Maynooth University Department of Law

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Convicting the Innocent? An Analysis of the Causes of Miscarriages of Justice in Ireland 1993-2022.

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Abstract

The aim of this dissertation is to develop a deeper understanding of miscarriages of justice in Ireland. Through an analysis of successful appeals under the miscarriage of justice provisions, namely s.2 and s.9 of the Criminal Procedure Act 1993, the causes of injustices were revealed. These include forensic/medical errors and eyewitness errors intermittently, and police misconduct manifesting in a number of forms. A further goal of this research was to illustrate the impact that the case law has had on the causes and frequency of miscarriages of justice since court judgements increasingly began to emphasise the importance of electronically recording interviews in police custody.

Given the dearth of research in this area of study in Ireland, the research adopted a qualitative research approach given its core principle of being capable of generating theory. Documentary analysis was chosen as the preferred qualitative research method and data was collected from documentary evidence in the form of publicly available case judgements. The research undertook a thematic analysis of documentary data and adopted an interpretative standpoint and primarily inductive approach to this thematic analysis. Thus the themes that emerged within this study are primarily data driven, though an element of deductive analysis on the basis the research was guided by a number of research questions and hypothesis' is true.

Following a discussion on the contemporary causes of miscarriages of justice relating to police misconduct regarding witnesses and disclosing evidence, the research effectively demonstrates that miscarriages of justice in Ireland are not isolated or rare events, but arise from systemic defects that have been precisely identified by this dissertation and can be addressed.

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Chapter One

Introduction

The aim of this research is to investigate the main causes of miscarriages of justice in Ireland between the period of 1993 – 2022 by analysing the case law utilising the miscarriage of justice provisions under s.2 and s.9 of the Criminal Procedure Act 1993. With reference to the accumulation of national and international empirical evidence and academic literature discussed in Chapter Two of this dissertation, this research intends to uncover whether international wisdom on the frequency and causes of miscarriages of justice has been received in Ireland, and whether the contemporary causes identified by this research differ from the causes of well-known cases of miscarriages of justice from 1970s Ireland. An additional aim of this research is to analyse the very conditions that impact on the rate of miscarriages of justice and have prompted the causes to change between 1993 and 2022 by weaving together the dicta and observations of the respective Irish courts into a coherent framework. Fundamentally, this dissertation will come to reveal whether the passing of court judgements and improving standards and practices regarding police procedures, such as the crackdown on electronically recording interviews in the early 2000s, has had an impact on miscarriages of justice in Ireland. Within the remit of this research is to identify the areas in which policy reform or future research is required to better protect against miscarriages of justice going forward.

The criteria applied to this research includes the determination of case selection and data collection to be taken only from successful applications under s.2 or s.9 of the 1993 Act. However, as a preliminary analysis to the findings of this research, an examination of the basis upon which applicants argued a miscarriage had occurred in the cases that were unsuccessful in their appeal under s.2 of the 1993 Act, will also be discussed. This is a means to understanding the frequency and nature of allegations of the causes of miscarriages of justice in Ireland whilst also shing light on the fact that the number of miscarriages may be far beyond what has simply been acknowledged as successful applications by the courts.

Wrongful convictions are a far too familiar part of all legal systems around the world, from the central park jogger case in the United States to the Guilford Four in England (Grounds, 2005; Langwallner, 2011). However, while there is much international writing on the occurrence and causes of miscarriages of justice, little has been written about this aspect of the criminal justice system in an Irish context. In fact, the Bar Review in 2015 went so far as to specifically call

for an analysis of wrongful convictions in Ireland (McCormack, 2015). It is unequivocally paramount to the functioning of a justice system to understand what a miscarriage of justice looks like, how to recognise its many forms and appreciate what the duty of care might be in terms of prevention (Turvey & Cooley, 2014). Thus for present purposes, this dissertation will not merely undertake a review of historical cases of miscarriages of justice in Ireland but will open its analysis to the present position taken by the courts in relation to injustices. Constituting an attempt to fill the gap in Irish literature, the present research will provide a comprehensive analysis of the causes of miscarriages of justice as identified by the Irish courts and an analysis of the impact, or lack thereof, on the rate and causes of miscarriages of justice following judgements related to improving practices and procedures within the police. Ultimately, it is proposed that a coherent picture of the contemporary causes of miscarriages will be captured, prospering definitive and valid findings and providing a basis upon which to gauge the areas requiring further research and policy reform.

This research is broken into three main chapters, followed by the conclusion and recommendations. Chapter Two will begin with a literature review on miscarriages of justice. Providing a descriptive overview of the literature and empirical studies regarding the most frequently cited causes of miscarriages internationally, the chapter includes individual discussion on the nature, problems associated with, and in some instances proposed reforms regarding each of the causes identified. The chapter will later outline some of the well-known historical cases of miscarriages of justice in Ireland before detailing the causes traditionally affiliated with those cases, including the operation of the 'Heavy Gang' within the police force during the 1970s. Finally, Chapter Two will introduce the development of procedures regarding electronically recording interviews in police stations and postulate that the significant shift in practice raises questions about the impact it has had on the causes of miscarriages of justice. Chapter Three gives a detailed description of the methods used in order to conduct this research. It outlines the approaches taken in terms of sampling, data collection and data analysis, and the justifications behind the use of each method. This chapter also straightens out some of the complexities often found in this area of research by conceptualising miscarriages of justice and defining 'innocence' in the context of this research. Chapter Four provides a detailed overview of the findings of this research and crucially, it analyses the causes of miscarriages of justice as identified by the case law. Beginning with a discussion on the impacts of interrelated trends on contemporary causes of miscarriages of justice and examining the findings in relation to the commonly cited international causes, chapter four then moves on to outline the main themes

emerging from the analysis of the cases of miscarriages of justice identified by this research. Before concluding, this chapter provides a preliminary analysis of the alleged causes in the unsuccessful cases that appealed under s.2 of the 1993 Act. The purpose of this supplemental analysis is to uncover whether the causes presented in the chapter have been routinely alleged in a number of other cases though never having met the court mandated criteria of a miscarriage of justice. Finally, the conclusion of this research will include recommendations for the future regarding what aspects of the Irish criminal justice system require further research and investigation, and what aspects are in noticeable need of reform.

Chapter Two

Literature Review

Introduction

While it is difficult to accurately estimate the extent to which wrongful convictions occur in the absence of systematic data in most jurisdictions, reasonable estimates of its prevalence indicate approximately 6,000 to 10,000 innocent defendants are convicted annually in the US (Smith et al, 2011; Denov & Campbell, 2005). Elsewhere, literature and speculation among criminal justice officials reveal that at least 10 per cent of all verdicts in Germany are estimated to be wrong, and over 350 miscarriages of justice have been documented in England, though the difficulties in measuring the magnitude or frequency of wrongful convictions is consistently acknowledged (Leuschner, Rettenberger & Dessecker, 2020; Dioso-Villa et al, 2016; Saguil, 2007). As there are few problems that pose a greater threat to free, democratic societies than that of wrongfully convicting an innocent person, a consideration of the principal factors that contribute to miscarriages of justice is paramount (Huff, Rattner and Sagarin, 1986). Emerging from academic literature and the study of exonerations, research has uncovered a list of sources contributing to miscarriages of justice as well as much about what might prevent them (Smith et al, 2011; Gould & Leo, 2010). Acknowledging that scholarly work has come a long way in establishing the extent of wrongful conviction globally (Schehr, 2005), research in this area is now concerned with the ways in which miscarriages of justice can happen and how the problems associated with them might be remedied.

Drawing on American, Canadian, British and other international literature, the purpose of this review is to examine the deep-rooted historical causes of miscarriages of justice, documented uniformly worldwide. To begin, the first section of this chapter will examine what Gould and Leo (2010: 825) have identified as contributing 'not exclusive', sources "of wrongful convictions, including eyewitness error, forensic errors, false confessions, overzealous police and prosecutors engaging in misconduct, and tunnel vision (Huff, 2004; Gould and Leo, 2010; Morgan, 2014). The second section will focus on a review of miscarriages of justice in Ireland, using well known historical cases to demonstrate the causes of these convictions and their impact, before reviewing the introduction of systematic recording in police stations and its potential effects.

Traditional Causes of Wrongful Convictions

There is considerable research consistently identifying the primary causes, or a combination of the primary causes, contributing to miscarriages of justice, as: eyewitness error, police and prosecutorial misconduct, false confessions, ineffective assistance of counsel, tunnel vision and forensic science errors (Huff, 2004; Schehr, 2005; Gould & Leo, 2010). Though not specifically within the remit of this current review, it is worth acknowledging that the role of race, media effects and community pressure for a conviction have also been discussed in the context of contributors to miscarriages (Smith & Hattery, 2011; Gould & Leo, 2010). Whilst the traditional causes are generally discussed distinctly and described independently from one another, Gould and Leo (2010; 825) are right to assert that they are in fact, "contributing sources" of miscarriages of justice as opposed to exclusive causes, where more than one factor contributes to the error (Huff, 2004). Police with tunnel vision who use oppressive interrogation techniques to secure a false confession in which ineffective counsel fail to show flaws in the prosecution case, is a good example of this overlap and one which also holds true in an Irish context (Conway, Daly & Schweppe, 2010). In order to gain a better understanding of the conditions that impact the rate of miscarriages of justice this chapter begins by exploring the common causes of wrongful convictions more broadly. These are categorised into eyewitness error, forensic errors, false and coerced confessions, prosecutorial misconduct and tunnel vision, while noting the overlap that may exist between them.

Eyewitness Errors

Eyewitness evidence has long been recognised as the leading contributing factor of wrongful convictions, supported by data from the Innocence Projects in America and a plethora of research on the problems associated with using eyewitnesses (Shermer, Rose & Hoffman, 2011; Gross et al, 2005; Acker & Redlich, 2011). In fact, the Innocence Project data reveals it is associated with an overwhelming 75 per cent of DNA exoneration cases (Shermer, Rose & Hoffman, 2011). Problems encountered with regard to eyewitness reliability include changes in memory and decision making processes, as well as systematic problems affiliated with line-ups and identification procedures (Clark & Godfrey, 2009; Wells & Quinlivan, 2009). The role of witness confidence however, is an aspect of eyewitness identification that has arguably attracted the most scholarly attention and, as research has illustrated, is often misinterpreted as accuracy by jurors (Shermer, Rose & Hoffman, 2011; 185; Brewer & Burke, 2002). Despite the extremely weak and insubstantial correlation between eyewitness confidence and eyewitness accuracy, Acker & Redlich (2011) demonstrated that juries give more credence to

confident identifications, and Wells, Lindsay and Ferguson (1979) found Juror's attributions of witness confidence accounted for almost 50% of the variance in their decisions, though were unrelated to witness accuracy. The literature in this area suggests that as long as a witness appears to be correct, they are likely to be believed (Shermer, Rose & Hoffman, 2011). Another issue associated with eyewitness errors concerns memory limitations and alterations. Though the effects of stress and the impact of time delay on eyewitness identification have been quite controversial within the literature, the general rule seems to be that, the longer the time period between an incident occurring and a witness identification, the higher the likelihood of significant memory decay and inaccurate identification (Clark and Godfrey, 2009; Fradella, 2007). Exposure to misleading and other sources of information following a crime, such as media reports, photographs of suspects and in some instances interviewer questions (Loftus, 2005), has also be found to impair and alter the memory for the past in specific ways (Clark & Godfrey, 2009). Research regarding eyewitness identification in line-ups suggests that witnesses often assume, whether consciously or subconsciously, the correct offender is in the line-up thus resort to choosing the person who looks most like the offender (American Bar Association, 2006). Additionally, the employment of suggestive identification procedures by the police has also garnered much attention, revealing that police may unknowingly or knowingly, encourage the identification of the person they believe is the offender (Gould & Leo, 2010; American Bar Association, 2006). By in some way implying that the witness has made the right choice, an increase in the confidence of the witness in their decision, even if the suspect was chosen tentatively, may also transpire (Semmelroth, 2014).

False/ Coerced Confessions

The domino effect of a suspect's confession typically comprises defence attorneys negotiating guilty pleas rather than preparing for trial, the jury's likelihood of voting to convict increasing, and more emphasis being placed on the confession than on any errors made during the trial and investigation, creating a serious problem for people who have falsely confessed (Acker & Redlich, 2011). There are a number of reasons why people confess to crimes they did not commit. Most research is indicative of certain interrogation conditions in which the police are likely to evoke false confessions and certain individuals who are more vulnerable to the pressure of interrogation, thus likely to submit to the accuser and agree with them (Gross et al, 2005; Gould & Leo, 2010; 844). Vulnerable groups of innocent defendants include juveniles, the mentally unstable and the intellectually impaired (Keene & Handrich, 2012). Police induced false confessions incorporate several techniques to instigate the confession such as

intimidation, extended hours of questioning, sleep and food deprivation, or physical and mental abuse (Keene & Handrich, 2012; Blood, 2020). Of the first 62 DNA exonerations as reported by Scheck et al (2000), approximately one in four involved false confessions related to improper interrogation (Huff, 2004). Perhaps the most infamous case of physical and psychological mistreatment leading to false confessions in police custody is the Birmingham Six case. Convicted in connection with the Birmingham pub bombings, six Irish men were severely and repeatedly beaten, deprived of food and sleep, threatened with guns and dogs, and told that their families were in danger during 12 hour long interrogations (Troops Out Movement, 1986). Though the men were so badly beaten to the point they were "unrecognisable" (Lally, 2006), their false, unconvincing and contradictory confession statements were admitted as the judge chose to disbelieve the evidence of police assault.

Pressure put on police investigators to solve a case from within police departments, the public or the media, may, as Huff, Rattner & Sagarin, (1996) suggest, represent another rationale accounting for false confessions. By generating a tendency amongst investigating officers to easily believe in any suspect's guilt, the use of improper interrogation techniques to prove such guilt, is justified in the minds of the officers. There are, however, many police departments that seem especially prone to such unethical behaviour (Huff, 2004). In his book, O' Mahony (1996; 153) refers to the 1995 Report of the CPT on Irish places of detention which, following a visit to eight Garda Stations in Ireland, came to the harrowing conclusion that "persons held in certain police establishments in Ireland – and more particularly in Dublin – run a not inconsiderable risk of being physically ill-treated". In addition to physical mistreatment, deceptive strategies from implying guilt to direct threats, are often supplemented with false evidence or even lies from investigators in order to coerce or convince a suspect to confess (Gould & Leo, 2010). Regarded as the primary cause of police induced false confessions, psychological coercion in contemporary years consists of implicit or explicit promises of leniency and threats of harsher treatment (Leo, 2008). Research indicates that one of the most commonly suggested solutions to preventing false confessions is electronically recording interrogations to ensure suspects are not being pressured or coerced, and minimise the likelihood that a false confession will lead to a wrongful conviction (Sullivan, 2005). Recordings would expose abusive tactics and aid suspects who may later recant their confession (Gould & Leo, 2010).

Forensic Errors

Forensic science errors have been consistently cited as common causes of miscarriages of justice in terms of the reliability of forensic methods and the reliability of forensic science testimonies in a conviction focused organisation (Smith et al, 2011). In fact, during a review of 86 DNA exonerations, Saks and Koehler (2005; 892) found that 63 per cent of the cases involved "forensic science testing errors," and 27 percent involved false or misleading testimony by forensic scientists. This is problematic given that 57 per cent of the first 200 DNA exonerees in America were convicted based on forensic evidence (Garrett, 2008, p. 60). While DNA testing has been responsible for the exoneration of hundreds of people in the US and has uncovered the issues with other traditional forensic methods (Morgan, 2014), Helm (2021) found it to play a more minimal role in England and Wales, having been relied on in quashing a conviction in only six cases in her study. In Ireland, the courts generally display a heightened awareness of the issues associated with DNA profiling but as Langwallner (2011; 55) points out, it remains to be seen how the courts would accept expert opinion presenting more sensitive DNA profiling, than the standard SGM test currently used. Nevertheless, the use of DNA to exonerate convicted individuals has been a crucial element in the investigation of miscarriages of justice and warrants credit (Langwallner, 2011).

Before the rise and acceptance of DNA testing, much less accurate forensic methods such as fingerprinting and hair comparison analysis were used for decades and in many places, are still used today (Gould & Leo, 2010). Mounting evidence has come to the fore about problems with both of these practices, indicating that they should not be admissible as evidence in courts (Morgan, 2014). Fingerprint analysis has not been found to be supported by any scientific evidence and issues with this technique include a lack of validity testing and valid standards for declaring a match (Gould & Leo, 2010). Perhaps more troubling is the hair comparison analysis, in which hairs found at a crime scene are compared to those of potential suspects (Smith & Goodman, 1995). The American Proficiency Testing Programme found that most laboratories reach incorrect results four out of five times a hair sample is analysed, and error rates are as high as 67 percent on individual hair samples (Gould & Leo, 2010; 853). It is worth noting that additional problems have also been identified in respect of other forensic methods such as shoe print identification and bite mark analysis (Balko, 2011). Though it is not merely the reliability of forensic evidence itself that is an issue, as the organisational locus of forensic laboratories being a part of law enforcement often subjects them to the "we arrest them and you help convict" organisational cultures (Huff, 2004; 113). It has been recommended that

forensic laboratories should be independent scientific labs, with analysis in criminal cases being available to both the prosecution and defence (Huff, 2004).

Prosecutorial Misconduct

Although other causes of wrongful convictions, such as eyewitness errors, are considered to be the most prevalent, prosecutorial misconduct typically comes into play among a number of other factors leading to a wrongful conviction (Gould & Leo, 2010). As Bouchard (1932: 369) contends, in almost all cases involving this type of miscarriage of justice, "some fault, carelessness or overzealousness" can be traced to the prosecution or the police. Prosecutorial misconduct is primarily associated with pretrial discovery, trial and post-trial appeals (Schoenfeld, 2005), and can include the prosecution engaging in overly suggestive witness coaching, inappropriate closing arguments, or failing to disclose critical evidence to the defence (Gould & Leo, 2010). Unethical behaviour on part of the prosecution has been argued to be the product of vast discretionary powers with little transparency and perverse incentives to engage in, as opposed to refrain from, misconduct given the inadequate accountability remedies (Joy, 2006; Orenstein, 2011). While the reasons why prosecutors ignore legal and ethical obligations in order to gain a conviction may be difficult to identify with certainty in every case, analysts have argued that, whether the misconduct is designed to facilitate the conviction of a person the prosecution actually believes is guilty, or stems from political pressure or the desire to win convictions coupled with limited sanctions (Meares, 1995; Bouchard, 1932), it is inexcusable in that it undermines due process rights afforded to the accused and so often leads to a miscarriage of justice (Joy, 2006). Motivation alone however, is not sufficient enough for prosecutorial misconduct to occur, the opportunities to act in such a way must be available (Schoenfeld, 2005). In addition to an absence of adequate accountability mechanisms, the characterization of prosecutors as agents of trust that the public rely on to use their knowledge, skills and power to prosecute people (Schoenfeld, 2005), enables opportunities for misconduct to arise. An investigation by the Innocence Project in Texas which declared Stanley Mozee and Dennis Allen innocent after spending 15 years in prison, is a good example of a case of prosecutorial misconduct where the prosecution had withheld evidence that could have proved the two men's innocence (Innocent Project, 2019). Among many other discrepancies including the presentation of false testimony, the Innocence Project discovered that much of this evidence that could have cleared both innocent men's names, was held in the lead prosecutors' files the entire time (Innocence Project, 2019). Cases like this not only shine light on the fact that failing to disclose exculpatory evidence can so

easily lead to a wrongful conviction but demonstrates how engaging in misconduct is a readily available option often without liability. It has been contended that the role of law schools in educating students on misconduct is paramount to reducing the likelihood of future prosecutors engaging in unethical behaviour knowing the inequitable consequences that may ensue (Bazelon, 2011)

Tunnel Vision

The process of tunnel vision can infect any point in the criminal justice process and can lead the police, a prosecutor, judge or a defence lawyer alike to focus on a particular conclusion – a suspect's guilt, and become less likely to consider alternative information that conflicts with this conclusion (Findley & Scott, 2006; Gould & Leo, 2010). For example, in the earlier stages of the process a police officer or investigator may be so convinced of a suspect's guilt that they filter all evidence in a case through the lens provided by that conclusion. This often results in coercive interrogations, false confessions and ignoring any clues that point away from the suspect's guilt (Orenstein, 2011). Correspondingly, the prosecution may be so satisfied with a suspect's confession that they ignore or fail to disclose exculpatory evidence, while defence lawyers on the other hand may neglect a deep investigation into all evidence and files if they perceive the prosecutor's case to be indisputable (Gould & Leo, 2010: 851). Research and exoneration cases document these possibilities which afford an explanation as to the ways innocent people can be wrongfully convicted as a result of tunnel vision (Raeder, 2003; Gould & Leo, 2010). Properly understood, tunnel vision is usually the product of institutional and cultural pressures as well as cognitive bias, as opposed to malicious intent (Findley & Scott, 2006). Extreme pressure put on investigating officers to solve cases quickly, stemming from victims, the media and inside the police department, is a contributing factor to tunnel vision which as discussed above, can invoke improper investigative techniques and consequent false confessions (Findley & Scott, 2006; Huff, Rattner & Sagarin, 1996). Similarly, the adversarial process seems to impose acute pressure on prosecutors to ensure conviction of the suspects apprehended by police (Findley & Scott, 2006). In response to the vast amount of evidence associating tunnel vision with miscarriages of justice (Rassin, 2010), literature in this area has proposed that police acquire training on tunnel vision to learn how to stay objective and focused on the evidence (Semmelroth, 2014).

Wrongful Convictions in Ireland

Despite the significant difference between the Irish criminal justice system and other justice systems around the world, such as those in the US, some of the causes that frequently give rise

to miscarriages of justice have been identified in Ireland, making it a mistake to assume that wrongful convictions are so rare as to not be of concern in Ireland (Langwallner, 2011). The fact of the matter is that the Irish criminal justice process has produced a number of disconcerting cases of miscarriages of justice, some of which were synchronous with the Birmingham Six case – in which six Irish men were sentenced to life in prison following their wrongful convictions for the 1974 Birmingham pub bombings based on confessions which had been beaten out of them by police (Walsh, 1999; Grounds, 2004). In particular, the facts of the infamous Nicky Kelly case and its progress through the system in Ireland, reveal a parallel with the facts of the Birmingham Six. Kelly suffered oppressive questioning and severe physical brutality including being repeatedly punched and kicked and hit with various objects whilst in police custody. Convicted of the Sallins Mail Train Robbery from 1976 on the basis of confession evidence, Nicky Kelly later made allegations of the ill treatment during his detention, claiming his confession was false and forced out of him by physical and mental abuse and exhausting interrogations (Walsh, 1999). Though his allegations were supported by medical testimony from personal and prison doctors, and mirrored the interrogation experiences of the four other men against whom charges were preferred in this case, Nicky Kelly was convicted and remained imprisoned despite the release of the other wrongly convicted men. The other men were released on the basis that the Criminal Court of Appeal found there had been oppressive questioning during their interrogations and that IRA members had come to the fore claiming responsibility for the mail train robbery (Conway, 2008). Nicky Kelly, however, having fled the country during the second trial in which he was sentenced in absentia, was incarcerated on his return from the US despite being under the impression that he, like the other men, would be a free man.

As a result of the Kelly case and subsequent notorious Kerry Babies case, widespread public disquiet about police interrogation methods began to emerge around this time (O' Mahony, 1996). The tribunal on the Kerry Babies case, though falling short of addressing the dangers of police interrogation as practised in Ireland, did spotlight the issues associated with interrogations by releasing the harrowing facts of the investigation of the case (O' Mahony, 1996). As a result of improper interrogation techniques, primarily coercive and forceful psychological tactics, the police managed to extract from the Hayes family, an ordinary farming family who certainly had no involvement with this murder, a detailed confession to the involvement in the murder of a baby and disposal of its body. It is obvious that inadequate controls on interrogating suspects and inconsistency with regard to the admissibility of

confessions by the judiciary allows for cases such as the two examples provided to occur. Though the trajectory of the Kelly case further illustrates how Ireland is set apart from its British counterpart and indeed other criminal justice systems around the world, in that the Irish criminal justice procedure seems less capable of rectifying injustice once it has occurred (Walsh, 1999: 309).

The 'Heavy Gang' in Ireland

Amidst a number of these cases of miscarriages of justice emerging in the 1970s, came claims of a 'Heavy Gang' operating within the police force, defined by Kilcommins et al (2004: 209) as "a loose affiliation of Gardaí drawn from different sections of the Force and specialising in extracting information under interrogation". In light of the number and content of the allegations of ill treatment in police custody, Amnesty International carried out an investigation into 28 cases in 1977 (Conway, 2008). The findings identified that the nature of the abuses ranged from severe physical beatings to food and sleep deprivation, and also included a readiness among the courts to accept the evidence of Gardaí in cases were ill-treatment was raised, and reject contrasting evidence presented by the defence (Conway, 2008; Walsh, 1999). Significantly, Amnesty confirmed suspicions that a 'heavy gang' existed within an Garda Síochána and pinpointed the source of the mistreatment to a group of detectives from the central detective unit in Dublin who, regardless of the location in the country, featured in almost all of the cases (Conway, 2008). The Irish Times weeklong series on the 'Heavy Gang' in 1977 exposed the systematic violent tactics of the police during interrogations where in one case, the suspect ended a six-hour interrogation by jumping out the window in an attempt at suicide, and another claimed she was punched in the stomach by members of an Garda Siochana when she was pregnant (The Irish Times, February 1977). However, the description that Nicky Kelly gave in Court of the abuse he endured under interrogation remains the most illustrative of the brutality of the treatment inflicted by an Garda Síochána. Kelly recounted how he was "spreadeagled" and taken upstairs by one of the guards where they "shoved (his) head five six times down toilet", kneed him in the groin, "spat in face and hit (him) with a chair". Furthermore, he described being on the floor on his back, "hands stretched backwards.. chair put on palms.. (Garda) sits on chair", and recalled being "very tired.. afraid for (his) life", hearing the Guards repeat "own up, make statement" (Conway, 2008: 179). The protection the Heavy Gang received from the entirety of the criminal justice system is demonstrated by the Government's unwillingness to admit to such severe wrongdoing and the officers involved going unsanctioned for the most serious miscarriage of justice case in Ireland. The fact that the

Heavy Gang is linked to the Special Criminal Court, a juryless court used for IRA cases, explains the convenience of the trial for the police in terms of procedures and the legal context within which they operated. Perhaps the police were emboldened to resort to improper tactics in the absence of being held accountable by a public jury (Conway, 2008: 181).

Introducing Audio-Visual Recording

As a result of the growing body of research on the causes and consequences of miscarriages of justice, a growing body of international research has amassed on the subject of 'best practices' to prevent wrongful convictions (Gould & Leo, 2010). This seems to suggest that, in the absence of constraints on police conduct in interrogations, confessions may be extracted from innocent people, whether psychologically vulnerable or, as Irish examples have disclosed, normally confident and independent people (Keene & Handrich, 2012; O' Mahony, 1996). The contention that most miscarriages of justice caused by false confessions could have been prevented had the police recorded the interrogations producing the false confession, seems to have gained considerable support both in theory and in practice (Leo & Richman, 2007: 791). Irish case law from the Supreme Court and Court of Appeal during the early 2000s, put a lot of emphasis on the need for electronically recorded interviews. Specifically, in the passing of a judgement, Hardiman J. stated that an unrecorded statement of an accused should be excluded from evidence for that reason alone.[1] Removing the secrecy of interrogations opens up police practices to the possibility of outside scrutiny, making them less likely to engage in physical and psychological misconduct (Leo & Richman, 2007).

Astonishingly, despite the broad awareness of these cases and the provisions for the routine taping of Garda interviews with suspects in the 1984 Criminal Justice Act (as well as the Committee of Enquiry, established by the Irish government to address the situation of wrongful convictions, recommending the recording of confessions in 1990) it was only in March 1997 that the necessary regulations for electronic recording were signed into law (Walsh, 1999). Although this was a step in the right direction in terms of a legislative reaction to the fallout from well publicised cases of miscarriages of justice, including the Guilford Four and the Birmingham Six cases in Britain and, in Ireland, the Nicky Kelly case, it has been noted that the recording of interviews is not without its limitations and it will not completely solve all issues (Bacik, 1999). Of particular concern is the possibility for misconduct to arise in unregulated spaces where the tape cannot record what happens, for example, in a Garda car or

[1] *Rattigan v DPP*, 2008 IESC 34.

in the corridor outside the interview room. As well as this, the 1997 regulations allow for the recording to be interrupted in situations where a break is taken or tape is replaced (Bacik, 1999). What has been most concerning in Ireland is the delay in giving effect to the regulations 'on the ground', something which can be attributed partly to the fact that the regulations only applied to Garda stations where electronic recording equipment had been installed and partly due to selective enforcement by the gardaí themselves. This practice began to change in the mid-2000s when the Court of Criminal Appeal and Supreme Court began issuing strong cautions to gardaí concerning the importance of electronic taping of interviews with suspects in serious criminal trials.[2] For example, Hardiman J. in the Supreme Court sent a clear message that audio visual recording is "infinitely superior". In 2005 he went further and reiterated that it had been stated to the public in those years that such recording was taking place in 96% of Garda interviews, but emphasised that instances of such recording at anything close to that frequency were yet to reach the appellate courts.[3] *Diver* in particular, is an important decision in terms of drawing a line in the sand with regard to the admissibility of incomplete recordings of interviews. In quashing a conviction for murder on the ground that the gardaí had failed to properly record a custodial interview with the accused,[4] this case is indicative of a willingness on the part of the courts to engender greater respect for the regulations of electronically recording evidence (Heffernan, 2011). Hardiman J. has been a key driver in this crack down on confession evidence, not only by stating that "the gardaí are not entitled to exercise total editorial control in recording what has been said… nor are they entitled to cherry pick what is to be recorded",[5] but through his conveyance of judicial frustration with tardiness in the practical implementation of electronic recording.[6] It is clear from the history of legal and legislative concern with uncorroborated confessions, legislators and judges alike have emphasised the importance of the audio-visual recording of interviews (*DPP v Connolly*, 2003 2 IR 1). As a result, audio visual recordings of interviews are now carried out as standard.

This significant shift in practice raises questions about the impact on miscarriages of justice, the frequency of their occurrence and the associated causes. Gallagher, Kavanagh and O' Riordan's (2021) estimation that there have only been 12 wrongful convictions during the period between 2001 to 2022 suggests that the introduction of electronic recording may indeed,

[2] *DPP v Diver* [2005] IESC 57. ; *DPP v Connolly* [2003] 2 IR 1.
[3] *DPP v Diver* [2005] IESC 57.
[4] DPP v Diver [2005] IESC 57, para 280 "I wish to reiterate that the gardaí are not entitled to exercise total editorial control in recording what has been said. Nor are they entitled to cherry pick what is to be recorded."
[5] *Rattigan v DPP*, 2008 IESC 34.
[6] *DPP v Connolly* [2003] 2 IR 1 at 17-18.

have been a step in the right direction in ensuring any confessions tendered have been obtained fairly (Walsh, 1999). Though not inexistent, research suggest there have been relatively few causes celebres alleging physical violence, at least to the extent experienced by detainees in the twentieth century (Conway, 2013). It is likely that if it had been available in the interrogations of Nicky Kelly, the Hayes family and Vincent Connell, such miscarriages of justice in Irish criminal justice history would never have happened (Walsh, 1999). It is this gap in the research regarding the impact of improving practices and procedures on miscarriages of justice that this thesis aims to address.

Conclusion

The importance of developing a better understanding of miscarriages of justice and its causes has been recognised in Ireland and around the world. The well-established factors leading to wrongful convictions, in particular false and coerced confessions, official misconduct and tunnel vision, are quite comparable in the US, the UK and Ireland, and so too is the loss of public confidence in the justice system as a result of grave injustices (Huff, 2004). In many ways, it seems evident that researchers are now not only conducting research for its inherent insight into the functioning of justice systems that provide opportunities for miscarriages of justice, but on some level researchers have become instruments of reform, encouraging policy makers to implement the lessons learned by their research (Gould & Leo, 2010). The strong indication in the literature and case law alike, that electronically recording interrogations in police stations can minimize the likelihood that a false confession will lead to a wrongful conviction, and reduce the volume of miscarriages of justice as a result of improper interrogations in Ireland, is an area that is inadequately explored within Irish jurisprudence (Langwallner, 2011). It is imperative to analyse the causes of miscarriages of justice in Ireland in contemporary years and explore the conditions that have impacted the rate of wrongful convictions. Has case law regarding electronic recording impacted the rate of miscarriages of justice all in all, or have new causes transpired?

Chapter Three

Methodology

Introduction

As previously noted, the objective of this study is to uncover the contemporary conditions impacting the rate of wrongful convictions as identified by the Irish Criminal Court of Appeal and Irish Supreme Court. As qualitative research is regularly used in circumstances where little is known about a research question, this study utilised qualitative research methods as a powerful source for analysis (Gray, 2018). The primary research questions that guided this study include; whether there has been a change in the rate of wrongful convictions following the passing of court judgements regarding reforms to police procedure? If so, has the change impacted the causes of wrongful convictions? And whether the causes identified by the Irish courts between 1993-2022 differ from the causes of well-known cases from the 1970s and 1980s? This chapter begins by outlining the theoretical approach and research design of the study at hand, followed by an overview of the research techniques, sampling and data collection procedures. Finally, the chapter will describe the process of data analysis used in this research and address the limitations of the data such as its generalisability.

Conceptualisation – What is a Miscarriage of Justice?

Plenty of literature alludes to the different meanings and categories for 'miscarriages of justice', discussing injustice in the contexts of both 'factual' and 'legal' innocence. Innocent person wrongly convicted or improper procedures undermining a conviction, respectively. However, the meaning of 'miscarriages of justice' in this research is straightforward in that it follows the broader conceptualisation advanced by the courts in relation to cases brought forward under the Criminal Procedure Act 1993. As discussed below, this a legal conceptualisation of miscarriage of justice which takes account of defects in the criminal process. The 1993 Act provides for judicial review of certain convictions and sentences on the grounds of miscarriage of justice as well as for the payment of compensation by the State to, or in respect of persons convicted as a result of an injustice. Applications under section 2 of the Act, which form the parameter of this research, are treated as an appeal to the Court against the conviction or sentence. Successful applications suggest that the outcome could have been different had the 'new' or 'newly discovered fact' been available at the time of the trial or appeal proceedings. The reference to 'new fact' is to evidence that was known to the convicted person at the time of the trial or appeal proceedings in relation to which s/he can reasonably

explain the failure to adduce evidence of that fact. The other avenue of 'newly-discovered fact' in section 2 (1) (b) is to evidence coming to the notice of the convicted person after relevant proceedings have been fully determined. It could also be a fact that s/he knew at the time but did not appreciate the significance of. It is important to be aware that the issuing of a declaration certifying that there has been a miscarriage of justice is an additional step taken by the courts under s.9 of the Act. After it is established the court will hold the hearing, it becomes an ordinary appeal with the additional option for the court to issue a certificate that a miscarriage of justice has occurred (Conway & Schweppe, 2012).

Often, a part of the problem with recognising a miscarriage of justice is that it is inherently linked with 'innocence'. Generally there are at least two categories of innocence to consider, factual and legal innocence. The former coincides with a "wrong man" claim (Wisotsky, 1996), while legal innocence is often defined as 'right person wrong procedure' (Hughes, 2010). The Innocence Project Movement has participated in deconstructing the concept of innocence into these two categories, but has focused primarily on defendants who did not commit the actions underlying their convictions (Hughes, 2010). Due to the emphasis on factual innocence in the media, society has come to believe that a person is wrongly convicted only if they are actually innocent, feeding into the public connotation of the term 'innocence' invoking the image of a blameless individual (Burnett, 2001). Yet the language of 'miscarriage of justice' is not so restrictive, and implies that a broader definition can be contemplated while the carriage of justice also links to processes (Conway & Schweppe, 2012). Has there been breaches of human and constitutional rights? Has the way in which justice has been achieved been right? There are many instances where it becomes complex to claim that an individual has been rightfully convicted (Hughes, 2010; Wisotsky, 1996). In fact, even the term 'wrongful conviction' itself is open to application of questions of innocence and grave procedural injustice. While the Criminal Procedure Act 1993 does not provide any specific and detailed definition of miscarriage of justice, the superior courts in Ireland have definitively stated that the term in Ireland is much broader than factual innocence. It was in the Nora Wall case that the most substantive definition of 'miscarriage of justice' was provided, and four instances that should be considered as such were outlined.[7] These were: actual innocence, where the prosecution should not have been brought in the first place due to lack of credible evidence, where judicial and constitutional procedure has been departed from as to make what happened altogether irreconcilable, and where there has been a grave defect in the administration of justice (Conway

[7] *DPP v Nora Wall* [2005] IECCA 140.

& Schweppe, 2012).While this is by no means an exhaustive list of circumstances which may constitute a miscarriage of justice, it is clear that the position of the courts in Ireland in determining whether the new or newly discovered facts show that a miscarriage of justice occurred is not just about factual innocence but is connected to the operation of the justice system itself in a given case (DPP v Meleady and Grogan, 2001; Conway & Schweppe, 2012).[8]

As already noted, the research at hand adopts the explanation that facts can emerge following a trial or appeal process that disprove or cast doubt over a conviction, but is not confined to solely analysing those cases in which a certificate has been issued. While notes were taken for each case documenting whether the higher standard of failure was met under s.9 of the Act and meriting an award of damages, the conceptualisation of miscarriages of justice in this research was more inclusive incorporating all cases where the courts find that a new or newly-discovered fact evidences that a different outcome could have unfolded had the 'new' evidence been available at the time. A focus on innocence minimises the scale of problems in the justice system and thereby would run the risk of limiting the causes of miscarriages of justice that unfolded in this research. Without examinations as to what went wrong in all types of miscarriage of justice cases, the use of illegal, unconstitutional interrogation or investigation methods may remain accepted by police, prosecutors and the courts, and go uninvestigated (Quirl, 2007).

Theoretical Approach

According to Gray (2018), an interpretivist perspective looks at "culturally derived and historically situated interpretations of the social life world" (Gray, 2009: 23), rejecting the positivistic view that there is a direct, one-to-one relationship between ourselves (subjects) and the world (object). Given that the remit of this research aimed to identify not only the number of wrongful convictions in recent years, but the conditions that have impacted the rate of the traditional causes of wrongful convictions, and the source of those potentially new causes, it more naturally aligns with the interpretivist perspective which is interested in values rather than facts. The interpretative perspective is also suited to the use of documentary analysis of which the documents relied upon in this research are case judgements.

Very little has been written on miscarriages of justice in an Irish context such that the Bar Review in 2015 specifically called for an analysis of wrongful convictions in Ireland (McCormack, 2015). Given that the study at hand is effectively cutting new ground, a

[8] *DPP v Meleady and Grogan (No 3)* [2001] 4 IR 16.

qualitative research approach is best suited to understanding the operation of this aspect of the criminal justice system and the contributing causes to the problem. Perhaps most significant is its core principle that qualitative research is capable of generating theory. With a paucity of research discussing the rate of miscarriages of justice in twenty first century Ireland, it was important to afford greater freedom to the researcher in order to respond to anything unexpected and unusual that emerged within data. This is opposed to a theory driven research process which would be difficult in this context given the lack of specific knowledge on this issue (Newburn, 2017; 1026). As Hoffman-Riem (1980; 343) put it, "the principle of openness implies that the theoretical structuring of the issue under study is postponed until the structuring of the issue under study … has 'emerged'". An analysis of court judgements to explore hidden reasons behind the complex problem of miscarriages of justice in Ireland is an excellent fit to the principle of openness as preconceived ideas were scarce and innovative findings were the objective. The qualitative approach that is capable of generating theory, was suited to the examination of 'miscarriages of justice' in respect of applications under s.2 of the 1993 Act, due to the fact that this context specific research has not be undertaken before and no earlier theories had been generated. The inductive/grounded theory approach does not set out to validate or disprove a theory, instead through the process of gathering and interpreting data from Court of Appeal and Supreme Court judgements, it endeavoured to identify fragmentary details to a connected view of the situation (Gray, 2018).

Documentary Analysis

Documentary analysis is the medium through which this research aimed to understand the causes of wrongful convictions and the changes impacting the rate of miscarriages of justice in contemporary years. The use of documentation in the form of case judgements in this research, provided potent evidence of continuity and change in practices and also reflects, as McCulloch (2004) describes, a depiction of the past and present rules of conduct in our society as interpreted by the Court of Appeal. Through the examination of case law dealing with successful appeals under section 2 of the 1993 Act over a period of 29 years, this research deduced the contemporary stance of the courts in dealing with wrongful convictions by analysing their response to the causes of the convictions at hand on a case by case basis, and the reasons leading to the decision to overturn a conviction. The causes were identified as the source from which the 'new or newly discovered fact' could be traced to. For example, if the newly discovered fact was a statement that was withheld by the police and not presented by the prosecution in the trial proceedings, the causal category under which this fell would be

'prosecutorial misconduct'. Additionally, any recommendations, rulings or precedent set in these cases made apparent the conditions that have had an impact on the rate of miscarriages of justice. Accrediting McCulloch's (2004; 1) expression, "to understand documents is to read between the lines of our material world", this research aimed to do just that.

Documentary analysis was chosen as the preferred method for conducting this research over other approaches such as case studies or interviews (Noaks & Wincup, 2004). The reason for selecting desk-based documentary analysis as the preferred approach was a matter of convenience and a matter of sufficient time and resources. Given the fact that there was a limited time period of four months to conduct this research, and less than two months dedicated to data collection and analysis, the availability of detailed documentation going back almost thirty years, all of which is easily accessible on the Courts Service website and Lex Justis website, made documentary analysis a competent fit. Moreover, it provided a more complete picture of the situation in Ireland and what has led to this situation than what would have been achieved by using interviews to explore the necessarily partial, and subjective, experiences of a number of practitioners. In assessing the quality of the documents, Scott's (1990) typology was found to be particularly useful. As outlined in Newburn (2017), the assessment requires four criteria to be met: authenticity, credibility, representativeness and meaning. As the court judgements were published online by the Courts Service, a government body, it is fair to suggest that they may be regarded as both authentic and credible. With regard to representativeness, given that all of the judgements concerning section 2 applications were included in this research, the sample may be regarded as representative of the group. In assessing the fourth criteria of 'meaning' concerning whether the evidence is clear and comprehensible, the researcher was happy to answer 'yes' as the court judgements were documented in a clear and explicit manner.

Sampling

Convenience sampling was used in this research given the fact that I was the sole researcher on this project and the strategy involves gaining access to easily accessible data which was available on the courts.ie website as far back as 2004 and the Lex Justis website back as far as 1993 (Gray, 2018; 221). The strength of convenience sampling lies in the fact that it is relatively easy to find data and the chances of good response rates or data being ready for analysis are decent. Though one of the limitations to this research was in fact that the analysis could only go back twenty nine years, the snapshot provided through convenience sampling still produced very reliable findings due to the dearth of research in this area. Further, as will be discussed

below, this fits with one of the aims of the study, which was to examine any changes to the incidence and causes of miscarriages of justice since the electronic recording of suspect interviews in Garda stations became routine.

Purposive sampling was another technique used in this research as the cases for analysis were selected purposefully on the basis that they dealt with successful appeals under section 2 and section 9 of the Criminal Procedure Act 1993. Moreover, analysis of Supreme Court cases only took place where a Court of Appeal application was denied but was later overturned in the Supreme Court. It is obvious that purposive sampling is an extremely relevant technique in gaining the correct information here, as the data was distinctively chosen because it was known to provide particular information unable to be gained from other sampling strategies (Gray, 2018; Maxwell, 1997). This strategy is effective at ensuring that specific experiences are included within the sample frame (Newburn, 2017) and was justified by this research in terms of the time period in which the data derived from 1993-2022. This timeframe was selected on the basis that it captures all successful miscarriage of justice cases since the introduction of miscarriage of justice provisions, and also that the early twenty first century is the timeline during which the case law increasingly began to emphasise the importance of electronic recording of interviews. As discussed in the previous chapter, this was evident through a number of judgements delivered by Hardiman J. in particular.[9] However, despite multiple accounts of the Court of Appeal and Supreme Court repeatedly stating that it would not tolerate failures to electronically record interviews but subsequently making exceptions, it was in *DPP v Murphy* [2005] when the courts definitively stated that from that point onwards, the court should only exercise its discretion to excuse failures to comply with the requirement to electronically record interviews "for very good reason".[10] Following this, electronic recording of interviews with suspects in Garda stations has become routine and the admissibility in evidence of an electronic recording is provided for under s. 57(1) of the Criminal Justice Act 2007. This raises questions about the impact of this significant change in practice on the incidence of miscarriages of justice (Heffernan, 2011). Thus, convenience sampling was used to access the data as far back as 1993 and purposive sampling was appropriate in terms of the case selection in order to provide a meaningful and fruitful analysis of the changes that have come to follow.

[9] *Rattigan v DPP*, 2008 IESC 34.
[10] *DPP v Michael Murphy* [2005] 4 IR 504 at 517.

Data Collection

Considering that this was desk-based research and the data was publicly available State documentation, the first step was to retrieve the data online through the courts.ie website and Lex Justis website. On these websites all judgements from as far back as 1993 from the jurisdictions relevant to this research were easily accessible. This specifically included the Court of Criminal Appeal now known as the Court of Appeal, and the Supreme Court. The data was collected from Lex Justis by manually filtering the case law search to include cases from the relevant courts between '01/01/1993' – '01/01/2005' and searching 's.2' and 's.9' under the 'any word' forum as well as 'Criminal Procedure Act 1993' under the 'exact phrase' forum. The data was collected from the Courts Service website from 2005 to 2022 by manually going through every case judgement year by year and on a case-by-case basis in order to identify the cases specifically dealing with section 2 of the Criminal Procedure Act. This was feasible given the relatively small number of judgments handed down by the Court of Criminal Appeal in, for example, approximately 32-35 per annum. Though there were much greater number of appeals after the Court of Appeal was established in October 2014 by the Court of Appeal Act 2014, only criminal cases were searched, which greatly reduced the number to be examined. It is important to note that the change in jurisdiction has in no way impacted the time series and consistency of this research as the 2014 Act kept the exact same jurisdiction of the Court of Criminal Appeal while simply merging it with the civil jurisdiction of the Supreme Court. In other words, the only change to the Court of Criminal Appeal in 2014 in the context of this research was the name and the addition of civil cases, irrelevant to this research.

Once a case was identified, it was read thoroughly and the details of the case were inserted into a table template. This template documents the jurisdiction, name and year/citation of the case as well as detailed descriptions and notes under headings including 'reason for appeal', 'outcome', 'reasons for outcome', 'other comments' and 's.9 certificate'. This way, each case and the details for analysis were systematically recorded in a chronological order as the research proceeded. After undertaking a pilot study where one case was analysed and details inserted into the table in order to verify the ability of the template to cover the important aspects of the cases that were later analysed, it was discovered that the table required additional columns to gather more specific, important details. Accordingly, the template was immediately amended to include individual columns for recording the technical basis (new or newly discovered fact) of the s.2 appeals, the named 'fact' presented, as well as a 'causal category' column in which the relevant number representing an individual category from the causal

category table, (see Appendix A) was inserted. The pilot study was also useful in that it revealed the benefit of including a column to document the 'original conviction date and offence type'. Once the amendments were made the template proved to be effective at documenting the important details of the data as well as being a clear and straightforward tool for recording the data. Lastly, a laptop was the main resource for the data collection and all data collection took place in the quiet setting of Maynooth University library over a period of 14-21 working days.

Though this research predominantly favoured the qualitative grounded theory approach whereby the researcher avoided commencing the research with preconceived ideas but instead allowed themes to emerge from the data collected (Noakes & Wincup, 2004), precautions were still taken to control for any potential researcher bias. In order to remain reflective about the data, a diary maintaining a meticulous record of the researcher's thoughts, ideas and feelings about the progress of the data collection and data analysis was kept (Gray, 2018). Furthermore, any preconceived ideas, expectations and biases at all stages of the process were journaled in order to remain aware of them while reflecting on the data. It must be noted that the research began with only one preconceived idea, namely, that the rise in electronic recording has resulted in a decline in the incidences of oppression by the Garda and resultant reduction in the number of miscarriages of justice. As this research did not include any human participants, and all information was publicly available online, it had no ethical dimension. Given that there were no data protection issues and no requirement for informed consent, there was no requirement to make an application to the Ethics Committee in Maynooth University.

Data Analysis

This research analysed a number of cases and case judgements to identify the contemporary causes of wrongful convictions and the conditions impacting their rate. An analysis of this evidence stemming from government published documents was useful in understanding the change in miscarriages of justice over time and the reasons for these changes. The main points of thematic interest and related analysis developed and evolved until all data was collected (Noakes & Wincup, 2004). In keeping with most other kinds of qualitative data analysis, Coffey (2014) reassures that it is entirely appropriate to undertake a thematic analysis of documentary data. Though content analysis provides a representation of the data's information, it was more favourable to undertake a thematic analysis of the data in this research as it goes one step further to provide an interpretation of the data (Gray, 2018).

Adopting an interpretative standpoint and primarily inductive approach to the thematic analysis, the themes in this study were data driven and supported by Straussian approaches to coding and grounded theorising (Priya, 2016; Strauss & Corbin, 1998). The analytic process through which the data was conceptualised and integrated to form themes and theories is what Strauss and Corbin (1998) called 'open coding'. This involved analysing the data such that the conditions impacting the rate of wrongful convictions emerged and the contemporary causes of wrongful convictions were uncovered. While the method of analysis was primarily inductive in that the codes emerged progressively during data collection (Braun & Clarke, 2006), there also existed an element of deductive analysis as the research was guided by the aforementioned research questions and hypothesis that there will be fewer miscarriages of justice arising from Garda oppression since the courts crackdown on electronically recording interviews. Colour coding was used to record the frequency of phrases, issues or other elements in the case judgements that later in the analytic process were used to identify key themes and generate theoretical categories (Coffey, 2014).

Limitations

The most obvious limitation to the use of documentary data in this research on miscarriages of justice in Ireland was that the data was only available for a limited timeframe, namely, 1993-2022. As the miscarriage of justice provisions were only introduced in 1993 this research was unable to collect data on miscarriage of justice cases prior to 1993 thus making it difficult to provide a complete depiction of the situation in Ireland. Another pertinent limitation to the research relating to the possibility of cases having been unreported and undiscovered, is due to the fact that only cases that come within the statutory definition of section 2 of the Criminal Procedure Act 1993 were included. Given that the Court of Appeal filters cases that actually go to appeal, there is a strong possibility that potentially relevant and valuable cases may have slipped through the cracks of the statutory definition and as a result, call the representativeness of the research into question. For example, applications under s.2 that are not successful but who may have deserved to have a conviction overturned, and/or people who feel they have suffered a miscarriage of justice but who, for various reasons, have decided against applying under s.2, were not recorded in the main analysis of this research. It is clear that the extent of miscarriages of justice is a topic of much speculation and remains a 'dark figure' in Ireland on the basis that if a legal appeal is not brought, it assumed a miscarriage has not ensued (Poveda, 2001). The fundamental complexity of this area is that there is no way to determine how many cases go unidentified and whether these cases differ systematically from those which are

identified (Huff et al, 1996; Poveda, 2001). Studies have consistently referenced the absence of a methodology for measuring this justice system error (Covey, 2012; Poveda, 2001). However, given the dearth of research analysing the causes of miscarriages of justice in successful appeals in contemporary years, the 29 year time frame of this research is valuable and the findings therefore, remain reliable and important.

Conclusion

The aim of this research was to capture the contemporary causes of wrongful convictions through an analysis of the case judgements where a finding of a miscarriage of justice under s.2 of the 1993 Act has been made or certificate under s.9 has been issued. The research was particularly interested in the impact that changes to practices and procedures has had on miscarriage of justice cases. On account of the lack of research in this area, an interpretivist approach has been adopted which allows for theory generation. The data collection method used for this research was documentary analysis of case judgements that were available online over the 29-year period. This was seen as a more comprehensive and time efficient approach than interviews with practitioners. Though the dark figure of miscarriages of justice limits the generalisability of the findings and representativeness of the number of people suffering a miscarriage of justice, the researcher is satisfied that the research provides important insights and a good basis for further research in this area.

Chapter Four

Findings and Analysis

Introduction

Throughout this chapter, the findings of the research which were gathered using the methods outlined in the previous chapter will be presented. Following the presentation of the trajectory of miscarriage of justice cases over time including their causes, frequency and timeline, the aim of this chapter is to analyse such findings in light of the current literature on causes of miscarriages of justice and unveil whether internationally received wisdom is true in the Irish context. While a number of themes emerged mirroring some of the issues previously discussed in the literature review, these themes came to the fore in contexts specific to Irish criminal justice. As a second supplementary strand to this research, this chapter will later discuss the unsuccessful appeals under s.2 of the 1993 Act, collecting data on the main basis of why each applicant argued a miscarriage of justice occurred. The purpose of this analysis is to gain further insight into the trends of miscarriages of justice in Ireland across the 29 year time period, and whether the causes in the unsuccessful cases reinforce those identified in the successful appeals.

Successful Appeals 1993-2022

As will be recalled from the previous chapter, in Ireland the term 'miscarriage of justice' is broad and encompasses all cases in which it becomes difficult to claim that justice has been done or that an individual has been rightfully convicted (Conway and Schweppe, 2012). There have been a number of high-profile instances of miscarriages of justice in Ireland over the last few decades, including the well-known 'Tallaght Two', Nora Wall and Frank Shortt cases. Likewise, there have been highly publicised cases in which controversial convictions were quashed or overturned despite having never been legally declared a miscarriage of justice, including Nicky Kelly and Peter Pringle. Figure 1 below presents the findings of the cases that either successfully appealed their conviction under s.2 of the 1993 Act on miscarriages of justice from 1993 to 2022, or had their conviction declared a miscarriage of justice on the basis of new evidence unfolding under s.9. Thus, the findings of this research are reflective of any case in which: (i) a conviction was either quashed under s.2 and subsequently declared a miscarriage of justice under s.9, (ii) quashed under s.2 without receiving a s.9 certificate, or (iii) declared a miscarriage of justice under s.9 but never having appealed under s.2. Of the nine cases recorded on the chart in Figure 1, six were successful appeals under section 2, while in

three cases only a relevant section 9 proceeding was identified. In any event, the most important points of analysis in each case for assessing the root causes of miscarriages of justice in Ireland and the decisions and conditions impacting their trajectory over time, is the date of the conviction, the reason for appeal and the period of time between conviction and appeal. The point in time when each miscarriage of justice occurred will reveal the practices and procedures in place at each given time and act as a point of comparison to the appeal date. A focus on the period of time between the conviction and the appeal date allows for an analysis of the changing conditions and decisions having an impact on the nature and frequency of each of the causes identified.

At first sight, Figure 1 reveals the relatively few cases of miscarriages of justice as identified by the Irish courts over the last 29 years. Overall, it is demonstrated that miscarriages of justice were most prevalent prior to the twenty-first century, with six of the nine cases being traced back to the 1980s and 1990s (though it is worth noting that in most of those cases appeals were not successful or certificates were not issued until the twenty first century, approximately one or two decades following the conviction). This paper posits that the introduction of the 1993 Act served as a remedy to the claims of injustices that had been emerging in the 1970s and allegations of ill treatment in police custody (Kilcommins et al, 2004). As will be recalled from Chapter Two, the existence of improper interrogation techniques and procedures in the 1970s were largely associated with the operation of the 'Heavy Gang' within the police force in Ireland (Conway, 2008). Given the decline in the rate of miscarriages of justice over the time frame of this research and the nature of the causes, though still very much connected to the operation of police work which this chapter will come to address, the findings are suggestive of the fact that, with the introduction of the 1993 Act, came the breakdown of the relative protection that the police traditionally received from the entirety of the criminal justice system. Notably, the courts' crackdown on the electronic recording of interviews in police stations and the expansion of what is accepted as a miscarriage of justice to include the administration of justice by state actors and the system itself, may be signalling the withering of trust that the courts and the public have in the police. This is contended alongside Kilpatrick's (2018) acknowledgement that history has shown the Garda cannot be left to its own devices to implement reform (Kilpatrick, 2018). In fact, what is more troubling is that the former editor of The Garda Review and a founding Commissioner of GSOC, Conor Brady, recorded his "deep" disillusionment with the garda and not being able to get into Fortress Garda (Sheridan, 2014), while the Garda Inspectorate in 2015 also recorded ineffective internal changes in

response to recommendations made by the courts, reports and inquiries (Kilpatrick, 2018; Inspectorate, 2015). Where the word of the police on trial has been seen to form the basis of a convincing case called by the prosecution, noticeable in the historical Nicky Kelly case and as identified by this research in the *DPP v Shortt* [1995] case, procedures such as the exclusionary rule and corroboration warning, though under increasing scrutiny in recent years (Hamilton, 2020), lend suggestion to the idea that the courts have attempted to take control in implementing reform in the area of miscarriages of justice as the Garda seem to fail to do as such. The Irish courts having operated for many years one of the strictest exclusionary rules in relation to illegally obtained evidence in the common law world and the requirement that statements must now be electronically recorded resting on breaches of the Custody Regulations, it is suggestive that this provides a somewhat plausible explanation as to relatively few cases of miscarriages of justice in recent years. The impact that improving practices and procedures has had on miscarriages of justice will be discussed further in this Chapter.

Figure 1. Conviction, Appeal and Certificate Dates

Case	Conviction Date	Successful Appeal	s.9 Cert?
DPP v Conmey	14th July 1972	22nd Nov' 2010	29th July 2014
DPP v Pringle	23rd Nov' 1980	16th May 1995	----------
Meleady & Grogan	8th May 1985	20th March 2001	20th March 2001
DPP v Shortt	28th Feb' 1995	----------	31st July 2002
DPP v Hannon	27th Jan' 1997	----------	27th April 1997
DPP v Nora Wall	10th June 1999	----------	16th Dec' 2005
Yusif Ali Abdi	28th May 2003	13th Feb' 2019	30th May 2022
DPP v Redmond	19th Nov' 2003	28th July 2004	----------
Michael Connolly	2014/2015	2018	2021

DPP v Conmey

Convicted in 1972 of manslaughter, Martin Conmey's conviction was quashed in 2010 thirty eight years after his conviction on the basis of newly discovered facts raising serious concerns that the Gardaí had concealed earlier statements from witnesses which differed substantially from the statements used at trial. This is an apparent case in which police misconduct was the

sole cause of the miscarriage. Notably, during the appeal one of the witnesses who had made changes to their statement in the original trial, outlined the nature of abuse they suffered at the hands of the Gardaí forcing them to change their original statement to include the placement of Conmey at the scene of the crime.

DPP v Pringle

Convicted in 1980 of capital murder of a member of An Garda Síochána following a bank robbery, Peter Pringle was sentenced to death which was later reduced by the President to 40 years without remission. Pringle's conviction was quashed in 1995 fifteen years after his conviction due to a conflict of evidence between two members of the guards that was documented in a garda notebook. Had Pringle's counsel been aware of the disputed entry in the notebook in which Detective Sergeant Connolly said he had handed the blood stained tissue (containing Pringle's blood) to Detective Sergeant Ennis and that Detective Sergeant Ennis contended he had not received the tissue, then this conflict would have raised reasonable doubt as to the general credibility of Detective Sergeant Connolly, possibly resulting in the exclusion of his disputed witness statement claiming Pringle admitted his involvement. This case was also classified under the casual category of police/prosecutorial misconduct in this research.

DPP v Meleady & Grogan

Commonly known as the 'Tallaght Two' case, Meleady and Grogan were convicted in 1985 of malicious damage and assault. The case against them rested solely on the identification by the victims of the crime, Mr Gavin and his son. Their appeal was successful on the basis that the 'Walker Memorandum' owned by a State solicitor, stated that the prosecuting garda in the case had said photos were shown to Mr Gavin and he had identified one of the accused prior to his eyewitness identification of Meleady and Grogan at the courthouse. The conflict that arose out of this was that Eamon Gavin and the Gardaí denied any photos having been shown. Additionally, evidence as to the location of the fingerprint of a different suspect and its non-disclosure to the defence before the first trial also rendered the convictions recorded by the jury unsafe and unsatisfactory. Again, the contradictions and concealment of evidence brought police/prosecutorial misconduct and eyewitness errors to the forefront of this case.

DPP v Shortt

Convicted in 1995 and sentenced to three years in prison for permitting the sale of drugs on his land, the prosecution quite suddenly, and without any substantive explanation, consented to

Shortt's conviction being quashed in 2000. This case has been described as a most serious, tragic and alarming case in which Mr Shortt was framed by gardaí on drug offences in 1995 and given a three year sentence. Police/prosecutorial misconduct was the sole cause of the injustice in this case, involving perjury and the deliberate concealment of documents such as annotated statements compiled by the gardaí who were the principal witnesses at this trial.

DPP v Hannon

Convicted of rape in 1997, this was a case of factual innocence. Close to ten years after the allegations were made, the complainant, now an adult, retracted her allegations in a number of statements to the gardaí, confessing to having wholly invented a completely false allegation against Mr. Hannon. Witness credibility and lack of evidence was the cause of this miscarriage of justice in which a factually innocent man was found guilty of one of the most serious offences.

DPP v Nora Wall

Convicted in 1999, Nora Wall was the first woman in Irish history to be convicted of rape. Wall served four days of her life sentence in 1999 before her conviction was quashed when it emerged a prosecution witness had been mistakenly called to give evidence at the trial, despite a decision of the DPP that she should not be called. The prosecution which involved the tendering of corroborative evidence by a witness known to be unreliable and false statements known to have been made, was a prosecution that should not have been brought. Given the gross incompetence that occurred at the hands of the DPP's office and the Gardaí, police/prosecutorial misconduct is the unmistaken causal category which this case fits into on account of the inability of State actors to adequately do their job.

DPP v Yusif Ali Abdi

Convicted in May 2003 of murdering his son, Yusif Ali Abdi served 16 years in an Irish prison before his 2003 conviction was overturned in late 2019.Yusif's medical diagnosis radically changed and he was found not guilty by reason of insanity after psychiatrists for the prosecution and defence said that at the time of the killing, he was suffering from delusions arising from schizophrenia. The causal category into which this miscarriage of justice falls is scientific errors.

DPP v Redmond

George Redmond was convicted in 2003 for corruption after it was found that he had accepted a corrupt payment of £10,000 connected to planning matters. Redmond served one year in prison before his conviction was quashed in 2004 on the grounds that had the new evidence of bank records (showing that the sum of money was not withdrawn by the primary witness on trial who claimed it was), been available in the original trial then it might have raised doubts amongst the jury. This case involved police/prosecutorial misconduct insofar as the police did not gather the records prior to the original trial. A retrial was not ordered as Redmond had served virtually all of his sentence.

Michael Connolly Case

Convicted in 2015 in the Special Criminal Court, Michael Connolly was sentenced after an Assistant Garda Commissioner gave belief evidence that he was a member of the IRA. In April 2021, an electronically passed judgement declared this case a miscarriage of justice under s.9 of the 1993 Act. It emerged that there was a grave defect in the administration of justice as the Commissioner's belief evidence was also contained in the book of evidence against the accused, resulting in the danger of being 'double-counted'. The court in 2021 ruled that the Commissioner made "an unqualified assertion" during the trial stating none of the material that formed the basis of his belief was in the book of evidence against the accused.

Figure 2. Causal Categories of Each Miscarriage

	Conmey	**Pringle**	**Meleady & Grogan**	**Shortt**	**Hannon**	**Wall**	**Yusif Ali Abdi**	**Redmond**	**Connolly**
Police/Pros Misconduct	●	●	●	●		●		●	●
Forensic Errors							●		
Factual Innocence					●				
Witness Credibility	●	●		●		●		●	●
Non-Disclosure	●	●	●	●		●		●	

Interrelated Trends: An Improvement to Procedures or a New Realm of Misconduct?

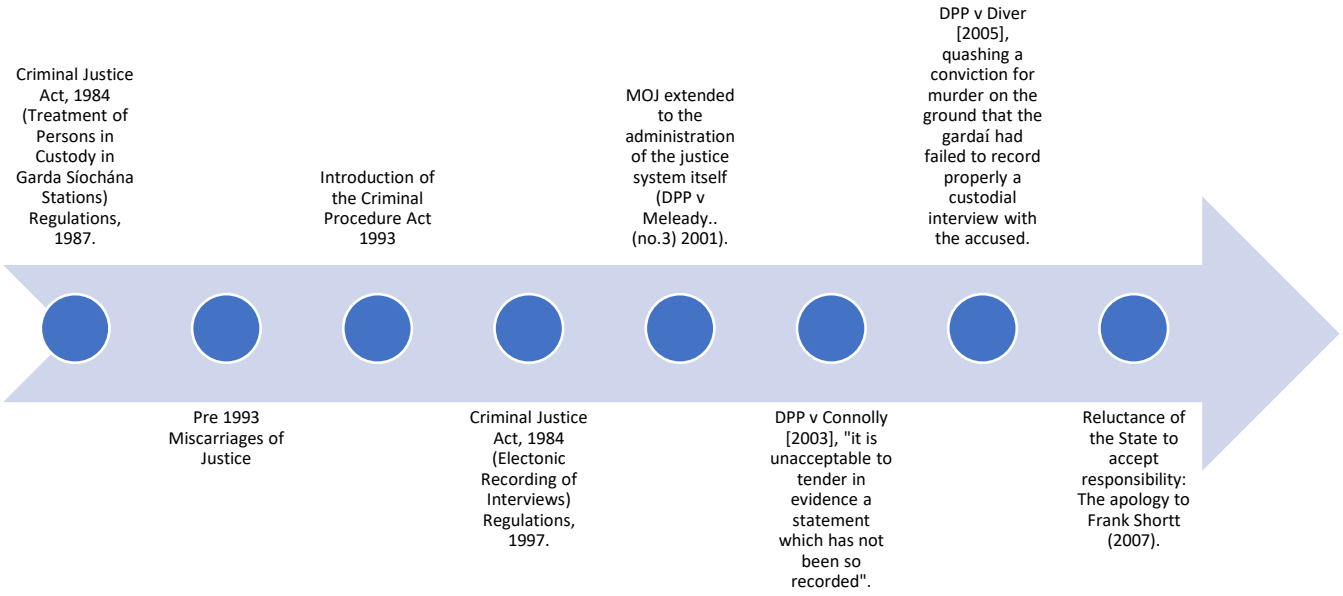
While the general decline in miscarriage of justice cases is demonstrated by Figure 1, the brief synopsis of each case and Figure 2 above, evidences persistent police misconduct as the primary cause of miscarriages of justice in Ireland. It has been shown that in all but two cases, namely Yusif Ali Abdi and Hannon, some form of police/prosecutorial misconduct was clearly identified. It is, however, the change in the nature of the misconduct that constitutes one of the most important findings unravelled by this research. Whilst historically, misconduct was unveiled in the form of oppressive questioning and severe physical brutality during police interrogation in attempt to procure people to confess, less visible operations such as committing perjury, non-disclosure and suppression of evidence has seemingly gained more traction in recent years. The shift in the nature of misconduct has transpired simultaneous to improvements to the standards and procedures in Irish criminal justice. Since the 1980s, but more impactfully from March 1997 when regulations for electronic recording were signed into law, the Court of Criminal Appeal and Supreme Court began issuing strong cautions to gardaí concerning the importance of electronic taping of interviews with suspects in a clear attempt to guarantee factual accuracy and avoid miscarriages of justice. In *DPP v Connolly* [2003], a detailed judgement on electronic recording was provided and a warning shot to the gardaí about recording was fired, while *DPP v Diver* [2005] marked the line in the sand when the Court of Criminal Appeal quashed a murder conviction on the grounds that the gardaí had failed to properly record an interview with the accused whilst in custody.[11] Moreover, the Court of Criminal Appeal in *Diver* announced that the time cannot be far off when a statement that has not been electronically recorded will not be admitted into evidence. Almost every legal system recognises procedural improvements and the inadmissibility of evidence as a reaction to serious violations. In particular, there is an almost universal rule that statements made as a result of mistreatment, torture and oppressive questioning must not be used in court (Turner & Weigend, 2019). It could be insinuated that it is not by chance that the crackdown on electronically recording statements for the purpose of deterring unlawful police conduct may have played a role in the slow decline in the rate of miscarriages of justice in the twenty first century in Ireland. Given the series of highly publicised cases of miscarriages of justice during the 1970s and 1980s and the consensus that police misconduct in the physical form was a traditional cause of injustices, as identified in the early case of *DPP v Conmey* [2010] by this research, the exclusion of unrecorded statements has been to regulate the space of interrogations and the

[11] *DPP v Connolly* [2003] 2 IR 1; *DPP v Diver* [2005] IESC 57.

conduct of police. As only three cases of miscarriages of justice accepted by the Irish courts have come to the fore in the twenty-first century, two of which involved some form of police misconduct in comparison to the other six cases identified in this research dating back to the twentieth century, the findings from the data certainly support the importance of improving practices and procedures within the criminal justice system.

While arguably improved standards in electronic recording may have contributed to the decline of miscarriages since the early 2000s, it is also argued that perhaps the changes to procedures have accommodated for modifications in the behaviour of the gardaí, particularly in terms of how they investigate crimes and gather evidence (Daly, 2011). Reflecting on the concerns expressed in relation to electronically recording statements outlined in the Literature Review, including the possibility for misconduct to arise in unregulated spaces where the tape cannot record what happens (Bacik, 1999), the data from the cases identified in this research are suggestive of the fact that it is indeed no longer the secrecy of interrogations that is the central concern but rather what happens in between. It is the non-disclosure of evidence such as the known unreliability of a witness, the concealing of early witness statements, the suppression of evidence, the conflicts between members of the gardaí, and perhaps most concerning, the false statements given by the guards during a trial, that this research has uncovered as the contemporary causes of miscarriages of justice in Ireland. As mentioned before, this shift in behaviour is unearthed in the briefing of each case above, but when understood in relation to the timeline demonstrated in Figure 3 below, it becomes more comprehensible to recognise the impact that procedural improvements have gradually had on the rate of miscarriages of justice and those said causes within the timeframe of this research. Where, on appeal, we saw pre 1993 cases such as *Conmey* [2010] concern allegations of police brutality during interviews with witnesses, the more recent *Redmond* [2004] and *Michael Connolly* [2021] cases, following the changes to standards and procedures, involved police/prosecutorial misconduct insofar as the police did not try hard enough to gather the appropriate records prior to the original trial or double check the book of evidence before providing a statement. Though it is clear from other studies that physical or coercive abuse has not disappeared in Ireland, this study suggests that misconduct borne out of laziness or perhaps disinterest has taken centre stage in recent years as opposed to more flagrant historical forms of malpractice.

Figure 3. Changes to Practices and Procedures



Are Common International Causes of Miscarriages of Justice Common to Ireland?

False confessions have been documented as one of the leading sources of wrongful convictions worldwide (Leo, 2005). While international Innocence Projects have long recognised the possibility and propensity of false confessions giving rise to miscarriages of justice, this is as yet an inadequately explored area in Irish jurisprudence (Langwallner, 2011). Though the exposure of the 'Heavy Gang' operating in 1970s Ireland brought with it allegations of false confessions as a result of brutal treatment in police custody (Conway, 2008), it appears from this research that it is an area that has not been canvassed before the Irish courts over the last three decades. In fact, there was no evidence of a false confession or even a suggestion as to a confession having been wrongfully obtained in any of the successful appeals identified and analysed for this research. Though in *DPP v Hannon* [1997], a completely false allegation against Mr Hannon was the sole cause of the miscarriage of justice, a false confession from Hannon never followed suit. In terms of the thematic analysis involved in this research, *DPP v Hannon* [1977] prevailed as somewhat of an outlier in that it unequivocally concerned factual innocence. While the Innocence Project Movement has put much emphasis on factual innocence and completely blameless individuals, many of which having falsely confessed in attempts to secure shorter incarceration periods, the sheer paucity of suspects falsely confessing in Ireland suggests that the leading causes of miscarriages of justice in Ireland do not necessarily mirror those of internationally recurrent causes.

Similarly, as will be recollected from Chapter 2, eyewitness errors have been consistently recorded as a leading contributing factor of wrongful convictions internationally, supported by a plethora of research and Innocence Project data (Acker & Redlich, 2011). Conversely, this has not been the case in Ireland. Given the small sample size of nine miscarriage of justice cases uncovered in this research it could be inferred that there is an unknown portion of unexposed miscarriages of justice, the so-called "dark figure", which simply were not subject to the fortuitous circumstances that might have allowed them to be exposed (Cole, 2009). Among those, eyewitness errors may actually be more prevalent, however, during the course of data collection only one case unfolded having encountered problems with regard to eyewitness reliability. In *DPP v Meleady and Grogan* [2001], Clark and Godfrey's (2009) contention that exposure to misleading and other sources of information following a crime, such as photographs of suspects and interviewer questions is problematic, was brought to the forefront of the appeal. This case, involving a conflict in the evidence as to whether the victim/witness had been shown photographs of the suspects prior to his eyewitness identification in the courthouse, brought to light the systematic problems associated with line-ups and identification procedures (Loftus, 2005; Clark & Godfrey, 2009). Though eyewitness error has been explicitly linked with miscarriages of justice internationally, in the context specific to *DPP v Meleady and Grogan,* it was discernibly affiliated with police misconduct. Thus, while the internationally documented problems associated with eyewitness identification have been recognised in Ireland, it is not amongst the leading causes of Irish miscarriages of justice. Again, this is demonstrable of the fact that international causes of miscarriages of justice are not entirely transferrable to an Irish context. Whether the differences relate to Ireland's population size and consequent prison population size, or whether these differences have their roots in other political and cultural factors, the following section of this chapter outlines the primary causes as identified by this research through a thematic analysis.

Contemporary Causes of Miscarriages of Justice in Ireland

As Chin and Well's (1997) argue, the police "are attached umbilically to the concept of honesty," but "they are profoundly corrupt". To put it plainly, the centrality of malpractice to the problem of miscarriages of justice in Ireland is unmistakable. Where the 'Heavy Gang' once operated using violence and forceful tactics, a strategically corrupt and less obvious force has materialized. On review and dissection of the relevant case judgements and categorising codes, the researcher identified two salient themes emerging within the evidence marking a conviction unsafe and unsatisfactory: *witness credibility* and *non-disclosure of evidence*. While

a number of other issues, including perjury, uncorroborated evidence and conflicts in evidence, all came to the fore during the course of analysis of the case judgements, common to almost all nine cases was some form of issue relating to witness credibility, non-disclosure of evidence or in some cases, both. It is important to note in advance the complexity of the area under investigation and the corresponding fact that several cases fitted into several causal categories, and in many cases a crossover between the two named themes is evident.

In six of the nine cases, namely *Conmey*, *Pringle*, *Shortt*, *Wall*, *Redmond* and *Connolly*, the credibility of core witnesses was questioned on appeal and assisted in rendering a conviction unsafe, though the credibility and types of witnesses manifested differently across the cases. The non-disclosure of evidence was also discovered in six cases, namely *Conmey*, *Pringle*, *Meleady and Grogan*, *Shortt*, *Wall* and *Redmond*. In some instances, witness credibility and non-disclosure of evidence, were interrelated. Such crossover was evident in *Wall*, *Shortt* and *Conmey* in particular. As touched on previously, Irish causes of miscarriages of justice have not entirely followed the trajectory of the causes established by its American and British counterparts. Forensic errors in the form of medical testimony only came to the fore as the cause of the miscarriage in *DPP v Yusif Ali Abdi* [2021], and as opposed to mass incarceration of factually innocent people, *DPP v Hannon* was the only case identified by this research as involving factual innocence (Gould & Leo, 2011). However, given the relatively small number of successful appeals found by this research overall, it is not to say that forensic errors and factual innocence are so rare as to not be relevant. It is altogether possible that the aforementioned 'dark figure' of miscarriages of justice in Ireland may conceivably reveal a pattern of forensic science or medical errors, but that that figure presently remains unknown. It could be suggested that on account of the fact that *Yusif Ali Abdi* was one of the most recent cases dating back to 2019, and that medical evidence has only been increasingly relied upon in Irish courts since the 1990s, perhaps like police malpractice, issues with the practice and related evidence are only unfolding years after their commencement (Ireland, 2010). Relating back to the so called 'dark figure', perhaps forensic and medical evidence that was exaggerated, misleading or simply mistaken, has been difficult to bring to light under the statutory provision of s.2 of the 1993 and thus as a common cause of miscarriage of justice in Ireland it is yet to be exposed (Edmond, 2014). Likewise, it could be that Ireland is set apart from its counterparts in the sense that protections afforded to suspects such as legal aid, may provide better safeguards against miscarriages of justice in Ireland where local needs and priorities are well established, than in larger jurisdictions such as the US (Lee, 1976). However, this is an area of

interest for future research. It is important to note that for the purpose of this analysis the case of *Hannon* in which false allegations were made, will be discussed in relation to the issues associated with witness credibility. As will come to be revealed by the following sections, there exists a number of factors specific to Ireland, including the connectedness of communities and 'small country syndrome', that have contributed to witness credibility and non-disclosure of evidence as the main causes of miscarriages of justice.

Witness Credibility

As Justice Blackmun once proclaimed, "there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, 'That's the one!'" (Wilson, 2010). This sentiment is especially true when a prosecution case is built almost entirely on statements made by a witness, but of course brings attendant dangers. Despite the most sophisticated forensic sciences and technologies, in a number of the cases presented in this research there was a visible lack of physical evidence (Sheridan, 2010). Perhaps the most memorable of them all was the trial that had turned completely on questions of credibility, *DPP v Hannon* [1997]. In the absence of any medically significant injury, the complainant, a young girl in this case, seemed to have convinced medical professionals and the courtroom alike that she had been assaulted. Given the extensive research on the early development of truth and lie telling amongst children and that in many cases the testimonial competence of child witnesses has been an issue at trial (Talwar et al, 2002; Polak & Harris, 1999), *Hannon* is affirmation of the dangers associated with a trial that places great significance upon a single witness.

What is of importance here is why the complainant lied and how the system depended on those lies. It is commonly suggested that witnesses often lie for money or in exchange for something else (Natapoff, 2006), but a history of animosity between the families of the complainant and Mr Hannon relating to disputes about land, not uncommon to Irish county districts, seemed to have unfortunately influenced her allegations. This, as well as the circumstances in which the unreliability of the witness Patricia Phelan in *DPP v Wall* [1999] came to be known, are suggestive of the fact that the connectedness of communities in Ireland have a part to play in miscarriages of justice. The term 'small country syndrome' within this research is used to describe the social phenomena in Ireland that having a small population often means communities are closeknit and people or families are often known to each other. As Hourigan (2015) points out, there is a delicate tension between rules and relationships in Ireland, it is a nation that equates 'being good' with 'being there for each other'. While *Hannon* is illustrative of the negative effects the connectedness of communities can have, the Gardaí's awareness of

the unreliability of a witness in *Wall* (as a direct result of remembering prior complaints and allegations made and withdrawn by that very witness multiples times in the past) is concerning. This second case, *DPP v Wall* [1999] is an exceptional case inasmuch as it involved the tendering of corroborative evidence by a witness known to be unreliable and thus, described by the Court of Appeal as 'a prosecution that should not have been brought'. The mistaken calling of a witness deemed to be unreliable despite specific direction not to do so, is a clear marker of the way in which the prosecution and police can manipulate their power and the connectedness of communities. This attempt to build a strong case on the basis of what Patricia Phelan acknowledged as lies, purporting to corroborate the complaints made by Regina Walsh, is one of the most concerning causes of a miscarriage of justice found in Ireland.

This was not the only case uncovered in the research in which there was overwhelming reliance on a witness in the absence of physical evidence. In *DPP v Redmond* [2004] the credibility of the core witness, Brendan Fassnidge, was crucial to the prosecution case. Despite seeming confused about many matters, contradicting himself on several occasions and failing to produce bank records to support the key fact that he had withdrawn a sum of money from his bank account, Mr Redmond was convicted nonetheless. Given that the basis on which Redmond's appeal was successful was the newly discovered fact showing no sum of money had been withdrawn by Mr Fassnidge from the bank, it appears that the Guards' failure to secure such records prior to the original trial and thereby corroborate the witness's assertions, was the cause of the injustice. It has become apparent that a failure on behalf of the gardaí to effectively participate in the collection and production of evidence, whether such failure is due to a general disinterest, laziness or purposeful negligence, is nonetheless equally as damaging as physical or coercive malpractice. In a similar vein, had the evidence of the disputed entries in Detective Sergeant Connolly's notebook been produced as evidence in the original trial of Peter Pringle, reasonable doubt as to the credibility of Detective Sergeant Connolly may have been raised and potentially resulted in a rejection of his witness statement alleging Pringle had said "I know that you know I was involved but on the advice of my solicitor, I am saying nothing and you will have to prove it all the way". Deep rooted in both cases is the fundamental existence of evidence with enough significance to call into question the credibility of the core witnesses. Even more damming is that *DPP v Pringle* [1995] was among the first cases identified during the data collection of this research dating back to 1980, while *DPP v Redmond* [2004] was one of the last, having occurred in the twenty-first century. Regardless of the inherent differences between the cases, and whether the evidence in both cases was intentionally or unintentionally

supressed, avoided or mistaken, it is concerning that the credibility of core witnesses continues to result in miscarriages of justice over a twenty year time span.

'Police generated witness testimony' was identified as another, even more troubling, form of witness testimony in which the credibility of a witness was called into question (Thompson, 2012). It is argued that police generated witness testimony manifested itself in two ways throughout the analysis. In *DPP v Conmey* [2010], once reliable witnesses succumbed to police oppression and unknowingly became unreliable to the defence, whereas in *DPP v Shortt* [2002] and the Michael Connolly case, the professional witnesses themselves, the police, provided perjurious statements to support their own versions of what happened (Chin & Wells, 1997). The witness statements in *DPP v Conmey* [2010] can only be viewed as products of the interactions between each individual on the one hand, and the investigator on the other. Rather than one-on-one conversations between equals, research has shown that investigative processes tend to be police dominated sessions in which the guards use various methods of oppression, suggestion, persuasion or coercion (Thompson, 2012). The statement given by Mr Séan Reilly, the only survivor of the three witnesses whose evidence changed during the garda investigation of this case, supports this hypothesis in the literature. He claimed that after he had given an account which was the same as the account given in his first statement of what he saw on the night in question, "they [the police] were not satisfied with this, I was punched on the outside of the shoulder and on the cheek".[12] Though this case came before the introduction of systematic recording of interviews in police custody, it is at least arguable that the sole aim of the follow up interviews was to manipulate the witnesses into producing statements which precisely supported the police account, and any prior contrary evidence was disregarded and concealed from the defence (Maguire & Norris, 1994). The role of the guards in procuring these statements is a critical factor in assessing the credibility of such witnesses and importantly, is a critical factor that distinguishes other forms of witness evidence from the dangers of this sort (Zajac et al, 2016).

The second type of police generated witness statement that this research discovered is the situation in which police themselves stand as a witness in a trial and perjure themselves. As "the most serious, tragic and alarming" cause of events to occur,[13] there is no way of knowing how often police perjure themselves in order for a case outcome to go their way, but the disconcerting cases of Frank Shortt and Martin Connolly demonstrate that it does happen. Chin

[12] *DPP v Conmey* [2010] IECCA 105
[13] Shortt v Commissioner of An Garda Síochána & Ors [2007] 4 IR 587

and Wells (1997) have contended that police testimony, even when perjured, is more persuasive to juries than witness statements by civilians. The guards acquire special credibility and, as noticeable in the case of *DPP v Shortt* [2002], that credibility can so readily be taken advantage of. The original statements of the principal witness in this case, a detective garda, focused on the fact that drug dealing took place on Frank Shortt's premises as opposed to Mr Shortt being aware of the drug dealing. However, it was revealed on appeal that in response to the advice on proofs, a second statement was prepared with the help of a superintendent who annotated the original statement to expand it to include specific references to the applicant being present when drugs were sold. It seems police perjury is intended to facilitate what research has found many officers to perceive as the most essential parts of their jobs, to punish those they believe to be committing or have committed crimes, often described as 'tunnel vision' (Covey, 2012). Given that the inculpatory amendments to the statement alleging Mr Shortt's presence when drugs were being sold was central to his conviction, this case exemplifies the way in which the system itself is not constituted in a manner likely to give defendants much chance of prevailing against the word of professional witnesses. Similarly, it was the statement by a member of An Garda Síochána that transformed Michael Collins' case from a potentially weak to a stronger case. Rather than an utterly annotated and untrue statement, the garda witness statement in this case involved belief evidence that Collins was a member of the IRA. Garda Assistant Michael O'Sullivan made what the courts described as "an unqualified assertion" that none of the material he viewed that formed the basis of his belief was in the Book of Evidence against the accused. The carelessness in making an inculpatory statement without being aware of the general nature at the very least, of the supporting evidence in the case is a "grave defect" in the administration of justice which led to the sentencing of Mr Connolly. In view of the facts of the appeal, credit again must be given to the assertion that contemporary misconduct on behalf of the police may well be down to idleness, disinterest or negligence. What it is argued is most unsettling in terms of police misconduct is that such malpractice involving a single guard or relatively small group of guards scattered throughout Ireland's police departments is extremely difficult to detect. Yet, the aggregate effect of such misconduct could very easily generate a high number of miscarriages of justice (Covey, 2012).

Non-Disclosure of Evidence

The non-disclosure of material evidence has taken on a fresh significance in miscarriage of justice cases in Ireland. The importance of disclosure cannot be underestimated for it is the most important aspect of a defendant's common law right to a fair trial and no democracy is

possible without fair, independent justice (Polykarpou, 2022; Tomkins; 1994). Non-disclosure has been found to be a potent source of injustice in Ireland, and the courts have emphasised the difficulty that can arise in deciding whether an undisclosed item of evidence that is produced in s.2 or s.9 appeals as a newly discovered fact, might have opened a new line of defence in the original trial or had such significance as to potentially change the outcome. Importantly, it seems that for disclosure of evidence to work effectively, the guards must act as impartial investigators whose role dictates the pursuit of truth and accurate fact-finding (Tomkins, 1994). However, the cases identified by this research suggest that unfortunately this has not always been the case. Where in *DPP v Redmond* [2004] it seems that accurate fact finding was not a driver in the investigation, insofar as the police did not make sufficient efforts to gather the bank records prior to the original trial, in cases such as *DPP v Conmey* [2010] the guards could not be described as impartial actors. In fact, they took one step further so as to suppress evidence and manipulate witnesses into making completely inaccurate and untrue statements. On appeal, the prosecution in *DPP v Conmey* [2010] said that it is not certain that the initial statements were undisclosed, but Counsel for Mr Conmey insisted they had absolutely no recollection of the initial statements of the three core witnesses being furnished to them. That the gardaí had concealed earlier statements from witnesses which differed substantially from the statements used at trial, and the only possible reason for the change being that the witnesses were pressurised and intimidated by the gardaí into making a statement implicating Mr Conmey, is unambiguous evidence of deliberate police misconduct. Supposed to be law enforcers, it seems the guards tend to conceive themselves as the law (Chin and Wells, 1997).

Constitutional violations in the form of perjured testimony and the deliberate suppression of favourable evidence also formed the basis upon which an apology to Mr Shortt was tendered some fourteen years after the chain of events causing a grave miscarriage of justice. What is interesting about the Irish justice system's apology to Frank Shortt, a case where the guards irrefutably lied about the defendants criminal involvement and the strength of the evidence, is that the apology was drafted in such a way as to not refer to Mr Shortt's innocence, or purport to be offered on behalf of An Garda Síochána. Though it has been put forward by this paper that there has been a slight breakdown in the protection that the police traditionally received from the criminal justice system in that there is now more scrutiny of the investigative process, it seems clear that even as of the twenty first century, Ireland is not wholly capable of rectifying or accepting responsibility once a miscarriage of justice has occurred.

The case of Nora Wall remains one of the most memorable cases in which there had been significant non-disclosure of evidence that pointed towards innocence, or at least undermined proof of guilt. In addition to the aforementioned non-disclosure of the unreliability of witness, Patricia Phelan, (who had made prior complaints involving indecent assault and rape to the Garda Síochána against a number of other people), there was also significant non-disclosure of information about complainant Regina Walsh. Matters which had not been disclosed to the defence regarding Regina Walsh included her proximate and material psychiatric history as well as the fact that she had made, but not pursued, an allegation of being raped in England. Furthermore, the Court of Appeal stated that Wall was furthered prejudiced during the course of her trial by evidence of which the defence had no prior notification, namely, that Regina Walsh recalled the alleged episodes of rape by reference to 'flashbacks and/or retrieved memory'. It is clear from the analysis of the cases of non-disclosure that the fact of the matter is the police power to direct investigations means almost all other actors are effectively at the mercy of the police when it comes to the collection, and noticeable suppression, of relevant evidence (Polykarpou, 2022). It seems from the cases presented thus far, that situations in which evidence is suppressed can be regarded as either negligent or deliberate suppressions (Beatty, 1980). Whilst much literature would spend time claiming one is worse than the other, it is clear that, either way, non-disclosure denies defendants a fair trial and undermines the legitimacy of the Irish criminal justice system (Kreag, 2019).

It seems true in Ireland that priority has been given to the end, convicting people, above the means, complying with procedural rules and standards (Maguire & Norris, 1994). Commonly known as the 'Tallaght two' case, *DPP v Meleady and Grogan* [2001] is evidence of the reality being a process of case construction in which, once a suspect or two has been identified, the objective becomes the one-sided collection of evidence to support this version of what happened, as opposed to a search for the truth. This is contented on the basis of the newly discovered facts being the location in the front of the car of a fingerprint not belonging to either applicant and the "Walker" memorandum suggesting that the victim of the crime identified the applicant from police photographs prior to his identification in Rathfarnham courthouse. The memorandum read: "*Garda Patrick Thornton mentioned to me that Eamon Gavin had asked to see a book of photographs to see if he could identify any of the people who had taken his car - he saw a book containing fifty photographs and identified one of the accused.*"[14] While the Court did not find it necessary to resolve conflicts of evidence in relation to the Memorandum,

[14] DPP v Meleady & Grogan (no 3) [2001] 4 IR 16.

it was enough that these conflicts were substantial. Conflicts in evidence, particularly between state actors, were not confined to this one case within this research. In *DPP v Pringle* [1995] the discovered notebook entry made by Sergeant Connolly which read, "*Pringle in upstairs office. Superintendent T. Maher — nose bleed — to Pat Ennis*", led to a revelation of serious conflicts in evidence. Firstly, the defence should have been made aware of the fact that the tissue (used by Pringle after he had a nose bleed whilst in custody) had not been passed to the forensic science laboratory, notwithstanding its importance as an exhibit, and that no analysis was made of the blood. Secondly, the conflict in this case was the dispute between Detective Sergeant Connolly and Detective Sergeant Ennis as to what had become of the tissue. The undisclosed knowledge that Detective Sergeant Connolly would say that he had handed the blood-stained tissue to Detective Sergeant Ennis and that Detective Sergeant Ennis would say that he had not received the tissue is of utmost importance in this case in that the conflict as to the credibility of Detective Sergeant Connolly might have raised a reasonable doubt in the mind of the Special Criminal Court. It is clear, as Langwallner (2011) has commented, that the preservation of evidence was once found to be problematic in Ireland. It is nothing less than inexcusable that the potentially exculpatory evidence of the blood stained tissue containing Pringle's blood was not adequately retained and its whereabouts remains unknown. Though the Forensic Evidence Act 2014 and DNA database have arguably assisted in regulating this area, and the incorporation of impact assessment protocols for Garda actions and improvements in Garda education and training programmes have been introduced consequent on reports detailing misconduct and the formerly low standards set for performing one's duty to disclose evidence (Polykarpou, 2022), time will tell the extent to which many of these have translated into meaningful human rights advances in practice, or whether they are little more than paper exercises offering appearance over substance (Conway & Walsh, 2011).

Unsuccessful Appeals

The preliminary analysis of unsuccessful section 2 appeals undertaken by this research generated interesting findings supportive of what has been presented above. Having identified just under twenty unsuccessful section 2 appeals in the Court of Criminal Appeal and Court of Appeal, it must be noted that a number of the appeals were brought by applicants more than once. It is not the case that twenty different applicants have been unsuccessful in their appeal but rather that a few have appealed a number of times. In fact, the case of *DPP v Cauneze* was brought before the Court of Appeal four times in the space of six years. The sole purpose of this analysis was to identify the basis upon which the appeals were being brought. The

researcher focused on the causes of the claimed miscarriages of justice in order to compare them to the causes of the successful cases miscarriages of justice.

Figure 4. Alleged Causes in Unsuccessful Appeals under s.2

Alleged Causes	No. of Cases Making Allegations
Non-Disclosure of Evidence	6
Witness Credibility	5
Police Misconduct (perjury/ abuse)	2
Incompetent Handling of a Case	4
Other	1

As mentioned above and demonstrated by Figure 4, the findings of the claimed 'new facts' in many of the cases in this analysis mirrored the causes discussed in relation to successful miscarriage of justice appeals. It is important to note at this point that in terms of categorising cases into the table in Figure 4, cases that appealed more than once on the same basis as previous appeals were only counted and categorised once. It is clear that in particular, alleged non-disclosure of evidence and allegations of misconduct on the part of the gardaí regarding witness testimonies and perjury during the course of trials appeared in a number of cases, namely *DPP v Nevin* [2010] and *DPP v Meehan* [2016], as well as *DPP v S* [2006] and *DPP v M.S* [2007] respectively. Comparable to successful appeals, alleged non-disclosure of evidence in many of the unsuccessful cases surfaced in the form of documentary evidence such as photographs, seen in *DPP v Egan* [2017], or in the form of withheld information regarding witness identifications in *DPP v Meehan* [2016]. This case also demonstrated a noticeable overlap between witness credibility and non-disclosure of evidence similar to that in some of the successfully appealed cases mentioned above. With regard to witness credibility, issues also manifested themselves in ways similar to those discussed in relation to witness credibility in successful appeals. Namely, as seen in *DPP v McKevitt* [2013], allegations in unsuccessful appeals surfaced in the context that witness statements were often not appropriately corroborated by other evidence.

It seems what sets successful appeals apart from the unsuccessful cases is the stringent application of what is accepted as a 'new' or 'newly discovered fact'. It is suggested by this

paper that if any cases are to, or have, slipped through the cracks of the definition of a miscarriage of justice under section 2 of the Criminal Procedure Act 1993, it is due to what the courts interpret as constituting a 'new fact'. The most memorable judgement exemplifying this very possibility was that delivered in *DPP v S. (M.)* [2007]. In this case the matters concerning alleged misconduct on behalf of the guards, their treatment of the applicant and the allegation of perjury by the gardaí, simply did not constitute a new fact on the basis that such allegations "should have been known.. or discerned prior to the trial".[15] This is most concerning given that, even where it is accepted that such grave misconduct occurred, the applicant only has recourse under the 1993 Act if s/he appreciated it at the time and raised it at the original trial. Without in any way casting doubt on the findings of the courts in these cases, it is notable that police misconduct in the form of witness credibility, perjury and non-disclosure continues to form the leading basis upon which applicants argue that they have suffered an injustice. However, it is of significance to mention that unique to the analysis of unsuccessful cases, were allegations of incompetence with regard to the handling of the cases during the original trial. This unfolded in the context of issues associated with the preparation of the Book of Evidence, as alleged in *DPP v Cauneze* [2016] and *DPP v O'Reilly* [2015], and also with regard to incompetence in the actual conduct of the case by senior counsel on behalf of the applicant, raised in *DPP v Murray* [2005]. Perhaps the findings of this analysis should be considered alongside other academic studies that discuss the possibility of a 'dark figure' of wrongful convictions (Cole, 2009). It is argued that the dark figure in Ireland is hidden behind the circumstances in which the courts do not accept evidence presented on appeal as a 'new fact'.

Conclusion

This Chapter analyses cases of miscarriages of justice in Ireland since the introduction of the 1993 Act. It has been evidenced that these cases are lower than in neighbouring jurisdictions. However, this Chapter has also argued that wrongful convictions are a real and ongoing social and legal problem. While internationally received wisdom regarding the issues associated with eyewitness identification procedures and police misconduct have been identified in Ireland, it is argued that the connectedness of communities and the slowly increasing scrutiny of investigation procedures, are factors that contribute to setting Ireland apart in terms of the causes of miscarriages of justice and conditions impacting their rate. Causes are often complicated and multi-dimensional (Poyser & Milne, 2015). This research has revealed that the root of the problem of most miscarriages is closely connected to police malpractice, indeed

[15] DPP v S. (M.) [2007] IECCA 80

reinforcing what Forst (2013: 24) suggests, “law enforcement is the engine of miscarriages of justice.. they rarely occur without lapses in policing”. Given the improvements to policing standards in Ireland and greater oversight by the courts, a shift in the nature of police misconduct seems to have occurred, away from physical brutality and towards issues relating to witness credibility and the non-disclosure of evidence. It is suggested that the process of case construction has moved beyond building a case against a suspect, to the suppression of counter evidence and moving towards convicting someone as opposed to complying with procedures (Covey, 2012). Supportive of these findings is the preliminary analysis of unsuccessful section 2 appeals over the time period of this research. Though the cases identified in this supplemental strand of research have not been legally recognised as cases of miscarriages of justice, the basis upon which many of them have been brought forward reinforce the finding that non-disclosure of evidence and witness credibility account for the leading causes of miscarriages of justice in Ireland.

Chapter Five

Conclusion and Recommendations

This research has examined miscarriages of justice in Ireland. Specifically, it has examined: whether there has been a change in the rate of miscarriages of justice in Ireland since the introduction and enforcement of electronic recording; whether that change has impacted the causes of miscarriages of justice; and whether the causes identified by the Irish courts between 1993-2022 differ from the causes of well-known cases from the 1970s and 1980s? Given the paucity of research on Irish miscarriages of justice in Ireland in recent years, the aim of this research was to provide an analysis of the leading causes of wrongful convictions in order to gain an insight into the complexity of this area and propose recommendations for reform and future research. Through the critical assessment and thematic analysis of successful appeals under s.2 and s.9 of the Criminal Procedure Act 1993, the findings indicate that the most common causes of miscarriages founded by studies worldwide, while also present in Irish cases, are not so reflective of patterns found in Ireland. Thus, the causes identified by this research include forensic/medical error in just one case, but police/prosecutorial misconduct in the form of witness credibility and non-disclosure of evidence in all other cases.

The previous chapter highlights the importance of the integrity of the process perhaps even more so than the result of that process. The process occurs not only in courtrooms but, as identified by this research, the most important place where justice or injustice can happen is at the hands of the police, whether that be in police stations or elsewhere (Poyser & Grieve, 2018). Although the role of police/prosecutorial misconduct had attracted public and academic attention prior to the 1970s internationally, it was the miscarriages of justice associated with the 'Heavy Gang' and Irish terrorism that turned the spotlight on the conduct of the guards and its relationship with miscarriages of justice in Ireland (Savage & Milne, 2012). The role played by unreliable witnesses in wrongful convictions has been highlighted in a number of cases uncovered by this research, such as *Conmey*, *Shortt*, *Wall*, *Redmond*, *Connolly* and *Pringle*, and presented itself in different forms. Whether it was revealed that a member of the guards themselves proved to be unreliable, whether the guards suppressed evidence relating to the unreliability of a core witness, or simply did not gather enough evidence relating to the reliability of a witness, at face value the miscarriages resulted from malpractices on behalf of the police. However, the process of case construction certainly moves beyond witness credibility, and further presents risks that the police will overlook exculpatory evidence or

conceal evidence that counters their version of what has happened (Maguire & Norris, 1994). This research has also speculated that particularly in more recent years, miscarriages can and have occurred, not only in situations where state actors have intentionally done the wrong thing, but also where they have not done enough (Poyser & Grieve, 2018). This can include the failure to sufficiently investigate crimes and mount a robust prosecution case, this was evident in the failure to acquire appropriate bank records in *DPP v Redmond* [2003].

The shift in the nature of police misconduct simultaneous to improvements to standards and procedures in the Irish justice system was also among the most important findings in this research. While the crackdown on electronic recording in police stations was an attempt to reduce miscarriages of justice deriving from oppressive questioning and physical brutality in police custody, it seems misconduct has transpired in form of perjury, suppression of evidence and conflicts in evident in more recent years. Perhaps changes to police procedures have merely encouraged modifications in the behaviour of the gardaí. Furthermore, this research identified the preservation of evidence as an area that required reform in terms of reducing its impact on miscarriages of justice. In particular, on the facts of the aforementioned Pringle case in which the blood-stained tissue containing Pringle's blood was not adequately retained and on the facts of the Conmey case, it is evident that physical and documentary evidence was not traditionally retained in a manner that one would expect or even in manner that made them accessible. However, the introduction of the Forensic Evidence Act 2014 has assisted in the regulation and reform of this area and lends support to the importance of improving practices and procedures within the justice system. While the responsibility for miscarriages of justice are complex and extend far and wide (Savage & Milne, 2007), the findings of this analysis supported by the findings of the preliminary analysis of the unsuccessful appeals demonstrate that the practices and investigative processes by the police play a major role in causing miscarriages of justice in Ireland. Though it must be reiterated that the findings of this research are reliant on the small sample size of nine cases, it is proposed by this paper that due to the consistent association between police practices and miscarriages of justice, it is an area that warrants fuller attention in Ireland.

What's Next?: Policy Recommendations and the Contribution of Research

While many scholars have regularly called for increased transparency with respect to police practices, policies and records in contexts beyond criminal proceedings and miscarriages of justice (Luna, 1999; Moran, 2018), this research suggests that the need for access to records and practices is most urgent in the context of criminal trials where it has been demonstrated

that the possibility of a miscarriage of justice is a serious consequence. As has been discussed, defendants are often condemned to lose a case simply because the guards have the power to direct investigations and consequently control the collection and presentation of evidence, as well as in situations when a core witness is a member of the guards. Thus, much needs to be done to remedy the existing disparity in the information accessible to the defence and courtroom, as well as the information defendants can, and should be able to, obtain or use regarding police officer witnesses and police records (Moran, 2018). While such reforms would take significant thought and political will to address, a preliminary step toward righting a longstanding imbalance to remedy a defendant's inability to obtain police records is ensuring that such records exist (Hannon, 2012). Despite much literature shining light on police misconduct, there seems an apparent lack of effort directed at recording any such misconduct. As Hannon (2012) points out, funding for the collection of police records is generally aimed at assisting, as opposed to assessing, law enforcement. That is what this paper suggests must change. Given the allegations of police perjury unveiled both in successful and unsuccessful appeals under the 1993 Act, perhaps it is high time for records to be kept in prosecutor's offices detailing information on the police such as, any time it is found that an officer lacks credibility in any case prosecuted, and any time it is revealed that an officer appears to have made false statements, whether written, oral, in court, in police reports or during communications with other officers (Moran, 2018). Though it is acknowledged that a system may need to be put in place to create such records, this type of record keeping on police credibility is not out of the ordinary. In fact, Abel (2015) outlines that Washington D.C. already has some form of this list of unreliable state actors.

Beyond attempts to identify and keep records on individual members of the guards who have been found unreliable, perhaps a more practically attainable protection that can be set up against police abuses is to ensure that members of an Garda Síochána in Ireland are selected and promoted adequately and are properly trained (Inbau, 1961). It is suggested that in the hands of members of the guards of high competence, there may be less degree of abusive practices. Research has found that high quality training results not only in improvements to skills but can also transfer best practice learnt in the workplace more generally (Scott, 2010). This could impact to some extent police culture, whereby an emphasis is placed on an impartial search for the truth and accurate fact finding more generally (Poyser & Milne, 2015). Given that the causes of miscarriages of justice in Ireland are routinely and inherently rooted in the

conduct of members of the guards, it would be nothing less than negligent not to urge attempts to reform this area.

In terms of going forward with future research in Ireland, this paper proposes that a number of knowledge gaps in this area could and should be filled. While this research has undertaken an analysis of the unsuccessful appeals under s.2 of the 1993 Act in order to gain a deeper understanding of the frequently and infrequently alleged causes of miscarriages of justice in Ireland, the potential for cases to slip through the cracks of the Irish definition of miscarriage of justice has been reiterated throughout this paper. Thus academic studies that continue the attempts to gauge the 'dark figure' of wrongful convictions in Ireland are important. Given that it has been found by this paper that misconduct is gaining more traction in the form of perjury, non-disclosure of evidence and untold conflicts in evidence, future research furthering on from this study should attempt to investigate exactly how malpractice gets swept under the rug in police stations. Finally, a significant addition to this area of research could include a study of the relationship between attempts to enhance the quality of investigation procedures and the effectiveness of such procedures in reducing police misconduct. A more complete picture of how and why miscarriages of justice may be slipping through the cracks of the Irish criminal justice system is extremely important and can provide further information about reforms in this area.

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Appendix A: Causal Category Table

Causal Category Table

Eyewitness Error	1
Forensic Error	2
Prosecutorial Misconduct	3
False/ Coerced Confessions	4
Tunnel Vision	5
Other	6

Casual Colour Coding

1 – Red

2 – Blue

3 – Green

4 – yellow

5 – Navy

6 – Blank