilt: A Study of the English Criminal Trial 3rd ed. (London: Stevens & Sons, 1963) at pp. 24-36.

134. Many of these reasons are echoed in the perceived advantages of tribunals over courts in certain contexts; see R.M. Jackson ibid.

135. Clayton and Tomlinson identify the fundamental problem of the British complaints procedure as being its assimilation with criminal proceedings. They argue that the purpose of the complaints procedure should be

to provide swift and effective redress for members of the public affected by police misconduct, whereas the current British approach produces a cumbersome, quasi-criminal investigation which is most unlikely to discover the true facts of the matter; op. cit. at 311.

136. See generally G. Williams op. cit.

137. For a useful discussion of the issues involved in giving powers of subpoena to a disciplinary tribunal see Report of the Departmental Committee on Powers of Subpoena of Disciplinary Tribunals (London: HMSO Scottish Home Department, 1960). At para. 5 it says:

> ...if parliament has felt it necessary that a disciplinary tribunal should be established then it follows that, if justice is to be done and seen to be done in individual cases, it must have the power to compel the production of all relevant witnesses and evidence brought before it.

It was the lack of such a power which neutralised the tribunal set up by the police authority for Northern Ireland pursuant to s.13(2) of the Police Act (Northern Ireland) 1970 to adjudicate on serious allegations of assault alleged against several members of the RUC; see In re Sterritt and Others (1980) 11 NIJB. By contrast, in Currie v. Chief Constable of Surrey [1982] 1 All E.R. 89 it was held that internal police disciplinary tribunals can subpoena non-police witnesses. It is not unusual for the police complaints authorities in some of the larger police departments in the USA to have such powers; see, for

example, Government of the District of Columbia Handbook for Conducting Administrative Trials and Hearings in the Metropolitan Police Department; New Jersey Statutes Annotated 53: 4-1.

138. County Courts (Northern Ireland) Order 1980, art. 30. See D.S. Greer Small Claims: The Law in Action 2nd ed. (Belfast: SLS, 1982); B. Valentine and T. Glass County Court Procedure in Northern Ireland (Belfast: SLS, 1985) at pp. 195-197.

139. Experience has shown that internal police discipline is likely to treat minor departmental infractions with much greater severity than the abuse of citizen's rights; see R. Goldman and S. Puro op. cit. at p.60.

140. Similar, although not identical arrangements, have been accepted in Northern Ireland since 1970 and in England and Wales since 1976; see Police Act (Northern Ireland) 1970 s.13(2); The Police (Northern Ireland) Order 1977 art.7; The Police (Northern Ireland) Order 1987 art.14; Police Act 1976 (England and Wales) s.4; Police and Criminal Evidence Act 1984 (England and Wales) s.94. Ireland has also adopted a similar arrangement, see Garda Siochana (Complaints) Act, 1986 2nd. schedule.

141. It would, of course, be possible to have decision by majority vote. Formal majority decisions, however, unnecessarily purvey the appearance of friction and dissension in individual cases. It seems preferable to leave the decision to the independent professional

judgement of the lawyer chairman and confine the input of the other two members to being advisory only.

142. The English court of appeal is R. v. Hampshire County Council, ex. p. Ellerton [1985] 1 All E.R. 599 held that the disciplinary tribunal for fire officers was a domestic tribunal and, therefore, the appropriate standard of proof that it should apply was the civil one. In doing so it accepted that the disciplinary procedures for firemen were very similar to those for police officers in England and Wales, and it specifically doubted the dictum of McNeill J. in R. v. Police Complaints Board, ex p. Madden [1983] 2 All E.R. 353 at 371 to the effect that the criminal standard applied in police disciplinary proceedings. Nevertheless, the British Secretary of State, presumably bowing to police pressure, made specific provision for the criminal standard to apply by the Police (Discipline) Regulations 1985 reg. 23(2)b. This is by no means universal however. Trial boards in the District of Columbia, for example, decide on "a preponderance of the evidence", a standard which is equivalent to a balance of the probabilities; Civilian Complaint Review Board Act, 1980 s.4.905(b).

143. There is nothing more disheartening for a genuine complainant who knows he has been the victim of police misconduct only to receive a letter through the post stating curtly that his complaint has been found to be unsubstantiated. See, Police Complaints Board for

England and Wales Annual Report 1978 (London: HMSO, 1979) at para.70.

144. Garda Siochana (Discipline) Regulations, 1971 reg. 9.

145. The Police (Discipline) Regulations 1985 (England and Wales) reg. 7.

146. K. Krajick Police vs Police; No-One Knows Much about Internal Affairs Bureaux so Everyone Distrusts Them Police Magazine (1980) 6-20 at p. 8.

147. Ibid.

148. Garda Siochana (Discipline) Regulation, 1971 reg. 11.

149. The Police (Discipline) Regulations 1985 (England and Wales) reg. 10.

150. Garda Siochana (Complaints) Act, 1986 s.4(4).

151. The Police (Complaints)(General) Regulations 1985 (England and Wales) reg. 9.

152. This would seem to flow from the individual's right to be heard where his civil right are in danger of being infringed.

153. McHugh v Commissioner of the Garda Siochana [1987] ILRM 181; Gallagher v The Revenue Commissioners [1991] ILRM 632.

154. DPP v Healy [1990] ILRM 313.

155. For example, New York City Police Department and District of Columbia Metropolitan Police Department.

156. See J. Hudson Police Review Boards and Police Accountability Law and Contemporary Problems 36 (1971) 515-538; B. Loveday op. cit. at 178-179; P.G. Barton op. cit.

157. This option is used in the New Jersey State Police, among others.

158. In Ireland the officer concerned must apply to the Commissioner for a review of the decision. The Commissioner has a discretion whether or not to refer the matter to the appeal board unless the case was one of dismissal or a reduction in rank, in which case be is under an obligation to refer. See Garda Siochana (Discipline) Regulations, 1971, reg.20.

159. Garda Siochana (Discipline) Regulations, 1971, reg.22(2).

160. Ibid., reg.22(3).

161. The Police (Discipline) Regulations 1985, reg.26(4).

162. Garda Siochana (Discipline) Regulations, 1971, reg.24.

163. The Police (Discipline) Regulations 1985, reg.26(6).

164. Ibid., reg.26(10).

165. Garda Siochana (Discipline) Regulations 1971, reg.28(1)(a).

166. See fn.130.

167. On double jeopardy generally see, M.L. Friedland **Double Jeopardy** (Oxford: Clarendon Press, 1969) at pp. 3-16.

168. This has been the subject of contention in Britain at least since the Home Secretary's circular 63/1977 put a gloss on the interpretation of s.11(1) of the Police Act 1976. Section 11(1) reads:

> where a member of a police force has been acquitted or convicted of a criminal offence he shall not be liable to be charged with any offence against discipline which is in

> substance the same as the offence of which he has been acquitted or convicted.

The relevant part of the Home office circular reads:

> where an allegation against a police officer has first been the subject of criminal investigation and it has been decided after reference to the Director (or otherwise) that criminal proceedings should not be taken, there should normally be no disciplinary proceedings if the evidence required to substantiate a disciplinary charge is the same as that required to substantiate the criminal charge. There will be cases, however, in which disciplinary proceedings would be appropriate... It must not be assumed that when the Director has decided not to institute criminal proceedings this must automatically mean that there should be no disciplinary proceedings.

In practice this guidance was interpreted by chief officers and the Police Complaints Board in Britain as effectively preventing then from proceeding with disciplinary charges where the DPP had decided against prosecution; see the **First Triennial Report of the Police Complaints Board to the Secretary of State for the Home Department** (London: HMSO Cmnd. 7966, 1980) at paras. 98-104; A.E. Greaves **Double Jeopardy and Police Disciplinary Proceedings** Criminal Law Review (1983) 211-222 at 214-216. However, in R. v. Police Complaints Board, ex. p. Madden and Rhone the High Court ruled that it was the duty of both chief officers and the Board to examine afresh the case for disciplinary proceedings, notwithstanding any decision on the criminal aspects. In other words the Home Office guidance was not binding. Indeed, the guidance was amended in 1983 to clarify this point.

169. Of 6,415 complaints of assault submitted to the British DPP between Jan. 1st. 1978 and Mar. 31st. 1980, only 33 resulted in charges; i.e. 0.5% (The Observer 1.2.81).

170. For a discussion of the difficulties involved in trying to ascertain whether justice is being provided for the complainant where the decision to prosecute or prefer disciplinary charges is dispersed among the police, the DPP and an ex post facto review board, see Police Complaints Board for Northern Ireland Annual Report 1978 (London: HMSO, 1979) at paras. 6-13.

171. Section 13(5) of the Police Act (N.I.) 1970 obliges the chief constable to refer all investigation reports on complaints against the police to the DPP unless satisfied that no criminal offence has been committed. In addition, the DPP has exercised his statutory power under art.6(3)b of the Prosecution of Offences (N.I) Order 1972 to direct the chief constable to send him reports of investigations of all complaints in which there is an allegation of a criminal offence.

172. Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland (London: HMSO Cmnd.7497, 1979) at para. 364-365.

173. The role of the RUC in: policing civil rights demonstrations in the late sixties and early seventies, the interrogation of detainees in the early seventies, the interrogation of arrested suspects in the mid to late seventies, the use of plastic bullets

in the late seventies and early eighties, the use of supergrasses in the mid-eighties, the shooting dead of suspects in the mid-eighties and the leaking of confidential intelligence information to loyalist paramilitaries have been the subject of government sponsored and independent inquiries.

174. The classic example of this is the case of the five London schoolboys recounted earlier at fn.99.

175. A classic example of this situation is provided by the manner in which the New York Police Department responded to a public demonstration by groups within the neighbourhoods of Tompkins Square Park, who were protesting at the police decision to enforce the Park Department Regulations on Park closing time. The result was violent confrontation between the police and protestors in which some police personnel used excessive force against protestors and innocent bystanders alike. Although a disciplinary investigation by the CCRB resulted in some disciplinary charges against some police officers, it failed to get to the truth of most allegations, largely due to police obstructionism. At page 13 of its report it was forced to conclude:

> Given the number of substantiated allegations the Board finds it inconceivable that many of the officers present did not witness these acts of misconduct. The witnessing officers' sworn duty to report such misconduct apparently conflicted with the officers' desire to protect and shield fellow officers from disciplinary actions that could end their careers

> and subject them to both criminal charges and civil actions.

At p.14 it goes on to say:

> In light of the failure of members of the police service to cooperate in attempts to identify offending officers, the Board recommends that the Department develop new procedures that would allow officers at major demonstrations to be more easily identified.

Report of the Civilian Complaints Review Board on the Disposition of Civilian Complaints Arising from Police Department Action Occuring at Tompkins Square Park on August 6-7, 1988 (New York: CCRB, April 1989).

176. **For a description of the various forms of corruption that police officers can get caught up in see City of New York Police Department Integrity Control: Anti-Corruption Manual 1989.**

177. **See J. Brown Policing by Multi-Racial Consent: The Handsworth Experience (London: Bedford Square Press, 1982).**

178. **In re Haughey [1971] IR 217.**

179. **See S.A. De Smith, op. cit. at pp. 155-209.**

180. **In the Kerry Babies Tribunal, for example, all the key witnesses were legally represented. The inquiry sat for 83 days between 7 January 1985 and 14 June 1985. It heard from 109 witnesses and more than 61,000 questions were put. The bill was estimated at £1,645,000, of which £1,020,674 was accounted for by legal expenses.**

181. **The usual practice is to invite a senior officer from**

another United Kingdom force to lead the inquiry. The most striking example of recent years is the Stalker-Sampson investigation into the RUC. Ongoing examples at the time of writing include the Stevens inquiry into the RUC and the West Yorkshire police inquiry into the West Midlands police.

Ch.9 IRISH COMPLAINTS PROCEDURE

1. "Citizens" is used here in a non-technical sense to refer generally to members of the public.
2. Where a member of the public complains about the conduct of a garda he is presumed to want his complaint considered by the Complaints Board unless he stipulates otherwise in writing.; Garda Siochana (Complaints) Act, 1986 s.4(1)b.
3. See, for example, NESC The Criminal Justice System: Policy and Performance (Dublin: NESC Report No.77, 1984) at ch.4.
4. See, for example, P McLaughlin Legal Constraints on Criminal Investigation Irish Jurist xiv (1981) 217.
5. Criminal Justice Act, 1984 s.4.
6. Ibid. s.6.
7. Ibid. s.15.
8. Ibid. s.16.
9. Ibid. s.19.
10. Ibid. s.18.
11. See, D.P.J. Walsh The Impact of Antisubversive Laws on Police Powers and Practices in Ireland: The Silent

Erosion of Individual Freedom Temple Law Review 62,4 (1989) 1099.

12. In order to get the Bill through the Minister had to agree to bring forward measures for the protection of suspects in police custody and for the investigation of citizens' complaints against the Garda.

13. See Report of an Amnesty International Mission to Ireland in June 1977.

14. See, for example, the saga of the Sallins' mail train robbery; J Joyce and P Murtagh Blind Justice (Dublin: Poolbeg Press, 1984); D.P.J. Walsh Miscarriages of Justice in the Republic of Ireland in C Walker ed. Justice in Error (London: Blackstone Press, 1992).

15. Report of the Committee to Recommend Safeguards for Persons in Custody and for Members of the Garda Siochana (Dublin: Government Publications, 1978).

16. Report of the Tribunal of Inquiry into "The Kerry Babies Case" (Dublin: Government Publications, 1985).

17. The Shercock case arose out of the death of a man while being interviewed on suspicion of fraud in Shercock Garda station Co. Cavan. The deceased was a small, poorly-built man who suffered from a serious heart condition. The post mortem revealed that he had been the victim of serious assault resulting in injuries to many parts of his body shortly before his death. A sergeant was tried for and acquitted of false imprisonment and assault. During his trial he alleged that another garda had assaulted the deceased. This

garda was subsequently charged with unlawful killing, assault occasioning grievious and actual bodily harm and false imprisonment but none of the charges succeeded. In the course of his trial he alleged that the sergeant had been the perpetrator of a violent attack on the deceased. This conflicted with his formal statement in the course of the investigation in which he had claimed that nothing had happened to the deceased during his interview in the station. The garda was summarily dismissed from the force by the Commissioner in the exercise of his disciplinary power. It would appear, however, that no further disciplinary action was taken in this case. See State (Jordan) v Commissioner of the Garda Siochana [1987] ILRM 107.

18. The Bunratty case arose out of an incident at a private function at Bunratty castle Co. Clare in which a chef was killed. The evidence suggested that he may have been killed by a car owned by one of a number of gardai who were at the function. No charges were preferred. Despite repeated requests and allegations of a cover up in the Dail the Minister for Justice refused to establish an inquiry into the death.

19. In particular, the position and function of the chief executive can be identified in the Canadian, New Zealand and some Australian procedures.

20. This is a specific offence in the 1924 Garda Disciplinary Code.

21. Garda Siochana (Complaints) Act, 1986 4th Schedule para 3(a)(ii).
22. Ibid. s.4(1)a.
23. Ibid.
24. Ibid. s.4(2)a.
25. Ibid. s.4(2)b.
26. Ibid. s.4(2)c.
27. If he thinks the circumstances so warrant he can appoint an inspector; ibid. s.6(1)a(ii).
28. Ibid. s.6(1)a.
29. Ibid.
30. Ibid. s.6(3)a. These functions may be delegated to the chief executive; s.6(3)b.
31. Ibid. s.6(3)c.
32. Ibid. s.6(1)c.
33. Ibid. s.6(4).
34. Ibid. s.6(2)a.
35. Ibid. s.6(2)b.
36. A copy must also be sent to the Commissioner; s.6(2)c.
37. Ibid. s.6(4).
38. Ibid. s.6(5)a.
39. Seanad Debates 12 June 1986, col.697.
40. Garda Siochana (Complaints) Act, 1986 s.8.
41. Ibid. s.8(b).
42. Ibid. s.8(d).
43. Police and Criminal Evidence Act 1984 s.89(4).
44. Ibid. s.89(5).
45. Ibid. s.89(10).

46. Seanad Debates 12 June 1986, col.697.

47. Ibid. 25 June 1986, col.1474.

48. Garda Siochana (Complaints) Act, 1986 s.7(9).

49. Ibid.

50. It could be a garda, the chief executive or someone appointed by the chief executive; s.7(9)h.

51. Ibid. s.7(9)c.

52. Ibid. s.7(9)d.

53. Ibid. s.7(9)b.

54. Dail Debates 28 January 1986, col.743.

55. Garda Siochana (Complaints) Act, 1986 s.7(9)c.

56. Ibid. s.7(9)d.

57. Ibid. s.7(9)e.

58. The parlimentary debates are ambiguous on the scope of the requirement; see, Dail Debates 28 January, 1986 cols.741-743.

59. Garda Siochana (Complaints) Act, 1986 s.4(5).

60. Ibid.

61. Ibid. s.4(4).

62. Ibid. s.6(1)b.

63. Ibid. s.3 and 1st Schedule para.1(1).

64. Ibid. para.2(1).

65. Ibid. para.2(2).

66. Ibid. para.2(4)a.

67. Ibid. para.2(4)b. If a complaint concerns the conduct of a Deputy or an Assistant Commissioner the Commissioner personally must act on the Board in place of any nominee he may have appointed; para.2(4)d(i).

68. Ibid. para.2(4)c. The most that the government was prepared to say on the matter was that "the people they appoint to the Board are people who will immediately command the respect and confidence of the general public and Garda"; Dail Debates 20 March 1986, col.2503.

69. Garda Siochana (Complaints) Act, 1986 1st Schedule para.3.

70. Seanad Debates 25 June 1986, cols.1467-1468.

71. A tribunal consists of three members, including two from the Board. One of the Board members must be a barrister or solicitor of at least ten years standing; Garda Siochana (Complaints) Act, 1986 s.8 amd 2nd Schedule para.1. In order to ensure fair procedures it is desirable that the Board members sitting in a tribunal should not have participated in the earlier deliberations in the case.

72. Ibid. para.2(3).

73. Ibid. para.2(8).

74. Ibid. para.2(6).

75. Ibid. para.2(7).

76. Ibid. para.1(2).

77. The Minister can curtail the information which the Board may recieve in an investigation where an investigation report may include material which is liable to affect the security of the State or to constitute a serious and unjustifiable infringement of the rights of some other person; s.6(8).

78. Ibid. s.13(2).

79. Ibid. 1st Schedule paras.6(2) and 7.

80. Ibid. para.4.

81. The old Police Complaints Board for Northern Ireland felt it was important to appoint its' own servants.

82. Garda Siochana (Complaints) Act, 1986 1st Schedule para.4(2).

83. Irish Times 16.12.89.

84. Garda Siochana (Complaints) Act, 1986 1st Schedule para.6.

85. Ibid. para.5(1).

86. Ibid. para.5(2).

87. Ibid. para.5(4).

88. Ibid. para.8(1).

89. Ibid. para.9(1).

90. Ibid. s.6(2)b.

91. Ibid. s.6(5)c.

92. Ibid. s.7(3).

93. Ibid. s.4(3)a.

94. Ibid. s.7(4). This is subject to the provision on double-jeopardy in s.7(7) which is discussed later.

95. Ibid. s.7(6)a.

96. Ibid. s.7(5). This is also subject to the provision on double-jeopardy in s.7(7).

97. Ibid. s.7(6)b.

98. Ibid. s.6(7)a.

99. Ibid. s.6(7)b.

100. Ibid. s.7(1).

101. Ibid. s.7(8).

102. Ibid. s.6(6)a.

103. Ibid. s.6(6)b.

104. Ibid. s.6(6)c.

105. Dail Debates 20 March 1986, col.2503.

106. While the British Complaints Authority undoubtedly has a chief executive to head up its' staff it is not established as an office in itself with specific powers and duties under the scheme.

107. The decision to rely on a Board plus a chief executive as opposed to a single individual was not discussed in the parliamentary debates on the legisation. Implicit in the government's presentation of the scheme is their belief that a Board was necessary to hold public confidence. It is possible, however, that it was simply taken straight from the British procedure on which the Irish procedure is closely modelled.

108. Garda Siochana (Complaints) Act, 1986 s.7(3).

109. Ibid. s.6(2)a.

110. Ibid. s.6(4).

111. Ibid. s.7(1).

112. Ibid. s.7(8).

113. Ibid. s.7(9).

114. Ibid. s.6(8).

115. Ibid.

116. Ibid. s.6(6).

117. Seanad Debates 25 June 1986, cols.1435-1436.

118. E Ryan and P Magee The Irish Criminal Process (Dublin:

Mercier Press, 1983) at p.72. In 1990 alone out of a total of 38 public statutes enacted no less than 8 conferred powers to prosecute for summary offences on bodies other than the DPP or the Garda Siochana. They are as follows: (1) Building Control Act, 1990 s.17(5)--Building Control Authority for breaches of the Building Control Regulations within its' own area; (2) Companies Act, 1990 s.240(4)--Minister for Industry and Commerce for an offence under the Act; (3) Health (Nursing Homes) Act, 1990 s.12(1)--Health Board for an offence under the Act committed within its' area; (4) International Carriage of Goods by Road Act, 1990 s.7(3)--Minister for Tourism and Transport for an offence under the Act; (5) Local Government (Water Pollution) (Amendment) Act, 1990--Local Authority for offences in connection with water pollution within its' own area; (6) Pensions Act, 1990 s.3(5)--Pensions Board for an offence under the Act; (7) Unit Trusts Act, 1990 s.18(2)--Central Bank for an offence under the Act; (8) Derelict Sites Act, 1990--Local Authority for an offence under the Act.

119. Ibid. at pp.68-73.

120. The McHugh case commenced with an incident in August 1978 and culminated with a Supreme Court decision in July 1986; McHugh v Commissioner of the Garda Siochana [1987] ILRM 181.

121. Garda Siochana (Complaints) Act, 1986 s.4(b).

122. Ibid. s.5(1)a.

123. Ibid. s.5(3)a.

124. Ibid. s.5(3)b.

125. Ibid. s.5(1)b.

126. Ibid. s.5(6)a.

127. Ibid. s.5(4).

128. Ibid. s.5(2).

129. Ibid. s.5(5).

130. Ibid. s.7(5).

131. Ibid. 2nd Schedule para.1(a).

132. Ibid. para.1(b).

133. Ibid.

134. Ibid. para.1(c).

135. Ibid. para.2.

136. Ibid. para.4(2).

137. Ibid. para.4(1).

138. Ibid. para.8(a).

139. Ibid. para.8(b).

140. Ibid. paras.8(b) and 8(c).

141. Ibid. para.10.

142. Ibid. para.11.

143. Ibid. para.6.

144. Ibid. para.9(1)a.

145. Ibid. para.5.

146. Ibid. para.9(1)b.

147. Ibid. para.12.

148. Ibid. para.12(c).

149. Ibid. para.12(f).

150. Seanad Debates 12 June 1986, col.698.

151. G Hogan and D Morgan Administrative Law in Ireland 2nd ed. (London: Sweet and Maxwell, 1991) at pp 420-439.
152. Garda Siochana (Complaints) Act, 1986 s.9(3).
153. Ibid. s.9(5). The reduction must not exceed four weeks pay in amount; any single deduction must not exceed 10% of pay.
154. Ibid. s.9(4).
155. Police Forces Amalgamation Act, 1925 s.10(4).
156. Garda Siochana (Complaints) Act, 1986 s.9(6)a.
157. Ibid. s.9(6)b.
158. Police Forces Amalgamation Act, 1925 s.10(5).
159. Garda Siochana (Complaints) Act, 1986 s.11(1).
160. Ibid. s.10(1).
161. Ibid. 3rd Schedule para.1(1).
162. Ibid. para.1(2).
163. Ibid. para.1(3).
164. Ibid. para.1(9).
165. Ibid. para.1(10).
166. Ibid. para.1(4).
167. Ibid. para.1(4)c.
168. Ibid. para.3(1).
169. Ibid. para.3(2).
170. Ibid. para.3(3).
171. Ibid. para.2(1).
172. Ibid. para.3(3).
173. Ibid. para.6.
174. Ibid. para.10.
175. Ibid. paras.4,7,8 and 9.

176. Ibid. para.2(2).

177. Ibid. para.5.

178. Ibid. s.11(2)a.

179. Ibid. s.11(2)d.

180. Ibid. s.11(2)c.

181. Ibid. s.11(2)b.

182. Ibid. s.11(3).

183. Ibid. s.11(4).

184. Ibid. s.4(3)a.

185. Under this heading the complaint will be inadmissible even if it has already been lodged and the investigation commenced; s.15(1)b(i).

186. Ibid. s.4(3)a.

187. Ibid. s.4(3)b.

188. Ibid. s.4(3)c.

189. The same result will occur if the Minister acts promptly to nominate a person to hold an inquiry under s.12 of the Dublin Police Act, 1924; s.15(1)a.

190. Ibid. s.15(1)a.

191. Ibid. s.15(2).

192. Ibid. s.7(7)b(ii).

193. Ibid. s.7(8).

194. Ibid. s.6(6)a.

195. Ibid.

196. Ibid. s.6(6)b.

197. Police and Criminal Evidence Act 1984 s.104(1).

198. Walsh J in Attorney-General v O'Brien [1965] IR 142 at pp. 167 and 169.

199. Garda Siochana (Complaints) Act, 1986 s.6(6)a.

200. Op.cit.

201. Irish Times 18.1.90.

202. Ibid.

203. Ibid. 19.1.90.

Ch.10 DEMOCRATIC ACCOUNTABILITY

1. D Held Models of Democracy (Oxford: Polity Press, 1987) at p. 1.
2. Ibid. at ch.1.
3. H.L.A Hart Essays on Bentham (Oxford: Clarendon Press, 1982); J.S. Mill Utilitarianism (London: Longmans, Green Reader and Dyer, 1867).
4. C.B. Macpherson The Life and Times of Liberal Democracy (Oxford: Oxford University Press, 1976) at chs.2 and 3; D Held op.cit. at ch.3.
5. See D Morgan Constitutional Law in Ireland 2nd ed. (Dublin: Roundhall Press, 1990).
6. C.B. Macpherson op.cit. at pp. 86-91; D Held op.cit. at pp. 196-220; C Pateman Participation and Democratic Theory (Cambridge: Cambridge University Press, 1970); R Miliband The State in Capitalist Society (London: Weidenfeld and Nicholson, 1969).
7. M.J.C. Vile Constitutionalism and the Separation of Powers (1967); C Turpin British Government and the Constitution: Text, Cases and Materials (London: Weidenfeld and Nicholson, 1985) at pp. 136-152; B Chubb Cabinet Government in Ireland (Dublin: Institute

of Public Administration, 1974).

8. R Crossman The Diaries of a Cabinet Minister vol.1 (London: Hamilton and Cape, 1977); R Miliband Capitalist Democracy in Britain (Oxford: Oxford University Press, 1982).

9. D Held op.cit. at pp. 254-264; C Macpherson op.cit. at ch.5.

10. Art.15.2.1 Bunreacht na hEireann; Art.12 of the 1922 Constitution.

11. Art.51 of the 1922 Constitution vested the executive authority of the State in the King, exercisable by the Governor-General on the advice of the Executive Council. Now Art.28.2 Bunreacht na hEireann vests it directly in the government.

12. Art.34.1 Bunreacht na hEireann; Art.64 of the 1922 Constitution.

13. For an account of its' history, structure, status and function see D Morgan op.cit. at pp. 64-87.

14. Ibid at pp. 88-93.

15. Under the 1922 Constitution.

16. See D Morgan op.cit. at pp. 46-53.

17. See J.A.G. Griffiths and M Ryle Parliament: Functions, Practice and Procedure (London: Sweet and Maxwell, 1989) at chs.7 and 8; see also the references in D Morgan op.cit at ch.5 fn.68.

18. Art.28.7 Bunreacht na hEireann.

19. Ibid. Art.21.1.1.

20. Ibid. Art.21.1.2.

21. Ibid. Art.21.2.1.

22. Ibid. Art.21.2.2.

23. Provisional Collection of Taxes Act, 1927.

24. D Walsh The Legal and Constitutional Implications of Dail Financial Resolutions Irish Law Times 9,2 (1991) 41.

25. Art.28.4.3 Bunreacht na hEireann.

26. Central Fund (Permanent Provisions) Act, 1965.

27. J Griffiths and M Ryle op.cit. at pp. 23-40.

28. Art.28.4.1-2 Bunreacht na hEireann.

29. J Griffiths and M Ryle op.cit.

30. See, for example, S Lowe The Governance of England (London: Unwin, 1904) at p. 133; Lord Morrison Government and Parliament 3rd ed. (London: Oxford University Press, 1954) at p. 332. The courts often decline to intervened in disputes concerning the exercise of political power on the ground that the appropriate remedy lies in parliament; see J.D.B. Mitchell Public Law [1965] 95 at 100.

31. Gibbs C.J. in the High Court of Australia in Re Toohey, ex parte Northern Land Council 38 (1981) ALR 439 at 457.

32. J Griffiths and M Ryle op.cit. at pp. 297-302.

33. Ibid. at pp. 269-286.

34. See D Morgan op.cit. at pp. 144-152.

35. The first Dail Committee on Crime, Lawlessness and Vandalism was established on the 6th July 1983. It consisted of 15 members of the Dail. Its' terms of

reference were:

> to examine such aspects of
> (a) the administration of justice
> (b) the implementation of the criminal law
> (c) existing legislation
> which in the opinion of the Committee affect the personal safety and security of our citizens in their homes, on the streets and in public places and to report thereon and to make recommendations where appropriate.

This Committee fell with the government of the day in 1988. It was re-established on the 19th June 1991 with identical terms of reference. Its' reports are laid before the House and may be published. See Dail Debates 344: 1726-7; 409: 2302-2333.

36. Their report on Garda Training was influential in the recent reforms in this area. The Committee was in the process of preparing a report on Garda Accountability when it fell with the government in 1988.

37. D Morgan op.cit. at p. 152.

38. Morgan points out that in the case of state-sponsored bodies the usual convention is that the relevant Minister is responsible only for policy as opposed to the day to day running of the body. However, he suggests that the convention may not always be applied rigorously; op.cit. at p. 153.

39. Hansard House of Commons vol.677 col.689.

40. 39 or 6% of the total.

41. In the case of written questions this happened on 37 occasions accounting for 92 questions. For oral questions the figures are 14 and 41 respectively. For

private notice questions they are 6 and 15 respectively.

42. The space devoted to discussion on private notice questions in the record of Dail proceedings ranged from 4-15 columns per question with an average space of 7 columns.

43. See, for example, Dail Debates 369: 2558; 376: 165.

44. Ibid. 364: 384-5; 368: 1756-7.

45. Ibid. 367: 1619-20.

46. Ibid. 365: 989.

47. Ibid. 363: 899; 376: 1769-71.

48. Ibid. 368: 2351.

49. Ibid. 369: 227-8.

50. Ibid. 369: 1734-5.

51. Ibid. 356: 1998.

52. In the case of crime statistics the only other publicly available source is the Garda Commissioner's annual report. This, however, can be as much as two years out of date by the time it is published. Unfortunately, there would appear to be an official policy against making such statistical information available more readily. It was reported in the Irish Times 15.8.91 that senior Garda officers had been instructed not to discuss crime statistics informally with journalists unless the material had been cleared first at departmental level.

53. See, for example, Dail Debates 356: 1691; 357: 1432-3; 358: 1824; 359: 365-7; 361: 57; 362: 305-9; 363: 501-

2; 364: 384-5; 365: 1251-4; 366: 103-4; 367: 1855-6; 368: 1657-60; 369: 593-4; 370: 3304-5; 371: 618-21; 372: 87; 373: 327-8; 374: 1566-7; 375: 12-16; 376: 2056.

54. Dail Debates 365: 162.

55. 78%.

56. Dail Debates 359: 364.

57. Ibid. 372: 1793-4.

58. Ibid. 370: 2990.

59. Ibid. 363: 705.

60. Ibid. 374: 566.

61. Ibid.

62. See, for example, Dail Debates 359: 674-5; 363: 703-4; 364: 678-85; 369: 2418; 374: 105.

63. Ibid. 373: 2660-1.

64. Ibid. 363: 902-3.

65. Ibid. 375: 35-9.

66. See, for example, Dail Debates 362: 333-7.

67. Ibid. 376: 1742-58.

68. See also 371: 618-21.

69. Ibid. 363: 875-886; 364: 713-4.

70. Ibid. 376: 1742-58.

71. [1985] ILRM 465.

72. Dail Debates 355: 967.

73. Dail Debates 372: 1779-82.

74. The main references are at Dail Debates 356: 1600, 1967, 1970. Similar scant coverage is evident in the 1986 debate in which it received about 1 column out of

a total of 933. In the 1987 debate it was not mentioned at all.

75. Dail Debates 356: 1848-51.

76. Ibid vol.369.

77. See, for example, the adjournment debate on armed robberies and crime at 364: 1318-26; the debate on motor insurance during private members business at vol.367; the debate on crime, lawlessness and vandalism in private members business at vol.366; the debate on the Malicious Injuries Bill at vol.367; the debate on the Garda estimate at vol.368; and the debate on Garda overtime during private members business at vol.368.

78. In 1986 there was also a debate on a supplementary estimate.

79. 1986 saw extra demands being imposed on the Garda largely as a result of the Anglo-Irish Agreement. The government initially sought to meet this extra demand from existing resources. However, as criticism mounted in the Dail to the effect that the Garda was being stretched beyond its' capacity to provide an adequate policing service throughout the country the Minister felt compelled to introduce a supplementary estimate to remedy the problem.

80. Dail Debates 357: 166-234.

81. Ibid. 362: 2578-613.

82. Ibid vol.363.

83. Ibid. 365: 2053-81, 2292-332.

84. Ibid. 366: 739-72, 990-1029.

85. Ibid. vol.368.

86. Ibid. 355: 960-70.

87. Ibid. 356: 1232-44.

88. Ibid. 357: 2431-8.

89. Ibid. 364: 1318-26.

90. Ibid. 365: 276-86.

91. Ibid. 366: 2018-26.

92. Ibid. 369: 2031-40.

93. Ibid. 371: 1717-20.

94. NESC The Criminal Justice System: Policy and Performance (Dublin: NESC, 1984) at pp. 89-95 and 129.

95. Dail Debates 367: 271-2.

96. Ibid. vols.363 and 364.

97. Ibid. 373: 1808.

98. Ibid. 1815-16.

99. Ibid.

100. Ibid. vol.370.

101. Ibid. 365: 185-211.

102. Ibid. 372: 1695-715.

103. Ibid. 373: 177-254.

104. Ibid. 374: 227.

105. Ibid. 368: 692.

106. For a rare exception see the opposition spokesperson on Justice at 368: 1427-28. He called for management reforms at the higher echelons of the force, but he did not offer any vision of what shape those reforms should take.

107. It is worth noting that in this statement the Minister attempted to distance himself politically from the operation by pointing out that the decision to adopt a softly-softly approach was taken by the Commissioner in conference with his Deputies and Assistants. The Minister, himself, was merely kept informed; 372: 1695-715.

108. Dail Debates 372: 1702.

109. See, for example, Dail Debates 363: 902; 372: 1711-15; 374: 1535; 375: 246-7.

110. Crime and Lawlessness at vol.357; Breakdown in Law and Order at vol.362; Crime, Lawlessness and Vandalism at vol.366; Garda Overtime at vol.368.

111. Dail Debates vol.363.

112. Ibid. vol.364.

113. D Morgan op.cit. at pp. 147-150.

Ch.11 STRENGTHENING DEMOCRATIC ACCOUNTABILITY

1. L Lustgarten The Governance of Police (London: Sweet and Maxwell, 1986) at chs.1 and 10.

2. Examples from the early years of the State are quite rare as the practice of devolving powers to non governmental bodies did not really begin to take off until the fifties. Nevertheless, there are at least three examples from the twenties. Section 12 of the Land Law (Commission) Act, 1923 renders the Irish Land Commission subject to the control of the Minister for Agriculture in the exercise of such of its' powers and

duties as are of an administrative or executive nature. Section 20(1) of the Medical Practitioners Act, 1927 established the Medical Council to oversee the medical profession in Ireland. It also stipulated that if at any time the Executive Council (the government) was satisfied that the Council had failed to do any matter or thing which the Council was authorised or required to do by the Act and the doing of which was in the opinion of the Executive Council necessary or appropriate for the proper exercise of the functions or the proper discharge of the duties conferred or imposed on the Council by the Act, the Executive Council could by order direct the Council to do such matter or thing. If the Council failed to comply with such an order the Executive Council could do it itself. The Dentists Act, 1928 s.22 confers a similar power on the Minister for Local Government and Public Health with respect to the Dental Board. Today such powers are as commonplace as the state-sponsored bodies themselves. In 1986, for example, at least four such statutory powers were created. Section 13(1) of the Industrial Development Act, 1986 gives the Minister for Industry and Commerce a power to issue such policy directions to the Industrial Development Authority as he considers appropriate having regard to the provisions of the Act. Section 12(1) of the Dublin Transport Authority Act, 1986 gives the Minister for Communications the power to issue such general

directions in writing as he considers appropriate to the Authority concerning the traffic management objectives of the Authority or its' administration. Section 29 of the National Lottery Act, 1986 gives the Minister for Finance the power to give directions in writing to the National Lottery Company when he considers it necessary or expedient in the public interest to do so. Section 10(8) of the Dublin Metropolitan Streets Commission Act, 1986 gives the Minister for the Environment the power to give general directions in writing to the Commission as to policy regarding the performance of any of the functions assigned to it by or under the Act.

3. P Birkinshaw Grievances, Remedies and the State (London: Sweet and Maxwell, 1985) at pp. 15-26, 41-52; R Klein and P Day Accountabilities: Five Public Services (London: Tavistock, 1987) at ch.4; M Hill The State, Administration and the Individual (London: Martin Robertson, 1976) at ch.7.

4. See, for example, Royal Commission on the Police (London: HMSO Cmnd.1728, 1962); I Oliver Police, Government and Accountability (London: Macmillan Press, 1987); S Uglow Policing Liberal Society (Oxford: Oxford University Press, 1988); R Mark Policing a Perplexed Society (London: George Allen and Unwin, 1977); R Reiner Where the Buck Stops: Chief Constables' Views on Police Accountability in Coming to Terms with Policing: Perspectives on Policy ed. by

R Morgan and D Smith (London: Routledge, 1989).

5. See, for example: L Lustgarten op.cit.; T Jefferson and R Grimshaw Controlling the Constable: Police Accountability in England and Wales (London: Cobden Trust, 1984); S Spencer Called to Account: The Case for Police Accountability in England and Wales (London: NCCL, 1985); P Scraton The State of the Police (London: Pluto Press, 1985); M Simey Government by Consent: The Principle and Practice of Accountability in Local Government (London: Bedford Square Press, 1985); P Boateng Crisis in Accountability in Police: The Constitution and the Community ed. by J Baxter and L Kaufman (London: Professional Books, 1985); R Morgan Policing by Consent: Legitimating the Doctrine in Coming to Terms with Policing op.cit.; Institute of Race Relations Policing Against Black People (London: IRR, 1987); R Reiner The Politics of the Police (Sussex: Wheatsheaf, 1985); T Bunyan The History and Practice of the Political Police in Britain (London: Quartet Books, 1977).

6. H Goldstein Police Discretion: The Ideal Versus the Real Public Administration Review 22-23 (1962) 140; H Goldstein Policing a Free Society (Massachusetts: Ballinger Publishing Co., 1977).

7. See, for example, K.C. Davis Police Discretion (St. Paul: West Publishing Co., 1975).

8. Lustgarten op.cit. at p. 10.

9. L Scarman The Scarman Report: The Brixton Disorders 10-12 April 1981 (Harmondsworth: Penguin, 1982) at pp. 83, 98, 100-101, 102-104 and 108-115.

10. See, for example: Lustgarten op.cit.; Spencer op.cit.; Boateng op.cit. Scraton op.cit.

11. D Lloyd The Idea of Law (Harmondsworth: Penguin, 1981) ch.1; R Cotterrell The Sociology of Law: An Introduction (London: Butterworths, 1984) ch.5

12. D Lloyd op.cit. ch.6; R Cotterrell op.cit. ch.8.

13. G Carte and E Carte Police Reform in the U.S.: The Era of August Vollmer 1905-1932 (London: University of California Press, 1975); J.F. Richardson The New York Police: Colonial Times to 1901 (New York: Oxford University Press, 1970); R Lane Policing the City: Boston 1822-1885 (Massachusetts: Harvard University Press, 1967); T Bowden Beyond the Limits of the Law (Harmondsworth: Penguin, 1978) at ch.5.

14. Lord Hunt Report of the Advisory Committee on Police in Northern Ireland (Belfast: HMSO Cmd.535, 1969) at paras. 84-92; Report of the Commission Appointed by thr Government of Northern Ireland to Investigate the Disturbances in Northern Ireland (Belfast: HMSO Cmd.532, 1969 at pp. 102-104; M Farrell Arming the Protestants (London: Pluto Press, 1983); M Farrell Northern Ireland: The Orange State (London: Pluto Press, 1980).

15. K Boyle, T Hadden and P Hillyard Law and State: The Case of Northern Ireland (London: Martin Robertson

Press, 1975) at chs.3-5; K Boyle et al. Ten Years on in Northern Ireland: The Legal Control of Political Violence (London: Cobden Trust, 1980) ch.4; Report of the Tribunal of Inquiry into the Violence and Civil Disturbances in Northern Ireland in 1969 (Belfast: HMSO Cmd.566, 1972); M Farrell Northern Ireland: The Orange State op.cit. at chs.11-12; Sunday Times Insight Team Ulster (Harmondsworth: Penguin, 1972).

16. See generally the references at fn.5.

17. At various times since the sixties the government and opposition parties have vied with each other in their support for the introduction of a police authority. None of them, however, attached any urgent priority to the subject when in office. The closest that any of them came to delivering on their promise was the Fine Gael-Labour coalition which held office from 1983-1987. For example, in 1985 Minister Noonan declared that the government was committed to the establishment of a police authority and that it would deliver on its' commitment when it had time; Dail Debates 359: 705-707. When questionned again on the subject in 1986 he claimed that a lot of preparatory work had been done on the type of police authority that would be most suitable. Although this government remained in office for another 14 months no firm proposals were ever presented to the Dail on the subject. The latest Fine Fail-Progressive Democrat coalition government position on the question of a police authority was

spelt out by the Minister for Justice (Collins) in December 1987 where he emphatically ruled out the possibility of allowing any form of independent body to take over responsibility for the Garda Siochana; Dail Debates 376: 1769-90. In May 1990 he confirmed that an independent police authority was not being considered by the government; Dail Debates 380: 2097-8.

18. Municipal Corporations Act, 1835 s.76.
19. Ibid.
20. Ibid. s.77.
21. County and Borough Police Act, 1856 s.7.
22. Hansard 3rd. Ser. vol.28 col.554.
23. Municipal Corporations Act, 1882 s.190(1).
24. Local Government Act, 1888 s.9.
25. Ibid.
26. Ibid.
27. Hansard 3rd. Ser. vol.327 col.286. (Matthews).
28. Ibid. col.284. The fallacy in this argument lies in the fact that even in the boroughs the constables were still vulnerable to the directions of the justices in the execution of such duties.
29. Ibid. col.285.
30. Ibid.
31. See, for example: S Spencer op.cit. at ch.3; M Brogden A Police Authority--The Denial of Conflict Sociological Review 25 (1977) 325; R Morgan and P Swift The Future of Police Authorities: Members Views

Public Administration 65,3 (1987); Association of Metropolitan Authorities The Relationship between the Police Authority and the Chief Constable--Accountability (London: AMA, 1983); Controlling the Police? Police Accountability in the U.K. (State Research Bulletin No.23, 1981).

32. County and Borough Police Act, 1856 s.7.

33. Local Government Act, 1888 s.9.

34. See, for example, Hansard Parliamentary Debates Ser.3 vol.324 cols.83-84, 281, 1165, 1795; vol.327 cols.537-8.

35. See references at fn.115 in ch.4. See also M Brogden The Police, Autonomy and Consent (London: Academic Press, 1982) at ch.2.

36. Lustgarten op.cit. at ch.3.

37. Police Act, 1964 ss.2-4.

38. Ibid. s2(2)-(3).

39. Hansard House of Commons vol.691 cols.732-50.

40. Police Act, 1964 s.4(1).

41. Ibid. s.50.

42. Ibid. s.5(1).

43. Hansard HC 5th. Ser. vol.685 col.87.

44. Ibid. cols.84-87.

45. Police Act, 1964 s.12.

46. Ibid. s.6(4).

47. Ibid. s.7(2).

48. Ibid. s.12(1).

49. Ibid. s.12(2)-(3).

50. Ibid. ss.4(2), 5(4), 6(4)-(5).

51. Police Act, 1919 s.4(1).

52. See references at fn.33. See also Association of Metropolitan Authorities What the Police Committee Member Needs to Know; Association of Municipal Corporations City and Borough Police Administration under the Police Act, 1964 (1964); Merseyside Police Authority Role and Responsibilities of the Police Authority (1980); S Spencer The Eclipse of the Police Authority in B Fine and R Millar Policing the Miner's Strike (London: Lawrence and Wishart, 1985).

53. Ibid.

54. See, for example, Lustgarten op.cit. at pp. 44-46.

55. See references at fn.52.

56. Sections 21-24 of the Police Act, 1964 makes provision for the amalgamation of two or more police areas. This can be initiated either by a request to the Home Secretary from the police authorities of the areas affected or by the Home Secretary acting unilaterally where it appears to him that amalgamation is expedient in the interests of efficiency. Broadly speaking, the effect is that instead of the areas affected each having their own police force and police authority they would have a single shared force and authority. The combined police authority would still be comprised of two-thirds councillors and one-third magistrates drawn from the areas concerned with the detais being laid down in the amalgamation scheme.

57. Police Act, 1964 s.62 and Sched.8.

58. Police Act (Northern Ireland) 1970 s.1(1).

59. Ibid. para.1 Sched.1.

60. Ibid. para.2(1).

61. Ibid. para.2(2).

62. Report of the Advisory Committee on Police in Northern Ireland op.cit. at paras. 84-85.

63. Ibid. at paras. 85-86.

64. Ibid. at paras. 84-88.

65. Police Act (Northern Ireland) 1970 s.1(2).

66. Ibid. ss.4-5.

67. Ibid. s.7.

68. Ibid. s.5(1).

69. Ibid. s.15(2).

70. Ibid. s.12(1).

71. Ibid. s.13.

72. Another provision peculiar to the Northern Ireland Police Authority is the obligation on the Secretary of State to consult the Authority, whenever practical, before making an order prohibiting public processions or meetings.

73. This concern is reflected in the number of official enquiries which have been established to look into matters connected, directly or indirectly, with policing. See, for example: Report of the Commission Appointed by the Government of Northern Ireland to Investigate the Disturbances in Northern Ireland (Belfast: HMSO Cmd.532, 1969); Report of the Advisory

Committee on Police In Northern Ireland (Belfast: HMSO Cmd.535, 1969); Report of the Tribunal of Inquiry into the Violence and Civil Disturbances in Northern Ireland in 1969 (Belfast: HMSO Cmd.566, 1972); Report of the Inquiry into Allegations against the Security Forces of Physical Brutality in Northern Ireland Arising out of Events on the 9th August 1971 (London: HMSO Cmnd.4823, 1971); Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland (London: Cmnd.5185, 1972); Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland (London: HMSO Cmnd.7497, 1979). There have also been some highly publicised, but unpublished inquiries, into police practices in Northern Ireland; for, example, the Stalker/Sampson inquiry into the alleged "shoot to kill" policy and the Stevenson inquiry into the leaking of confidential police records to loyalist paramilitaries.

74. The clearest example is the Authority's role through out the controversy over RUC interrogation practices in the mid-seventies. For the most part the Authority remained silent in the face of overwhelming evidence of ill-treatment of suspects at certain interrogation centres. When it did see fit to issuue a public statement on the matter it was in support of the RUC denials of wrongdoing; see, P Taylor Beating the Terrorists: Interrogation in Omagh, Gough and

Castlereagh (Harmondsworth: Penguin, 1980).

75. Northern Ireland Police Authority Working Together to Police Northern Ireland: Three Years of Progress 1985-1988 (Belfast: NIPA, 1988); Northern Ireland Police Authority The First Three Years (Belfast: NIPA, 1973).

76. D Morgan op.cit. at pp.81-82.

77. I Oliver Police, Government and Accountability (London: Macmillan, 1987) at chs.11-12.

78. Lustgarten op.cit. at chs.3, 6 and 7.

79. See D Morgan Constitutional Law of Ireland 2nd ed. (Dublin: Roundhall Press, 1990) at pp. 131-2 for the Public Accounts Committee.

80. L Scarman op.cit. at pp. 146-152.

81. Police and Criminal Evidence Act 1984 s.106.

82. In the London metropolitan area it is the Home Secretary who will give guidance to the Commissioner after consultations with the councils of the London boroughs and districts within the LMP area.

83. With the youth councils the police go further and organise youth centred activities with the aim of establishing a good working relationship with the youth within the precinct.

84. This figure is made up as follows:
Each county area is allocated at least one council with Cork and Dublin being allocated 3 each, and Kerry, Tipperary, Donegal, Limerick and Galway being allocated 2 each; making a total of 35. Dublin City is allocated 12, Cork city is allocated 5, Galway,

Limerick and Waterford cities are allocated 3 each; making a total of 26. The 77 municipal towns are allocated one each. The combined total comes to 138.

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