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Unlawful Carnal Knowledge in the Irish Free State, 1924–1935

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Abstract

Despite a growing body of research on sexual violence in Irish history, and on recently reported historic sexual offences, few studies have focused on sex offenders who were prosecuted and convicted contemporaneously in the early decades of the Irish Free State. This article examines hitherto restricted archival files on sixty-five offenders who were convicted of unlawful carnal knowledge under the Criminal Law Amendment Act 1885, and, in doing so, constitutes the first comprehensive analysis of convicted sex offenders during the formative years of the independent Irish state. The findings reveal the *modus operandi* of these perpetrators and that the majority of the victims were exploited by someone who was known to them. The article also challenges the view that there was little recognition of child sexual abuse as a societal problem in the early years of the state and demonstrates that there was an awareness of predatory individuals within Irish communities during this period.

I

In 1935, the Oireachtas (Irish parliament) enacted one of the most controversial sources of law in the Irish legal history – the Criminal Law Amendment Act 1935. Until recent decades, this statute was identified principally with the prohibition on artificial contraceptives,¹ but in May 2006 the Supreme Court struck down the seventy-one-year-old statutory rape law – which made it an automatic crime for a man to have sexual intercourse with a female under the age of fifteen – due to a failure to provide the accused with a defence of reasonable mistake as to the girl's age.² Yet, despite the diverse range of

¹ In 1973, the Supreme Court struck down section 17 of the 1935 Act which proscribed the import and sale of artificial contraception in the landmark case of *McGee v. Attorney General* [1974] IR 287.

² *CC v. Ireland* [2006] 4 IR 1.

concerns encompassed in the legislation, the circumstances in which this statute was formulated remained relatively obscure for much of the twentieth century. In 1937, the *Irish Law Times and Solicitors' Journal* wrote that: 'The Government refuse to publish the report of the Commission that investigated moral conditions in the country. The Committee's conclusions and recommendations are stated to be so startling that they cannot be disclosed. Instead the government passed the Criminal Law Amendment Bill.'³ Writing almost sixty years later in his 1996 book, *Sexual offences: law, policy and punishment*, Thomas O'Malley reaffirmed the clandestine context that accompanied this aberrant process of law reform:

The act was based on the recommendations of a committee whose findings on the moral state of the country at the time were reported to be so shocking that they could not be published. Furthermore out of respect for Dáil deputies and senators, most of the parliamentary debate on the bill took place in committee, the proceedings of which do not appear to have been published either.⁴

This lacuna has been addressed in a number of important respects by scholars in the intervening period,⁵ but little is known about the 'gross offences' that were reported to be 'rife throughout the country',⁶ or the perpetrators who committed these offences 'under the impulse of violent passion, and with their reason clouded by it'.⁷ This article opens up this area of inquiry by examining hitherto restricted archival files on sixty-five offenders who were convicted of unlawful carnal knowledge in the Irish Free State from the establishment of the civilian court system in 1924 until the commencement of the Criminal Law Amendment Act 1935.⁸

This article focuses solely on perpetrators who were convicted of unlawful carnal knowledge under the Criminal Law Amendment Act 1885 (1885 Act), and a number of explanations can be offered for this selection. First, there has been a considerable amount of research conducted on so-called historic

³ *Irish Law Times and Solicitors' Journal*, 30 Oct. 1937, p. 298.

⁴ Thomas O'Malley, *Sexual offences: law, policy and punishment* (Dublin, 1996), p. 6.

⁵ See, for example, J. M. Smith, 'The politics of sexual knowledge: the origins of Ireland's containment culture and the Carrigan Report (1931)', *Journal of the History of Sexuality*, 13 (2004), pp. 208–33; S. McAvoy, 'Sexual crime and Irish women's campaign for a Criminal Law Amendment Act, 1912–35', in Maryann Gialanella Valiulis, ed., *Gender and power in Irish history* (Dublin, 2008), pp. 84–100; J. M. Smith, *Ireland's Magdalen laundries and the nation's architecture of containment* (Notre Dame, 2007); M. J. Maguire, 'The Carrigan Committee and child sexual abuse in twentieth-century Ireland', *New Hibernia Review*, 11 (2007), pp. 79–100; S. Riordan, '"A reasonable cause": the age of consent and the debate on gender and justice in the Irish Free State, 1922–35', *Irish Historical Studies*, 27 (2011), pp. 427–46.

⁶ *Report of the Committee on the Criminal Law Amendment Acts (1880–85) and Juvenile Prostitution* (hereafter Carrigan Report) (Dublin, 1931), p. 15. See National Archives of Ireland (NAI), DT S5998.

⁷ Canavan to Geoghehan, NAI, JUS H247/41C, n.d., p. 2.

⁸ These offences were also referred to as 'Defilement' offences in sections 3 and 4 of the Criminal Law Amendment Act 1885.

offences that have been recently reported,⁹ but notwithstanding a few notable exceptions,¹⁰ comparatively little research has been conducted into historical sexual offences that were investigated and prosecuted contemporaneously in the early decades of Independence. Moreover, little is known about the ‘morally depraved’ offenders who the commissioner of An Garda Síochána (1925–33), Eoin O’Duffy, claimed would have previously been ‘exorcised from society’, but who, reputedly, by 1930, were ‘regarded as rather clever and interesting’.¹¹ The importance of focusing on offenders, as opposed to victims, was set out by Joanna Bourke in her seminal book, *Rape: a history from 1860 to the present*:

if we are to dissect the scourge of sexual violence...from the mid-nineteenth century to the present, we must train a steely gaze on the guilty parties: those who carry out these acts. The vast majority of abusers are male. Victims, most of who are female...but it would be wrong to explore the violence carried out predominantly by men by studying the women they wound.¹²

Secondly, these legislative provisions provoked the most concern at the time – the Committee on Criminal Law Amendment Acts (1880–5) and Juvenile Prostitution (Carrigan Committee, 1930–1), in particular, was set up to initiate amendments of the Acts of 1880 and 1885 – and thus a sustained inquiry of the extant prisoners’ records is necessary to investigate what appeared to be compelling evidence of the frequency of sexual violence in this period, particularly against young girls.¹³ As Mark Finnane acknowledged, the legislative successor to the 1885 Act – the Criminal Law Amendment Act 1935 – cannot ‘be wholly explained without appreciating the serious state of affairs with which relatively high levels of sexual violence were associated’.¹⁴ Thirdly, the 1885 Act remains a lasting tribute to moralists and feminists who agitated tirelessly to persuade the political establishment of the need for more effective measures in response to child prostitution and sexual violence against young girls.¹⁵ As O’Malley persuasively argues, the 1885 Act ‘continues to exercise a strong influence on legal and political thinking about state

⁹ T. O’Malley, *Sexual offences* (Dublin, 2013), pp. 17–18; S. Ring, ‘The victim of historical child sexual abuse in the Irish courts (1999–2006)’, *Social and Legal Studies*, 26 (2017), pp. 562–80, at p. 562; J. Gallan, ‘Historical abuse and the Statute of Limitations’, *Statute Law Review*, 39 (2018), pp. 103–17, at p. 103; S. Ring, K. Gleeson, and K. Stevenson, *Child sexual abuse reported by adult survivors: legal responses in England and Wales, Ireland and Australia* (London, 2022).

¹⁰ A. Keating, ‘Sexual crime in the Irish Free State, 1922–33: its nature, extent and reporting’, *Irish Studies Review*, 20 (2012), pp. 135–55, at p. 135; D. Ferriter, *Occasions of sin: sex and society in modern Ireland* (London, 2009).

¹¹ O’Duffy to the Carrigan Committee, 30 Oct. 1930, NAI, JUS H247/41A, p. 1.

¹² J. Bourke, *Rape: a history from 1860 to the present day* (London, 2006), p. 6.

¹³ For the definitive history of the Committee, see M. Finnane, ‘The Carrigan Committee of 1930–31 and the moral condition of the Saorstát’, *Irish Historical Studies*, 32 (2001), pp. 519–36.

¹⁴ *Ibid.*, p. 535.

¹⁵ O’Malley, *Sexual offences: law, policy and punishment*, p. 6.

regulation of sexual behaviour. It set an agenda which has lasted over a century and which looks set to last for many years to come.’¹⁶ Finally, ‘there have been few quantitative or qualitative analyses of sexual offenses against children in the first two-thirds of the twentieth century’.¹⁷ This article will thus constitute the first comprehensive analysis of *convicted* sex offenders during the formative years of the independent Irish state.

II

The Central Registry ledgers of the Department of Justice H234 and 18 Series Files were examined from 1924 until the end of February 1935.¹⁸ Details on prisoners who were convicted of offences contrary to sections 4 and 5 of the Criminal Law Amendment Act 1885 were extracted from these ledgers and databases were constructed containing information about the offence, including the name of the perpetrator, the file number, and the year in which the offender was convicted. A list of these restricted files was provided to the staff of the National Archives of Ireland (NAI), who kindly retrieved the records and made them available for consultation in the NAI Reading Room. These files include *inter alia* Garda reports, judges’ observations, petitions (usually by family members, solicitors, or by the prisoners themselves), medical reports, and a synopsis of this material which was prepared by senior civil servants.¹⁹ Record linkage work was then generated by cross-checking a list of prisoners’ names against the extant State Books for the Central Criminal Court and the Circuit Courts of the respective Irish counties.²⁰ Where a prisoner’s details on the list corresponded with those recorded in the State Books, the State File, if available, was then ordered. The State Files contain court depositions, medical reports, and the details of an appeal against sentence or conviction, if applicable. National and provincial newspaper reports were also identified from the offence and trial dates, but these crimes, for the most part, only received sparse, coded reporting in the national and provincial press.²¹ This type of obfuscatory language was also a recurring feature of the court depositions and offers an insight into how ‘contemporaries understood sex and its relationship to morality’.²²

It should also be acknowledged that the surviving prisoner records are of little use in assessing the actual incidence of sexual offences during any era

¹⁶ Ibid., p. 5.

¹⁷ Maguire, ‘The Carrigan Committee and child sexual abuse in twentieth-century Ireland’, p. 79.

¹⁸ The Criminal Law Amendment Act 1935 came into force on 28 February.

¹⁹ D. M. Doyle and L. O’Callaghan, *Capital punishment in independent Ireland: a social, legal and political history* (Liverpool, 2019), p. 39.

²⁰ A number of the State Books and Files in this period are still referred to as ‘Crown Books’ and ‘Crown Files’, and catalogued as such in the National Archives. See, for example, Cavan (1912–25), Dublin (1923–5), Donegal (1924), Laois (1924–45), Louth (1924–67), Meath (1924–30), Monaghan (1924–30), Offaly (1895–1949), Waterford (1925–44), Westmeath (1930–68), and Wexford (1921–40).

²¹ Doyle and O’Callaghan, *Capital punishment in independent Ireland*, p. 165; Keating, ‘Sexual crime in the Irish Free State, 1922–33’, p. 146.

²² L. Earner-Byrne, ‘The rape of Mary M.: a microhistory of sexual violence and moral redemption in 1920s Ireland’, *Journal of the History of Sexuality*, 24 (2015), pp. 75–98, at p. 84.

in Irish history and provide only a 'partial glimpse of the extent of criminal sexual activity' in the formative years of Irish independence.²³ Recent scholarship on sexual violence during the revolutionary period,²⁴ and inquiries into clerical and institutional abuse,²⁵ have revealed a high level of criminal activity in decades past and that numerous sexual offences went unreported to the authorities or, if reported, did not necessarily result in proceedings.²⁶ The so-called dark figure of crime in sexual offences was deemed to be considerable. As far back as the 1930s, the Garda commissioner doubted that the amount of illegal sexual conduct revealed represented more than 15 per cent of the actual crime committed.²⁷ This, regrettably, is a statement that cannot be substantiated, but it does serve as a reminder that the range of sexual behaviour that is the focus of this article is only 'a subset of all illegal sexual activity' during the fledgling years of the Irish state.²⁸

Having set out the methodology used in the study, the following sections provide an overview of the unlawful carnal knowledge provisions – sections 4 and 5 – of the 1885 Act before analysing the nature and extent of these offences in the formative years of Irish independence.

III

Section 4 of the Act of 1885 created a felony of unlawfully and carnally knowing any girl under the age of thirteen.²⁹ The offence was gender specific – only a male could be guilty of this crime as the principal offender and only a female could be a victim – by virtue of how the criminal law defined 'carnal knowledge'.³⁰ Proof of penetration of a vagina by a penis was necessary, but not of emission.³¹ If the jury were not satisfied that penetration occurred they could have handed down a verdict of attempted carnal knowledge.³² If they were not convinced that the act of the offender amounted to an attempt they could have brought in a verdict of indecent assault, or if they found

²³ I. O'Donnell, 'Sex crime in Ireland: extents and trends', *Judicial Studies Institute Journal*, 3 (2003), p. 95; L. Weinstein, 'Unlawful carnal knowledge of teenage girls: performing femininity and the myth of absolute liability', *Éire-Ireland*, 49 (2014), pp. 69–91, at p. 71.

²⁴ L. Connolly, 'Towards a further understanding of the sexual and gender-based violence women experienced in the Irish Revolution', in L. Connolly, ed., *Women and the Irish Revolution* (Dublin, 2020), pp. 183–97; L. Connolly, 'Sexual violence in the Irish Civil War: a forgotten war crime?', *Women's History Review*, 30 (2021), pp. 126–43, at p. 126.

²⁵ M. Keenan, *Child sexual abuse and the Catholic church: gender, power, organisational culture* (Oxford, 2012).

²⁶ C. Holohan, *In plain sight: responding to the Ferns, Ryan, Murphy and Cloyne Reports* (Dublin, 2011); K. Gleeson and S. Ring, 'Confronting the past and changing the future? Public inquiries into institutional child abuse, Ireland and Australia', *Griffith Law Review*, 29 (2021), pp. 1–25.

²⁷ F. Kennedy, 'The suppression of the Carrigan Report: a historical perspective on child abuse', *An Irish Quarterly Review*, 89 (2000), p. 355.

²⁸ O'Donnell, 'Sex crime in Ireland', p. 89.

²⁹ F. Mead and A. H. Bodkin, *The Criminal Law Amendment Act, 1885* (London, 1911), pp. 45–50.

³⁰ 24 & 25 Vict. c. 100, s. 63.

³¹ *Ibid.*

³² Cambridge Department of Criminal Science, *Sexual offences* (London, 1957), p. 329.

that the girl was over the age of thirteen but under the age of sixteen they could have returned a verdict of unlawful carnal knowledge with a girl between thirteen and sixteen.³³ Consent of the victim was immaterial and in no circumstances a defence to the offender, nor was his belief, however reasonable, that the girl was over the age of thirteen.³⁴

The raising of the age of consent from thirteen to sixteen was arguably the most important change in the law made by the 1885 statute. Section 5 was also a gender specific offence and created a misdemeanour of unlawfully and carnally knowing any girl above the age of thirteen years and under the age of sixteen years.³⁵ This offence, similar to the felony offence, was limited to 'unlawful' carnal knowledge and intercourse was rendered criminal within the meaning of the earlier statute, if no valid marriage had existed between the parties and the girl consented to it.³⁶ Thus, if one considers that the minimum age at which a girl could lawfully marry was twelve during this period, it can be acknowledged that the raising of the age under which sexual intercourse outside matrimony was to be an offence, irrespective of the consent of the girl, was an extremely significant amendment of the law.³⁷ As in other sexual intercourse offences, any degree of penile-vaginal penetration was sufficient for the full offence.³⁸

Consent on the part of the female was also no defence to the misdemeanour charge, but in particular circumstances an honest belief based on reasonable grounds that the girl was over sixteen years was a defence.³⁹ In such circumstances, if the girl had consented to intercourse, the accused would have been free from criminal liability.⁴⁰ If she did not, in fact, consent the crime was then rape and the belief as to her age would have been completely irrelevant. It was held in the English case *R v. Banks* that, for this defence to avail, the accused must have reasonable cause to believe, and must in fact believe, that the girl was at least sixteen years of age.⁴¹ It is evident therefore that the British legislature in enacting the Act of 1885 was not intending to provide a defence of mistake as to age in respect of the offence of unlawfully and carnally knowing a girl under the age of thirteen years, and that this proviso was only applicable to an offence committed against a girl between the ages of thirteen and sixteen years. Crucially, there was never statutory provision for a defence of mistake as to age on a charge of the felony offence: neither when the age was under ten from 1861 nor when under thirteen from 1885.

The legislative context, however, only reveals part of the history. The formulation, interpretation, and implementation of the unlawful carnal knowledge provisions of the 1885 legislation were inter-related activities, and it is

³³ *Ibid.*, p. 329.

³⁴ *Ibid.*, p. 328.

³⁵ 48 & 49 Vict. c. 69, s. 5.

³⁶ Cambridge Dept., *Sexual offences*, p. 330.

³⁷ *Ibid.*, p. 329.

³⁸ *Ibid.*, p. 330.

³⁹ 48 & 49 Vict. c. 69, s. 5.

⁴⁰ Cambridge Dept., *Sexual offences*, p. 330.

⁴¹ [1916] 2 KB 621; 12 Cr. App. R. 74.

now necessary to 'look in greater detail at the cases themselves and the context in which they emerged'.⁴²

IV

The age of the perpetrators ranged between sixteen and sixty-six with the majority, 84.6 per cent of the total sample, aged over eighteen years.⁴³ Of the cohort of male offenders aged eighteen years and under, 60 per cent were aged eighteen and 40 per cent were aged between sixteen and seventeen. The average age of the perpetrators in the sample was thirty-two years. However, 70.8 per cent of the perpetrators were twenty-one or over, and if male offenders aged twenty-one or under are excluded, the average age of the perpetrator is increased to thirty-eight years of age. The age range of these victims varied between four and fifteen.⁴⁴ The two youngest victims in the sample were both aged four. In Tipperary in 1933, D. H. was convicted of attempting to have unlawful carnal knowledge of four-year-old J. R. When challenged by the child's mother after she returned home to find her daughter crying,⁴⁵ the accused responded 'Sure I'm not a lunatic to do such a thing.'⁴⁶ He subsequently pleaded guilty to the offence and was sentenced to eighteen months' hard labour. The perpetrator later petitioned for credit for the eighty-three days that he spent in pre-trial custody,⁴⁷ but the state solicitor wrote in a letter that 'If there is any question of mitigation of this sentence I think the reading of the depositions will be sufficient to dispose of it.'⁴⁸ The state solicitor also revealed that the medical examination was consistent with the child's story as told by the mother,⁴⁹ and opined that 'the accused was treated very lightly'.⁵⁰ The trial judge unsurprisingly did not consider the accused a proper object of mercy,⁵¹ and no remission of sentence was granted. Similarly, in Dublin in 1935, J. S. was convicted of attempting to have unlawful carnal knowledge of four-year-old T. G., a mere fifty yards from a Garda (Police) station.⁵² An accurate account of the offence could not be obtained due to the age of the child,⁵³ but the accused admitted the charge⁵⁴ and was sentenced to four months' imprisonment with hard labour.⁵⁵ The accused was not considered

⁴² R. McMahon, *Homicide in pre-famine and famine Ireland* (Liverpool, 2012), p. 65.

⁴³ Information on the ages of all sixty-five male offenders were available and collated.

⁴⁴ The age profiles of fifty-six out of the total sixty-three female victims in the sample were also precisely identified.

⁴⁵ Deposition of L. R., 30 Oct. 1923, NAI, JUS/H234/411.

⁴⁶ Ibid.

⁴⁷ Application for discharge of a prisoner, 21 Nov. 1924, NAI, JUS/H234/411.

⁴⁸ O'Connor to Roche, 17 Nov. 1924, NAI, JUS/H234/411.

⁴⁹ Deposition of L. R., 30 Oct. 1923, NAI, JUS/H234/411.

⁵⁰ O'Connor to Roche, 17 Nov. 1924, NAI, JUS/H234/411.

⁵¹ Application for discharge of a prisoner, 21 Nov. 1924, NAI, JUS/H234/411.

⁵² Form of inquiry as to prisoner's eligibility for Borstal treatment, 18 June 1935, NAI, JUS/H218/1034.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Governor, Sligo Prison to Roche, 26 June 1935, NAI, JUS/18/1034.

suitable for modified Borstal treatment due to the nature of the offence, but the Department of Justice wrote that J. S. 'should be kept hard at work, in the open air as far as possible' and should receive special attention from the prison governor and chaplain.⁵⁶ The belief – that tough manual labour outside in the elements was the optimal means of reforming young offenders – was firmly rooted in the Borstal and the Industrial School system, and would continue to be a feature of Irish penal policy for decades to come.⁵⁷ Ironically, the majority of the perpetrators in this sample were rural labourers who would have been clearly accustomed to this type of physical exertion.

In 1930, the Garda commissioner, Eoin O'Duffy, regretted that 'an alarming aspect' was 'the number of cases of interference with girls under 15, and even under 13 and under 11, which come before the courts'.⁵⁸ Additionally, O'Duffy intimated in his memorandum that although the 1885 Act made 'no distinction between the ages under 13', it could be observed 'that the number of cases of defilement of girls under 10 years' was 'much higher than those of 10 to 13'.⁵⁹ The 'statistically rich' submission furnished by the Garda commissioner to the Carrigan Committee in 1930 did not correspond exactly with the legal definitions of the offences,⁶⁰ but the observation is somewhat confirmed by his abovementioned submission and the surviving prisoner records.⁶¹ In fact, there were sixteen defilement offences against girls under ten years in the extant prisoner files in this chronological period as opposed to thirteen against girls aged between ten and thirteen years. Of the cohort of female victims aged under sixteen years, 27 per cent were less than ten and 32 per cent were aged under thirteen. The average age of the female victims of unlawful carnal knowledge across the prisoner files was twelve years. However, 57.6 per cent of the sample victims were aged between thirteen and fifteen, and if female victims aged under thirteen are excluded, the average age of the complainant is fourteen years of age.

Hannah Clarke, an inspector for the National Society for the Prevention of Cruelty to Children, argued that men who exploited girls under ten years of age frequently escaped conviction due to a lack of evidence and that it was misguided to intimate that girls over the age of ten years were more susceptible to sexual exploitation than children of tender years.⁶² She contended that female children between the ages of ten and fifteen years were 'more exempt' from sexual crime than younger and elder girls. 'Blackguards', she claimed, were fearful of this age group because they were 'conversant with the law'

⁵⁶ Roche to governor, Sligo Prison, 28 June 1935, NAI, JUS/18/1034.

⁵⁷ Roche to governor, Sligo Prison, 2 Aug. 1933, NAI, JUS/H234/6194; E. O'Sullivan and I. O'Donnell, *Coercive confinement in post-independence Ireland: patients, prisoners and penitents* (Manchester, 2012), p. 277.

⁵⁸ E. O'Sullivan, "'This otherwise delicate subject': child sexual abuse in early twentieth-century Ireland', in P. O'Mahony, ed., *Criminal justice in Ireland* (Dublin, 2002), p. 189.

⁵⁹ *Ibid.*

⁶⁰ Maria Luddy, *Prostitution and Irish society, 1800-1940* (Cambridge, 2007), p. 232.

⁶¹ Finnane, 'The Carrigan Committee of 1930-31 and the moral condition of the Saorstát', p. 532.

⁶² Clarke to the Carrigan Committee, n.d., NAI, JUS/90/4/8; evidence of Hannah Clarke, 5 Feb. 1931, NAI, JUS/90/4/2.

and more likely to tell parents about the assault.⁶³ However, the surviving sample prisoner records demonstrate that, in fact, the 'greatest danger'⁶⁴ lay between the ages of fourteen and sixteen years.⁶⁵ On the whole, O'Duffy expressed particular regret that the number of 'offences on children between the ages of 9 and 16' was increasing,⁶⁶ while a 1935 Department of Justice memorandum revealed that 'offences against very young girls' showed a 'deplorable increase'.⁶⁷ In this study, the oldest victims were approaching the age of sixteen years and petitioners in these cases pointed to proximity to the age of consent in an effort to prompt decision-makers to show mercy. In the case of J. M., the petitioners maintained that the girl was 'one month under 16 years of age',⁶⁸ while D. H. claimed that he did not know the girl's age, but that 'if she was three months older he would not have committed a criminal offence'.⁶⁹ Moreover, in another case, the petitioners appeared to misrepresent the age of the girl to a local priest who wrote to the minister on their behalf in an attempt to seek mitigation of the prisoner's sentence. This was flatly contradicted by the evidence of the Gardaí who confirmed that the girl's age was eight years and eleven months at the time of the offence and not thirteen years as stated in the priest's letter.⁷⁰ As the secretary of the Department of Justice, Stephen Roche, put it, 'It would appear that the Convict's statement to Father Doyle in respect of the age of this girl was untrue and that it would be absurd to attach any blame to a girl of such tender years.'⁷¹

Conversely, it was not just prisoners or petitioners who opined that the complainant looked older than her actual age. B. M., who was a week from turning sixteen at the time of the offence, was described by the Gardaí as 'a well-developed girl' who 'looks about 18 years of age',⁷² and even the trial judge, Justice Sheehy, observed that she looked more than her years.⁷³ He also added that the accused did himself a disservice by refuting the act entirely:

In my opinion the fact that the accused denied any act completely with the girl mitigated against what might have been a very strong defence on the grounds of reasonable belief as to age and it is extremely doubtful if the jury gave this defence the careful consideration it deserved, though I fully instructed them in the court...I confess however that the case has

⁶³ Ibid.

⁶⁴ O'Duffy to the Carrigan Committee, 30 Oct. 1930, NAI, JUS/H247/41A, p. 5.

⁶⁵ The age group accounted for slightly over half of the fifty-nine identified victims (51 per cent).

⁶⁶ O'Duffy to the Carrigan Committee, 30 Oct. 1930, NAI, JUS/H247/41A, p. 5.

⁶⁷ Memorandum in connection with Judge Hanna's speech, 1936, NAI, JUS/72/53, part 1, p. 4.

⁶⁸ O Fionnán to O'Higgins, 1 Feb. 1927, NAI, JUS/H234/1523.

⁶⁹ Petition on behalf of D. H., n.d., NAI, JUS/H234/4298.

⁷⁰ Roche to Sheridan, 11 June 1935, NAI, JUS/H234/6074.

⁷¹ Ibid.

⁷² Molloy to chief superintendent, Sligo, 28 Jan. 1935, NAI, JUS/18/760.

⁷³ Sheehy to Roche, 4 Feb. 1935, NAI, JUS/18/760.

worried me because I feel that if the accused had admitted carnal knowledge and relied boldly upon this defence he would probably have been acquitted as the girl certainly looked more than her age and fully consented to the acts.⁷⁴

Although a Department of Justice memorandum stated in 1932 'that the [reasonable belief] defence is very rarely pleaded',⁷⁵ four other offenders in this sample swore that they believed that the girl was over the age of consent.⁷⁶ In one Mayo case in 1935, the trial judge, Justice Wyse Power, subsequently wrote to the minister that 'Had I been on the jury that tried the case I would have favoured the accused's acquittal on the grounds that any reasonable man looking at the girl in the case would have no doubt whatever but that she was well over sixteen.'⁷⁷ He concluded that though the 'law may have been fulfilled, an injustice was also done'⁷⁸ and that he would 'not only recommend his release', but 'venture to press the Minister to order it'.⁷⁹ The advice of the trial judge – despite the evident encroachment on the executive branch of government's authority to reduce or mitigate judicially imposed sentences – was heeded and T. C. was released on 20 April 1935.⁸⁰

It is also possible to identify information as to the exact age of both victims and offenders in fifty-seven of the sample cases. The particulars indicate that there was generally a large discrepancy between the ages of the perpetrator and the victim, and that the criminal law was being invoked mainly in circumstances where the sexual activity clearly amounted to sexual exploitation. Of the cases gleaned from the prisoner files, the average offender age was thirty-one years. The average victim age was twelve, a difference in age of nineteen years. The greatest age difference was fifty-eight years, while the lowest age difference was three years. There was no case in the sample where the victim was the exact same age or older than the perpetrator.

V

The evidence gleaned from the prisoner files indicates that the proportion of cases that came before the courts as a direct result of Garda activity was small and that the Gardaí were dependent on victims, their parents, or other responsible people, to come forward and report these offences. This, of course, is understandable given the clandestine nature of many of the crimes, but one Wicklow case provides an example of an offence that came to light directly as a result of Garda initiative. In July 1927, A. M., a labourer, was convicted

⁷⁴ Ibid.

⁷⁵ Department of Justice memorandum, 27 Oct. 1932, NAI, JUS/90/4/4, p. 5.

⁷⁶ See, for example, Clinton to commissioner, 2 July 1932, NAI, JUS/H234/4298; application for mitigation of a prisoner's or convict's sentence, 10 July 1931, NAI, JUS/H234/3615; Bolger to Corish, 26 June 1933, NAI, JUS/H234/6238.

⁷⁷ Power to Roche, 16 Apr. 1935, NAI, JUS/18/834.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Governor, Sligo Prison to Roche, 20 Apr. 1935, NAI, JUS/18/834.

of the unlawful carnal knowledge of fifteen-year-old G. C. after two Gardaí saw them go into a field together near the local town. After following them into the field, the police officers overheard the couple engaged in conversation 'of a revolting character', ⁸¹ which subsequently became the principal evidence in the case. ⁸² At trial, it was argued that the young female, who was reputed not to be of good character, ⁸³ was not only 'a consenting party', but induced A. M. – who was 'under the influence of drink' ⁸⁴ – to commit the act. ⁸⁵ A. M. was convicted and sentenced to eleven months' hard labour, but his sentence was remitted a mere four months later after the case attracted attention from some influential petitioners. The petition, which clearly delineated the social demarcations in rural Wicklow, was submitted by a future minister for justice, James Everett TD, who urged the minister to 'see your way to exercise clemency in this case'. ⁸⁶ Denoting only the occupation of the most prominent signatories, the petition also stated that the 'lapse was a great surprise to many respectable people in the town, who at first refused to believe it' ⁸⁷ and that the defendant was 'unable to resist' due to his inexperience in the world. ⁸⁸ It further noted that 'this isolated lapse should be overlooked' and argued that the time served in prison was already sufficient punishment 'to purge the crime which the young fellow through the frailty of human nature had the misfortune to fall a victim to'. ⁸⁹ The Garda superintendent, albeit observing the offence was a serious one that would not normally merit mitigation, recommended release due to the effect that his incarceration was having on his aging mother, his previous good character, the fact it was a first offence, and because he believed that the term served was a 'sufficient deterrent to him and others, not to indulge in this type of crime in future'. ⁹⁰ After reading the superintendent's report, the trial judge, Justice Doyle, wrote that he was 'in complete agreement with his views and suggestions' and recommended 'the discharge of prisoner, as an act of mercy to his dependants'. ⁹¹

The Garda commissioner stated that parents were frequently unwilling to pursue cases 'in the interests of their children', ⁹² but most of these offences were brought to the attention of the Gardaí by the parent(s) of the victim. In Mayo in 1933, the father of seven-year-old R. F. reported the offence to the Gardaí after the medical examination confirmed that the girl had been

⁸¹ Meehan to chief superintendent, Wicklow, 12 Nov. 1927, NAI, JUS/H234/1961.

⁸² Ibid.

⁸³ Application for mitigation of a prisoner's or convict's sentence, 22 Nov. 1927, NAI, JUS/H234/1961.

⁸⁴ Meehan to chief superintendent, Wicklow, 12 Nov. 1927, NAI, JUS/H234/1961.

⁸⁵ Application for mitigation of a prisoner's sentence, annotation, 22 Nov. 1927, NAI, JUS/H234/1961.

⁸⁶ Everett to Fitzgerald-Kenney, 2 Nov. 1927, NAI, JUS/H234/1961.

⁸⁷ Meehan to chief superintendent, Wicklow, 12 Nov. 1927, NAI, JUS/H234/1961.

⁸⁸ Petition for mitigation of sentence, Sept. 1927, NAI, JUS/H234/1961.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Doyle to O'Friel, 19 Nov. 1927, NAI, JUS/H234/1961.

⁹² Luddy, *Prostitution and Irish society*, p. 233.

'outraged',⁹³ while in Sligo in 1934, fifteen-year-old M. B. M.'s father reported to the police that his daughter had been 'defiled'.⁹⁴ Ferriter has noted that it was frequently to their mothers that the victims first turned and this is borne out by the surviving prisoner files.⁹⁵ In Tipperary in 1927, for example, eight-year-old M. O'G.'s mother brought her to the Garda station to make a statement after she revealed what happened her.⁹⁶ Similarly, in the same county in 1929, fifteen-year-old E. P.'s mother brought her daughter to the Garda station following an examination by the doctor.⁹⁷ A breakdown in parental supervision, as the report of the Carrigan Committee revealed, was a contemporary concern,⁹⁸ and blamed, on occasion, as a cause not only for the actions of the perpetrator, but also for the exploitation of the victim. Nineteen-year-old M. M., who was convicted of the unlawful carnal knowledge of nine-year-old B. G. in 1935, was described as of 'reckless disposition' and it was noted that 'his father exercised little or no control over him',⁹⁹ while the father of ten-year-old J. D., who was defiled by eighteen-year-old P. M. in Clare in 1931, was 'known not to be exercising proper control over his children'.¹⁰⁰

By contrast, there were cases in the sample where parents were vigilant and the girls involved were "keeping company" with the accused against their parents' wishes. In these circumstances, it is reasonable to assume that some of these offences were reported to the Gardaí against the victim's own volition. In Dublin in 1928, one mother brought her daughter to the Garda station and complained that she was out all the previous night with J. B.,¹⁰¹ while in the same county a year later, the parents of E. O'C. became anxious when she did not return home the previous night.¹⁰² A search was commenced for the latter the following morning and E. O'C.'s mother brought her daughter to the Garda station after she was located with the accused.¹⁰³ Three months earlier, the girl's mother had told J. B. that her daughter was too young for him and pleaded with him to stay away, but to no avail.¹⁰⁴ Conversely, the fact that her daughter 'kept good hours', 'never mixed with boys', and that she had 'never received any complaints with regard to my daughter's conduct' was sufficient evidence for another mother to suspect that the offender was closer to home.¹⁰⁵ It subsequently transpired that her husband's step-brother,

⁹³ Kilroy to chief superintendent, 16 Feb. 1934, NAI, JUS/H234/6040.

⁹⁴ Molloy to chief superintendent, Sligo, 3 Jan. 1935, NAI, JUS/18/725.

⁹⁵ Ferriter, *Occasions of sin*, p. 49.

⁹⁶ Deposition of M. S., 7 Nov. 1927, NAI, JUS/H234/2697.

⁹⁷ County of Waterford Circuit Court, *Attorney General v. J. H.*, 23 Oct. 1929, NAI, JUS/H234/3037.

⁹⁸ Ferriter, *Occasions of sin*, p. 49.

⁹⁹ McManus to commissioner, Apr. 1935, NAI, JUS/18/833.

¹⁰⁰ Keegan to Ard Fheadh, Ennis, 11 Apr. 1932, NAI JUS/H234/4083.

¹⁰¹ Petition of J. B. for mitigation of sentence, 4 May 1928, NAI, JUS/H234/2167.

¹⁰² Petition for mitigation of a sentence – J. B., 21 Dec. 1930, NAI, JUS/H234/3368.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Deposition of B. D., 6 June 1929, NAI, JUS/H234/3162.

who lived in the same house as them, was the perpetrator and the father of the child that resulted from the persistent offending.¹⁰⁶

Most of these offences were almost immediately revealed to parents or other responsible persons,¹⁰⁷ while there were also a number of cases in the sample where the physical or emotional consequences of the offence led to parents discovering and reporting the sexual crimes. In a few cases, the young girls returned home 'looking excited'¹⁰⁸ or with soiled,¹⁰⁹ wet,¹¹⁰ or torn¹¹¹ clothing. Moreover, in a small number of cases the victim was in obvious distress or physically injured, which alarmed the parents, who subsequently brought the victim for medical attention and informed the authorities. Eleven-year-old O. B., for example, was 'put into terror by the assailant'¹¹² and the medical evidence showed that the little girl assaulted was suffering from venereal disease as a result of the attack.¹¹³ The trial judge stated that it was one of the worst cases that he had dealt with during his judicial career.¹¹⁴

An equally disturbing case came before the Dublin Circuit Criminal Court in autumn 1928. On 8 October, M. J. F. attempted to have unlawful carnal knowledge of seven-year-old N. D., who was left 'shivering...afraid of her life'¹¹⁵ and in a very poor state of health.¹¹⁶ During the night, the victim became 'very agitated' and was 'crying and complaining of a pain in her lower stomach'.¹¹⁷ Her mother examined her and found her 'very much swollen and inflamed' around her private parts.¹¹⁸ The subsequent medical examination revealed 'a diagnosis of venereal disease – syphilis of some standing and the result of carnal connection or attempted carnal connection'.¹¹⁹ It appears that the judge considered that the youth of the victim, and the additional trauma caused by the fact that she had been infected with syphilis, aggravated the seriousness of the offence for the purpose of sentence. M. J. F. was sentenced to ten years' penal servitude: the longest sentence for unlawful carnal knowledge during this chronological period.¹²⁰

¹⁰⁶ Application for mitigation of a prisoner's or convict's sentence, 13 Sept. 1930, NAI, JUS/H234/3162. A significant number of offences occurred in victims' homes, neighbours' houses, and other buildings and lodgings.

¹⁰⁷ Ferriter, *Occasions of sin*, p. 49.

¹⁰⁸ *Attorney General v. J. K.*, 27 June 1931, NAI, JUS/H234/4099.

¹⁰⁹ Deposition of Guard John Lynch, 15 June 1931, NAI, JUS/H234/4099.

¹¹⁰ Deposition of M. O'G., 7 Nov. 1927, NAI, JUS/H234/2697; Dempsey to superintendent's office, 6 Dec. 1929, NAI, JUS/H234/2066.

¹¹¹ Molloy to chief superintendent, Sligo, 28 Jan. 1935, NAI, JUS/18/760; County of Waterford Circuit Court, *Attorney General v. J. H.*, 23 Oct. 1929, NAI, JUS/H234/3037.

¹¹² McGrath to chief superintendent, 30 June 1983, NAI, JUS/H234/4465.

¹¹³ Application for discharge of a convict, 8 Jan. 1926, NAI, JUS/H234/1065.

¹¹⁴ Moore to Feadh, Kevin St. Station, 15 Apr. 1933, NAI, JUS/H234/4587.

¹¹⁵ Statement of N. D., 6 Dec. 1929, NAI, JUS/H234/2066.

¹¹⁶ *Ibid.*

¹¹⁷ Deposition of E. D., 13 Oct. 1928, NAI, JUS/H236/3066.

¹¹⁸ *Ibid.*

¹¹⁹ *People (AG) v. F.*, Circuit Criminal Court, Dublin City, Nov. 1928.

¹²⁰ Banks to O'Friel, 30 Oct. 1929, NAI, JUS/H236/3066.

The Garda commissioner, Eoin O'Duffy, informed the Carrigan Committee that victims – 'innocent or so shrouded with the shame of the act' – rarely reported sexual offences to the Gardaí.¹²¹ In Ireland, at this time, there was 'a stringent moral code, which deemed sexual conduct outside marriage to be immoral',¹²² and many children who suffered sexual abuse 'were terrified to let other adults know what was going on'.¹²³ This fear appears to have been amplified where there was a pregnancy involved. For example, in 1931, fifteen-year-old J. McH. 'did not tell anyone as she was ashamed',¹²⁴ while in Sligo in 1934 B. A. stated that she was 'ashamed and afraid to tell her parents'.¹²⁵ Similarly, in one Tipperary case in 1929, the Garda report revealed that the accused had impregnated other girls in the neighbourhood, one of whom 'kept it a secret to her parents...her parents finding her in the out-offices of their home the day the child was born'.¹²⁶ The perpetrator, who was reported to be addicted to drink and 'a source of annoyance to women with whom he came into contact',¹²⁷ had allegedly fathered two other illegitimate children in the district.

Other cases were also brought to the attention of the Gardaí by the parents of the girl after the pregnancy became visible,¹²⁸ or the suspicions of the Gardaí had been stimulated by a rumour that an under-age girl was pregnant, community surveillance, or reliable information received, from a 'private source'.¹²⁹ A 1932 Department of Justice memorandum emphasized that in the majority of unlawful carnal knowledge cases that 'come to notice, the reason will be that the girl has become pregnant'¹³⁰ and in sixteen of the sixty-five cases it was identified that the complainant was pregnant. At the trial of P. D. in February 1926, fourteen-year-old M. B. K. appeared at the trial with the baby in her arms.¹³¹ By contrast, fourteen-year-old A. A. gave birth to a child in November 1934, but the infant was described as 'not healthy or normal' and died shortly after birth.¹³² Laura Weinstein observed that while in some instances the young girls 'understood the significance of this change', it was more often the case that 'she was unaware that she was pregnant until a parent noticed that she was gaining weight' or discovered the pregnancy in some other way.¹³³ Fifteen-year-old B. A. M.'s mother, for

¹²¹ McAvoy, 'Sexual crime and Irish women's campaign for a Criminal Law Amendment Act, 1912–35', p. 90.

¹²² Earner-Byrne, 'The rape of Mary M.', p. 77.

¹²³ Ferriter, *Occasions of sin*, p. 172.

¹²⁴ Deposition of J. McH., 10 Nov. 1931, NAI, JUS/234/4180.

¹²⁵ Molloy to chief superintendent, Sligo, 28 Jan. 1935, NAI, JUS/A18/760.

¹²⁶ Haughey to superintendent, Waterford, 2 Nov. 1929, NAI, JUS/H234/3037.

¹²⁷ Application for mitigation of a prisoner's or convict's sentence, 2 July 1930, NAI, JUS/H234/3037.

¹²⁸ C. Rattigan, *'What else could I do?': single mothers and infanticide, Ireland, 1900–1950* (Dublin, 2012), pp. 173–82, 188–9.

¹²⁹ Murphy to superintendent's office, Kilkenny, 30 June 1931, NAI, JUS/H284/8615.

¹³⁰ Kennedy, 'The suppression of the Carrigan Report', p. 357.

¹³¹ Leas commissioner to O'Friel, 11 June 1926, NAI, JUS/H234/1289.

¹³² Glynn to Ard Feadhmanach, 12 Dec. 1934, NAI, JUS/18/566.

¹³³ Weinstein, 'Unlawful carnal knowledge of teenage girls', p. 75.

instance, reported the offence to the Gardaí after noticing her daughter looking unwell.¹³⁴ The Garda commissioner claimed that the cause of many offences could be found in the 'wretched housing conditions such as where large families sleep in one or two beds in a common room, clothes barely sufficient to cover their nakedness, and no consideration possible as regards dressing, undressing, sleeping and complying with the demands of nature',¹³⁵ but in one Roscommon case in 1931 it was actually inadequate sleeping arrangements that led to the discovery of a pregnancy. The mother reported that while in bed with her daughter she felt a movement, and after examining her, found that she was pregnant.¹³⁶ Fifteen-year-old J. McH. subsequently began to cry when questioned, but after some coaxing revealed that nineteen-year-old R. B., a local farmer's son, was responsible for her condition. The accused, however, denied responsibility and the mother in question reported the offence to the police after he refused to marry her daughter and 'save both families from disgrace'.¹³⁷

The abovementioned Department of Justice memorandum also emphasized that in the majority of cases 'the final result will not be a police prosecution, but a forced marriage',¹³⁸ and there were a number of cases in this sample where the girl or her family failed to reach an amicable marriage agreement with the offender, and the girl's family then reported the matter to the Gardaí. In August 1926, for example, P. Q. was approached by fourteen-year-old M. K.'s people to have a marriage arranged,¹³⁹ but he claimed that he was 'blamed in the wrong',¹⁴⁰ that he 'never had anything to do with her', and that 'she and her mother blackmailed me'.¹⁴¹ The spectre of blackmail was candidly introduced into a Dáil debate on the age of consent by the minister for justice, James Fitzgerald-Kenney, in 1929,¹⁴² but there was considerable consensus during the deliberations of the Carrigan Committee that the prospect of a young unmarried mother resorting to blackmail was 'extremely remote'.¹⁴³ Evidence submitted by certain women's organizations affirmed that 'girls who had been betrayed were very reluctant to disclose the names of their betrayers',¹⁴⁴ while Jesuit R. S. Devane¹⁴⁵ wrote in the pages of the *Irish Ecclesiastical Journal* that the Good Shepherd nuns – who operated a proportion of the Magdalene Laundries – pointed out that blackmail was 'so

¹³⁴ Molloy to chief superintendent, Sligo, 28 Jan. 1935, NAI, JUS/18/760.

¹³⁵ Memorandum of Eoin O'Duffy, Carrigan Committee, 30 Oct. 1930, NAI, JUS/H247/41A.

¹³⁶ Keenan to Ard Feadh., Roscommon, 17 June 1932, NAI, JUS/H234/4180.

¹³⁷ Ibid.

¹³⁸ Kennedy, 'The suppression of the Carrigan Report', p. 357.

¹³⁹ Murphy to chief superintendent's office, Kilkenny, 3 Sept. 1927, NAI, JUS/H234/1895.

¹⁴⁰ P. Q. to O'Higgins, 19 June 1927, NAI, JUS/H234/1895.

¹⁴¹ Ibid.

¹⁴² Parliamentary Debates Dáil Éireann, 27 Mar. 1930, vol. 34, col. 260. See also Riordan, "'A reasonable cause'", p. 432.

¹⁴³ Minutes of evidence, Carrigan Committee, 20 Nov. 1930, NAI, JUS/90/4/2.

¹⁴⁴ Ibid., 15 Jan. 1931.

¹⁴⁵ S. Riordan, "'Storm and stress": Richard Devane, adolescent psychology and the politics of protective legislation, 1922–1935', in C. Cox and S. Riordan, eds., *Adolescence in modern Irish history* (London, 2015), pp. 129–50.

rare as to be negligible'.¹⁴⁶ It appears that the jury too was unconvinced by the blackmail claim. The Garda report noted that there was 'no doubt but that prisoner was guilty of the offence'¹⁴⁷ and P. Q. was sentenced to nine months' imprisonment with hard labour.¹⁴⁸

The Mother and Baby Home Report (2020) noted that 'when a single woman was known to be pregnant the most common response in all countries was to try and arrange a marriage between the woman and the father of her child' and the prisoner files contain details of other failed attempts at arranging what Fr. Fitzpatrick, of St Michael's Parish, Limerick, termed 'marriages of necessity'.¹⁴⁹ The Garda commissioner observed that it was frequently 'the clergy who informed the police' of such offences,¹⁵⁰ and in one Roscommon case in 1931, the mother in question first reported the matter to the parish priest prior to informing the Gardaí of the offence when the accused refused to marry her daughter.¹⁵¹ Unsuccessful efforts were also made to arrange a marriage between nineteen-year-old E. C. and fifteen-year-old M. O'N. – who at the time of trial was expected to give birth 'very shortly' – in Kilkenny in 1930.¹⁵² The Gardaí believed that the former was not only responsible for the girl's pregnancy,¹⁵³ but another mother came forward and blamed him for the condition of her daughter (over sixteen years of age), who was pregnant too.¹⁵⁴ On the other hand, eighteen-year-old P. W. had previously asked the complainant to marry him, but when she became a mother he refused to do so as he alleged that she was 'carrying on' with other men.¹⁵⁵ This case does not appear to be an outlier. Dr Delia Moclair Horne and Dr Dorothy Stopford Price, at the behest of the Irish Women's Doctor Committee, told the Carrigan Committee that Irish girls were 'of a more trusting nature' and that 'seduction was very frequently brought about by a promise of marriage which the girl believed to be genuine'.¹⁵⁶ The Carrigan Committee would subsequently conclude that it was impossible to 'estimate even approximately the annual number of illegitimate births',¹⁵⁷ but it seems reasonable to surmise that cases involving single mothers and their babies were atypical in ending up before the courts. Many of these girls had to resort to 'shotgun' weddings, institutional confinement, pregnancy emigration, infanticide,¹⁵⁸ or

¹⁴⁶ R. S. Devane, 'The legal protection of girls', *Irish Ecclesiastical Record*, 37 (1931), pp. 20–40, at p. 31.

¹⁴⁷ Murphy to chief superintendent's office, Kilkenny, 3 Sept. 1927, NAI, JUS/H234/1895.

¹⁴⁸ Form to be attached to all petitions from prisoners, 20 Aug. 1927, NAI, JUS/H234/1895.

¹⁴⁹ Minutes of evidence, Carrigan Committee, 13 Nov. 1930, NAI, JUS/90/4/3.

¹⁵⁰ McAvoy, 'Sexual crime and Irish women's campaign for a Criminal Law Amendment Act, 1912–35', p. 90; *Attorney General v. J. L.*, State Solr Birr, 1 July 1931, NAI, JUS/H234/4099; deposition of M. M., 15 June 1931, NAI, JUS/H234/4099.

¹⁵¹ Keenan to Ard Feadh., Roscommon, 17 June 1932, NAI, JUS/H234/4180.

¹⁵² Murphy to superintendent's office, Kilkenny, 30 June 1931, NAI, JUS/H284/8615.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ Meehan to O'Friel, 4 Nov. 1930, NAI, JUS/H234/3278.

¹⁵⁶ Minutes of evidence, Carrigan Committee, 20 Nov. 1930, NAI, DJUS/90/4/3.

¹⁵⁷ Carrigan Report (1931), p. 9.

¹⁵⁸ L. Kelly, *Contraception and modern Ireland: a social history, c. 1922–92* (Cambridge, 2023), p. 74.

simply residing with their children within families and communities just as married mothers and their 'legitimate' children did.¹⁵⁹

VI

In 'popular imagination', as O'Malley points out, the 'typical rapist is a stranger who emerges from a dark alley way to attack his unsuspecting victim'.¹⁶⁰ The image of the sexual offender that emerges from this sample does not correspond with this stereotype, but there are a number of offences that remind us that this stereotype should not be dismissed as a mere figment of the popular imagination. On 11 October 1933, P. D. was found guilty of assaulting fourteen-year-old C. D. The complainant alleged that the accused – 'whom she did not know at the time – forcibly took her from a road over a ditch to a spot about 30 yards along a canal bank, and that, knocking her down, he had connection with her'.¹⁶¹ Similarly, in the case of thirty-one-year-old H. B., the complainant, eight-year-old L. G., stated that she 'didn't know him before'.¹⁶² There were also a number of cases where the victim was not acquainted with the accused prior to the offence, but who subsequently recognized him immediately, or identified him in an identity parade. As soon as nine-year-old A. D. saw the perpetrator again, she pointed to him and said 'there he is, that's the man'.¹⁶³ She also observed that the perpetrator had 'horrid teeth' and that 'she would never forget him'.¹⁶⁴ In the case of R. R., who was convicted of unlawful carnal knowledge at the Trinity sitting of Monaghan Circuit Criminal Court in 1932, the victim, eleven-year-old O. B., told the police that she was 'assaulted and raped' by an 'unknown man'.¹⁶⁵ The girl also described his clothing and later pointed him out in an identity parade after he was apprehended in Northern Ireland.¹⁶⁶ Likewise, seven-year-old M. D. identified twenty-three-year-old M. J. F. in an identity parade without hesitation,¹⁶⁷ despite the fact the accused exchanged different colour coats with another man in the line-up 'with a view to baffling the little girl in the identification'.¹⁶⁸

More commonly, however, there was a previous association between the victim and the offender prior to the offence and in a number of cases it was possible to discern the nature of this association. Typically, the parties involved were neighbours, keeping company or casual acquaintances. On 19 November 1925, E. O'B. was found guilty of the attempted defilement of 'a

¹⁵⁹ M. J. Maguire, *Precarious childhood in post-independence Ireland* (Manchester, 2010), p. 12.

¹⁶⁰ O'Malley, *Sexual offences: law, policy and punishment*, p. 368.

¹⁶¹ Boyle to superintendent's office, Monaghan, 2 Mar. 1934, NAI, JUS/18/86.

¹⁶² *People (AG) v. B.*, Circuit Criminal Court, Dublin City, Easter 1931.

¹⁶³ Deposition of Garda Foley, 25 July 1925, NAI, JUS/H234/1065.

¹⁶⁴ Deposition of A. D., 18 July 1925, NAI, DJUS/H234/1065.

¹⁶⁵ McGrath to chief superintendent, Monaghan, 30 June 1933, NAI, JUS/H234/4463.

¹⁶⁶ *Ibid.*

¹⁶⁷ Superintendent to chief superintendent, 10 Dec. 1929, NAI, JUS/H234/1077.

¹⁶⁸ Application for mitigation of a prisoner's or convict's sentence, 11 Oct. 1929, NAI, JUS/H234/3066.

neighbour's child',¹⁶⁹ while prisoner M. M., convicted in the Limerick Circuit Criminal Court in 1934, wrote:

The people who have me in prison is my neighbours and I would not wish any harm to them whatsoever, we were always great friends. If I knew that it was any harm in what I was doing. It would never be done by me. It was only an attempt.¹⁷⁰

Similarly, in Roscommon in 1926, twenty-seven-year-old M. C. was convicted of the attempted unlawful carnal knowledge of an eight-year-old girl, C. T. The latter told the Gardaí that she had been assaulted that evening by 'some unknown man',¹⁷¹ but the perpetrator later wrote that 'they [her family] were very good neighbours to me always'.¹⁷² As Ferriter points out, these cases, 'particularly in such small communities, must have had serious consequences for relationships between neighbours and friends, as the victims were almost always known to the perpetrators, and the making of statements and giving of evidence involved so many different members of the community'.¹⁷³

A number of cases also involved situations where the accused person and the complainant were engaging in intimacies in the period prior to the offence. In Dublin in 1930, J. B. was charged with the unlawful carnal knowledge of E. O'C. According to the court transcripts, the perpetrator had been 'keeping company with the girl for about 3 months'¹⁷⁴ and they were reported to be on 'very affectionate terms'.¹⁷⁵ Other complainants were also reasonably well known to the perpetrators and some of the *dramatis personae* knew each other from childhood. In Westmeath in 1934, at the trial of P. F., the complainant and defendant were reported to be 'neighbours, living very near to each other',¹⁷⁶ while at the trial of J. H. at the Tipperary Circuit Criminal Court in 1929, it was pointed out by the complainant that 'I know the defendant as long as I remember – he lives three miles from me and works around the district'.¹⁷⁷ Similarly, in Roscommon in 1931, at the trial of R. B., the complainant said that she had 'known the accused all my life'.¹⁷⁸ Her mother also told the court: 'I know the accused since he was a week old. He grew up with J. and went to the same school'.¹⁷⁹

¹⁶⁹ Leas commissioner to O'Friel, 16 Mar. 1926, NAI, JUS/H234/1173.

¹⁷⁰ Moore to Rutledge, 5 June 1934, NAI, JUS/18/344.

¹⁷¹ O'Garda to chief superintendent's office, Roscommon, 29 Apr. 1927, NAI, JUS/H234/1733.

¹⁷² Cox to Fitzgerald-Kenney, 13 Mar. 1928, NAI, JUS/H234/1733.

¹⁷³ Ferriter, *Occasions of sin*, pp. 181–2.

¹⁷⁴ Application for mitigation of a prisoner's or convict's sentence, 14 Jan. 1931, NAI, JUS/H234/3368.

¹⁷⁵ *Ibid.*

¹⁷⁶ Glynn to Ard Feadhmanach, 12 Dec. 1934, NAI, JUS/18/566.

¹⁷⁷ Deposition of E. P., 4 Oct. 1930, NAI, JUS/H234/3037.

¹⁷⁸ Copy of deposition of B. McH., n.d., NAI, JUS/H234/4180.

¹⁷⁹ *Ibid.*

VII

In his 2009 book, *Occasions of sin*, Diarmaid Ferriter observed that children 'were prey to the designs of older men who offered them inducements of sweets or small amounts of money'¹⁸⁰ and this *modus operandi* was adopted by a small number of the perpetrators convicted of unlawful carnal knowledge.¹⁸¹ Most typically, money was used by these offenders to persuade young girls to engage in unlawful sexual activity or to lure them to secluded areas for the purposes of sexual exploitation.¹⁸² In Monaghan in 1927, J. C., who had his person exposed at the time, offered two eight-year-old girls, M. C. and M. F., money if they permitted him to have sexual intercourse with them.¹⁸³ M. F. refused the money, but the forty-eight-year-old tailor caught M. C. and knocked her down onto a bench in his workshop where it was alleged that he had 'connection with her'.¹⁸⁴ M. C.'s mother refused to allow her child to 'come forward to prove the case',¹⁸⁵ but during investigations it was discovered that J. C. had exploited four other children of a similar age over an extended period both in his workshop and in the belfry of the local Catholic church where he was employed as a sexton.¹⁸⁶ The statements of the first three victims revealed that 'when they raised alarm and began to cry he gave them money in order that they would not tell any other person', while the fourth additional victim told the Gardaí that J. C. 'gave her money also (six-pence in silver) and told her not to tell her father or mother of what happened'.¹⁸⁷ The parents of the children, like M. C.'s mother, were hesitant to permit their children to testify at trial due to the 'immoral nature' of the offence.¹⁸⁸ Such concerns were reminiscent of sentiments subsequently expressed by the Garda commissioner to the Carrigan Committee in 1930:

We are aware that in many cases of carnal knowledge of young girls, of rape, and of indecent assault the person aggrieved, or the parents in the case of children, while anxious that the offender should be brought to justice, suppress all information through fear of the consequences to the future of the girl which the publication of such prosecutions entail.¹⁸⁹

J. C. was ultimately convicted on the strength of the children's evidence,¹⁹⁰ which to use the words of the district court judge, Dermot Gleeson, was 'really a question for the Jury, after direction, to make up their minds' as to whether

¹⁸⁰ Ferriter, *Occasions of sin*, p. 172.

¹⁸¹ See, for example, Kenny to superintendent's office, Castlecomer, 11 Jan. 1934, NAI, JUS/18/71; form of inquiry as to prisoner's eligibility for Borstal treatment, 18 June 1935, NAI, JUS/18/1034 and McCarthy to chief superintendent's office, Cork, 25 Feb. 1936, NAI, JUS/18/626.

¹⁸² Form of inquiry as to prisoner's eligibility for Borstal treatment, 18 June 1935, NAI, JUS/18/1034.

¹⁸³ Lynch to chief superintendent's office, Monaghan, 2 May 1932, NAI, JUS/H234/4319.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*; application for mitigation of a prisoner's sentence, annotation, 25 May 1932, NAI, JUS/H234/4319.

¹⁸⁶ Lynch to chief superintendent's office, Monaghan, 2 May 1932, NAI, JUS/234/4319.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ O'Duffy to the Carrigan Committee, 30 Oct. 1930, NAI, JUS/H247/41, p. 27.

¹⁹⁰ Lynch to chief superintendent's office, Monaghan, 2 May 1932, NAI, JUS/H234/4319.

the children could be relied upon or not.¹⁹¹ The crimes provoked shock in the local community and it was reported that if the Gardaí had not instituted proceedings 'the people of Ballybay would have dealt with [the] prisoner in their own way'.¹⁹² Such an approach does not appear to have been an anomaly. As Hannah Clarke informed the Carrigan Committee, certain communities 'protected their children by taking the law into their own hands'.¹⁹³ Almost five years after the commission of the offences, the level of public hostility towards the defendant does not appear to have abated. In May 1932, the Garda superintendent opined that the sentence should not be mitigated as the 'prisoner's release would not be in his own interest or in the interests of peace'.¹⁹⁴

J. C. was not the only perpetrator who used money to encourage the child to remain secretive about the offence or to repeat the act on another occasion. In Mayo in 1933, T. C. gave seven-year-old R. F. two pence after 'satisfying his lust' and told her not to tell anybody,¹⁹⁵ while sixty-five-year-old T. D. gave varying amounts of money to the three young girls that he abused in Wicklow between 1928 and 1931 – ranging from one pence to half a crown – and warned them not to tell their parents.¹⁹⁶ These two offenders also isolated their victims by sending them on errands before exploiting them on their return.¹⁹⁷ Other offenders falsely promised to pay or compensate the child. In Roscommon in 1926, M. C. gave eight-year-old C. T. a 'two shilling piece' to stop her from crying,¹⁹⁸ told her 'to buy sweets' and not to tell anyone what had occurred.¹⁹⁹ He subsequently took the two-shilling coin back from the little girl,²⁰⁰ and significantly that was all that was found in his possession when he was later arrested.²⁰¹ Similarly, in a Tipperary case in 1927, eight-year-old M. O'G. stated that J. P. told her that 'he would give me a penny and he never gave it to me'.²⁰² Described as 'a moral degenerate of a vicious type',²⁰³ J. P. also said that he would buy her sweets in a local shop, but he reneged on that promise too.²⁰⁴

The varied ways in which offenders allegedly induced their victims included fictitious requests inviting them to go on errands.²⁰⁵ In May 1929, T. W. asked

¹⁹¹ Supplementary memorandum from Dermot Gleeson to the Carrigan Committee, n.d., NAI, JUS/90/4/21, p. 5.

¹⁹² Application for mitigation of a prisoner's sentence, annotation, 25 May 1932, NAI, JUS/H234/4319.

¹⁹³ Minutes of evidence, Carrigan Committee, 5 Feb. 1931, NAI, JUS/90/4/2.

¹⁹⁴ Lynch to chief superintendent's office, Monaghan, 2 May 1932, NAI, JUS/H234/4319.

¹⁹⁵ Kilroy to chief superintendent, Castlebar, 16 Feb. 1934, NAI, JUS/H234/6040.

¹⁹⁶ Stack to chief superintendent's office, Bray, 26 Sept. 1932, NAI, JUS/H234/4395.

¹⁹⁷ Ibid.; Kilroy to chief superintendent, Castlebar, 16 Feb. 1934, NAI, JUS/H234/6040; statement of N. D., 6 Dec. 1929, NAI, JUS/H234/2066.

¹⁹⁸ O'Garda to chief superintendent's office, Roscommon, 29 Apr. 1927, NAI, JUS/H234/1733.

¹⁹⁹ Wakely to O'Friel, 10 May 1929, NAI, JUS/H234/1733.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Deposition of M. O'G., 4 Nov. 1934, NAI, JUS/H234/6427.

²⁰³ *Attorney General v. J. P.*, précis for the attorney general, 2 Jan. 1932, NAI, JUS/H234/6427.

²⁰⁴ Deposition of M. O'G., 4 Nov. 1934, NAI, JUS/H234/6427.

²⁰⁵ McCarthy to commissioner, 25 Feb. 1936, NAI, JUS/18/626; McManus to commissioner, April 1935, NAI, JUS/18/833.

fourteen-year-old E. C. to go get him 'a packet of fags' before dragging her down a lane,²⁰⁶ while similarly T. C. sent seven-year-old R. F. on an errand for cigarettes before luring her to the inner apartment of his mother's egg store where he placed her on top of some meal bags and had carnal knowledge of her.²⁰⁷ There were also cases where young girls were exploited when isolated en route with errands for parents, neighbours,²⁰⁸ and relatives.²⁰⁹ In a Limerick case in 1934, six-year-old M. E. was in the process of fetching milk when she was induced to cross the wall into a field where she was sexually abused,²¹⁰ while other children were also exploited when returning from 'gathering nuts',²¹¹ and 'bringing home milk'.²¹² Many of these offences were crimes of opportunity and the majority were perpetrated in outdoor locations.²¹³

Moreover, in Roscommon in 1926, eight-year-old C. T. was assaulted after being sent by her parents to bring home the cows from a field some distance from their house. When she was driving the cows out onto the road, an unknown man appeared and caught hold of her,²¹⁴ brought her behind a hedge, and attempted to have carnal knowledge with her.²¹⁵ The defendant, a twenty-seven-year-old labourer, was convicted and sentenced to two years' imprisonment with hard labour, with the trial judge, Justice Wakely, stating that he was 'sorry that the law did not allow him to give a longer sentence'.²¹⁶ In a subsequent letter to the Department of Justice, he explained the rationale for what he termed 'a very severe sentence':

Now I gave the severe sentence because I think that the crime is a bad one & a really low down one in considering which I think a decent man is annoyed and thinks deserves punishment, also little girls on small farms have to go on errands & they should be safe and kept safe.²¹⁷

The judge also wrote that 'the little girl was not precocious & seemed to me to give her evidence naturally & I don't think she could have invented what she said'.²¹⁸ Although one government memorandum stated that 'many competent

²⁰⁶ Deposition of E. C., 12 July 1929, NAI, JUS/H234/2793.

²⁰⁷ Kilroy to chief superintendent, Castlebar, 16 Feb. 1934, NAI, JUS/H234/6040; see also deposition of E. C., 12 July 1929, NAI, JUS/H234/2793.

²⁰⁸ *Attorney General v. J. L., State Solr Birr*, 1 July 1931, NAI, JUS/H234/4099.

²⁰⁹ Ferriter, *Occasions of sin*, pp. 181–2; deposition of E. C., 12 July 1929, NAI, JUS/H234/2793; deposition of A. D., 25 July 1925, NAI, JUS/H234/1065; O'Boyle to superintendent's office, 2 Mar. 1934, NAI, JUS/A18/86.

²¹⁰ Keyes to superintendent's office, Bruff, 21 June 1934, NAI, JUS/18/344.

²¹¹ Form of enquiry as to prisoner's eligibility for Borstal treatment, 27 Jan. 1931, NAI, JUS/H234/3551.

²¹² O'Tuama to superintendent's office, Roscommon, 21 Dec. 1934, NAI, JUS/18/229.

²¹³ The exact outdoor locations included canal banks, fields, gardens, graveyards, groves, lanes, quarries, roads, wells, and woods.

²¹⁴ O'Garda to chief superintendent's office, 29 Apr. 1927, NAI, JUS/234/1733.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Wakely to O'Friel, 10 May 1927, NAI, JUS/H234/1733.

²¹⁸ *Ibid.*

authorities' had 'grave doubts as to the value of children's evidence',²¹⁹ other legal professionals did not share such concerns. In one Tipperary case in 1929, the state solicitor wrote that the statements of the witnesses, '[t]hough youthful...were absolutely clear',²²⁰ while in another Monaghan case 'it was on the children's evidence that the Judge directed the Jury, and on which the latter found the accused guilty'.²²¹ Indeed, Judge Gleeson told the Carrigan Committee that personally he would 'prefer to convict on the unsupported evidence of an intelligent child of ten or eleven, than on some of the type of evidence one hears from adults'.²²²

VIII

Consent was no defence to a charge of unlawful carnal knowledge under sections 4 and 5(1) of the 1885 Act. This was explicitly captured by Justice Sheehy in the case of W. M. in 1929 where he pointed out that '[t]he consent of the girl was (owing to her age) immaterial for the purposes of proving the crime charged'.²²³ Put otherwise, sections 4 and 5(1) of the 1885 Act, *stricto sensu*, were only applicable in the event that the intercourse took place with a young girl who factually consented or where there was insufficient evidence to establish the absence of consent on the part of the female complainant. As Justice Davitt observed in a Wexford case in 1929, 'if there were not consent, the offence would be rape'.²²⁴ Accordingly, there were a substantial number of cases in the extant files where the sexual activity appears to have been consensual.²²⁵ In Mayo in 1934, fourteen-year-old B. S. was reported to be 'without doubt a consenting party',²²⁶ while in Sligo in 1934, fifteen-year-old J. G. 'fully consented to the acts complained of'.²²⁷ This was also exemplified by the case of J. M. that came before the Offaly Circuit Criminal Court in 1926, in which fifteen-year-old C. McC. gave evidence that 'it was with my own full consent the misconduct took place on the different days'.²²⁸ She also attested that the 'accused asked my mother to let me marry him', but that her mother refused stating that she was too young to get married.²²⁹

J. M., who was described by the trial judge, Justice Wakely, as a 'thorough bad character', was not perturbed by the rejection.²³⁰ The Garda report revealed that the accused reputedly told the girl at a later meeting that if

²¹⁹ Department of Justice memorandum, 27 Oct. 1932, NAI, JUS/90/4/4, p. 10.

²²⁰ O'Connor to O'Friel, 22 Oct. 1929, NAI, JUS/H234/2696.

²²¹ Lynch to chief superintendent's office, Monaghan, 2 May 1932, NAI, JUS/H234/4319.

²²² Supplementary memorandum from Dermot Gleeson to the Carrigan Committee, n.d., NAI, JUS/90/4/21, p. 5.

²²³ Sheehy to O'Friel, 13 Nov. 1929, NAI, JUS/H234/2703.

²²⁴ Devitt to O'Friel, 21 Oct. 1929, NAI, JUS/H234/2689.

²²⁵ See, for example, chief superintendent to commissioner, 2 Sept. 1933, NAI, DJUS/H234/6328, and Davitt to O'Friel, 21 Oct. 1929, NAI, JUS/H234/2689.

²²⁶ Flynn to superintendent's office, Castlebar, 4 Mar. 1935, NAI, JUS/18/834.

²²⁷ Sheehy to Roche, 4 Feb. 1935, NAI, JUS/18/760.

²²⁸ Deposition of C. McC., 18 Aug. 1926, NAI, JUS/H234/1523.

²²⁹ Ibid.

²³⁰ Ibid.

her parents would not consent to the marriage that there was ‘only one way out of it’.²³¹ This was confirmed by the fifteen-year-old-girl who testified that J. M. told her that he would have to ‘put me in the family way to get me’²³² and that her parents would then have no choice but to consent to the marriage.²³³ J. M. subsequently succeeded in both endeavours – impregnating and marrying C. McC. – but the girl’s mother ‘in a fit of temper’ got him arrested,²³⁴ and it would appear that his ‘callous and indifferent’ attitude in court, not to mention his previous character, were aggravating factors at the sentencing stage where he received eighteen months’ imprisonment.²³⁵ J. M., for instance, admitted in open court that ‘his own sister charged him with attempting to rape her’,²³⁶ while two of his daughters from his previous marriage endured the stigma of being placed in an Industrial School after the elder girl was ‘indubitably assaulted and more than likely ravished by him’.²³⁷ Unlike the leniency that was afforded to defendants who were willing to enter into matrimony with their victims in the nineteenth century,²³⁸ the judge considered ‘imprisonment the only punishment & safeguard’ for the accused’s dependants.²³⁹

Identifying the extent to which consent had been forthcoming from the information provided in the prisoner files is laden with difficulties. In only a small number of cases did the extent of the injuries sustained by the victim remove any reasonable doubt about her lack of consent. Although a number of offences involved the perpetrator ‘knocking’ the victim to the ground,²⁴⁰ there were only a small number of cases – excluding those involving pregnancy – where the physical harm to the victim was considerable. In October 1923, for instance, a mother found her four-year-old child crying and bleeding from her private parts,²⁴¹ while in Tipperary in June 1929, fifteen-year-old E. P. was defiled while unconscious²⁴² after falling and hitting her head off a stone.²⁴³ The extant archival evidence also reveals that a small number of very young victims were not only physically injured, but emotionally disturbed by the offences. In the case of M. M. in Limerick in 1934, the six-year-old victim was flushed, her hair was tossed, and she displayed signs of distress when

²³¹ O’Sullivan to the chief superintendent’s office, Tullamore, 10 Dec. 1926, NAI, JUS/H234/1523.

²³² Deposition of C. McC., 18 Aug. 1926, NAI, JUS/H234/1523.

²³³ O’Sullivan to the chief superintendent’s office, Tullamore, 10 Dec. 1926, NAI, JUS/H234/1523.

²³⁴ Petition from a person under imprisonment, 30 Nov. 1926, NAI, JUS/H234/1523.

²³⁵ Wakely to O’Friel, 29 Jan. 1927, NAI, JUS/H234/1523.

²³⁶ *Ibid.*

²³⁷ Kennedy to O’Friel, 4 Dec. 1926, NAI, JUS/H234/1523.

²³⁸ C. A. Conley, ‘No pedestals: women and violence in late nineteenth-century Ireland’, *Journal of Social History*, 28 (1995), pp. 801–18.

²³⁹ Application for mitigation of a prisoner’s sentence, annotation, 22 Nov. 1927, NAI, JUS/H234/1961.

²⁴⁰ Leas commissioner to O’Friel, 2 Feb. 1927, NAI, JUS/H234/1587; deposition of E. C., 12 July 1929, NAI, JUS/H234/2793; deposition of N. McH., 10 Nov. 1931, NAI, JUS/H234/4180; De Bron to Seanascal, 27 June 1933, NAI, JUS/H234/5096; O’Neill to commissioner, n.d., NAI, JUS/H234/3350.

²⁴¹ Deposition of L. R., 30 Oct. 1933, NAI, JUS/234/411.

²⁴² Ryan to O’Friel, 17 June 1930, NAI, JUS/H234/3037.

²⁴³ County of Waterford Circuit Court, *Attorney General v. J. H.*, 23 Oct. 1929, NAI, JUS/H234/3037.

she returned home.²⁴⁴ The child also complained of a pain in her stomach, and notwithstanding that there was no injury to prove penetration or semen traces, the doctor observed that she 'displayed an unusual fear in regard to her private part'.²⁴⁵ Likewise, in a Dublin case in 1925, the nine-year-old victim was 'overcome with terror' and 'shaking her clothes and crying' in the aftermath of the attack.²⁴⁶ The medical evidence confirmed the extent of the physical injuries inflicted, which included forcible distension of the vagina consistent with the physical signs of an attempted rape.²⁴⁷ The child was subsequently found to have contracted gonorrhoea, which necessitated hospital treatment due to her tender age.²⁴⁸ She was one of the four victims in this sample who contracted venereal disease.²⁴⁹

Notwithstanding the use of force, consent may have been vitiated by fear, intimidation, or fraud, and thus the fact that the majority of these offences appear to have been committed in non-violent circumstances does not necessarily imply that these victims consented to the sexual act. The varied materials gathered by the Department of Justice when these prisoners' petitions for release were being considered ranged from correspondence from prison authorities, trial judges, doctors of varying expertise, petitioning letters from various institutions and individuals, court depositions, and Garda reports (which frequently tend to offer a more punitive assessment of convicted sex offenders that directly contradicted the claims of petitioners).²⁵⁰ Officials in the Department of Justice usually drafted a summary of these materials which was then presented to the minister for justice. From the historian's point of view, these documents, taken collectively, offer composite yet often contradictory narratives of individual cases,²⁵¹ but they are the only available sources that enable one to investigate whether or not the victims consented to the sexual intercourse. However, in certain cases, there are obvious limitations in taking the statements of the victims solely as the basis for determining whether the sexual act was consensual or non-consensual. For instance, one difficulty associated with reliance on these statements, as a source to establish *de facto* consent, was the partiality of the evidence and the ensuing effect this had on objectivity given that a substantial proportion of the cases almost invariably involved a direct conflict of evidence.

Reliance on these statements is fraught with difficulties in a number of other respects. It is possible that some of the young females would not admit to their parents that they had consented to the conduct. Indeed,

²⁴⁴ Keyes to chief superintendent, Limerick, 21 June 1934, NAI, JUS/18/344.

²⁴⁵ *Ibid.*

²⁴⁶ Deposition of J. H. Reynolds, 18 Aug. 1925, NAI, JUS/H234/1065.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ Deputy commissioner to O'Friel, 24 Sept. 1925, NAI, JUS/H234/936; application for mitigation of a prisoner's sentence, annotation, 5 Dec. 1932, NAI, JUS/18/349. See also Cryan to Detective Branch, Dublin Castle, 7 Jan. 1947, NAI, JUS/H234/4587, and deposition of Patrick J. Lydon, 18 Aug. 1925, NAI, JUS/H234/1065.

²⁵⁰ Doyle and O'Callaghan, *Capital punishment in independent Ireland*, p. 138.

²⁵¹ *Ibid.*

although the detail contained in the prisoner files is quite limited in this respect, it was possible to discern that a number of complainants delayed reporting both exploitative offences and consensual transgressions due to fears of parental opprobrium. Moreover, in a Roscommon case in 1931, resentment seems only to have arisen due to the reluctance of the prisoner to marry the girl after it emerged that 'she was in the family way'.²⁵² Significantly, the Irish Women's Medical Association contended that it was their experience that girls of '14 to 17 years of age who have been assaulted or who have been acting immorally do not make any statements to their parents unless they become pregnant'.²⁵³ Therefore these factors, although they escape any precise assessment, may possibly have had a direct bearing on the amount of crime recorded, and the number of offenders brought to justice.

Many of the victims in this sample were too young to have the capacity to consent,²⁵⁴ but it is possible to determine whether the female actively resisted in some of the cases.²⁵⁵ This, of course, is not to suggest that a failure to put up some level of resistance or opposition in such circumstances can be equated with consent, and there is evidence in the prisoner files to demonstrate that a number of victims submitted to the sexual acts due to threats of serious violence or detriment to themselves. J. McH. testified in 1932 that she 'did not know what he was doing to her and that she endeavoured to shout but he prevented her by placing his hand on her throat'.²⁵⁶ In another case from Offaly in 1933, N. M. resisted and shouted, but J. K. put his hand over her mouth and threatened her 'if you don't shut up I will kill you'.²⁵⁷ The victim later testified 'I thought I would die, it was terrible'.²⁵⁸ Moreover, it was reported that R. R. defiled eleven-year-old O. B. 'partly by threats'.²⁵⁹ Other offenders also used threats to pacify the victim. Nine-year-old A. D., for example, began roaring when she heard a car pass during the attack, but the perpetrator, T. K., warned her to 'shut up for Christ's sake or "I'll put it down your neck"'.²⁶⁰ The victim began roaring again when she heard another car passing which provoked the accused to respond 'for Jesus' sake will you shut up or I will choke you'.²⁶¹ As the oft-quoted *dictum* of Justice Coleridge elucidated in 1841, there was a considerable distinction between consent and submission: 'it by no means follows that mere submission involves consent'.²⁶² The decision to under-charge these offenders could possibly have been attributed to the stringency of

²⁵² Deposition of B. McH., n.d., NAI, JUS/H234/4180.

²⁵³ Minutes of evidence, Carrigan Committee, 30 Nov. 1930, NAI, JUS/90/4/2.

²⁵⁴ Statement of N. D., 6 Dec. 1929, NAI, JUS/H234/2066.

²⁵⁵ Emphasis added.

²⁵⁶ Keenan to Ard Feadh, 17 June 1932, NAI, JUS/H234/4180.

²⁵⁷ *Attorney General v. J. K.*, June 1931, NAI, JUS/H234/4099.

²⁵⁸ Deposition of M. M., 15 June 1931, NAI, JUS/H234/4099.

²⁵⁹ Form of enquiry as to prisoner's eligibility for Borstal treatment, 6 June 1932, NAI, JUS/H234/4463.

²⁶⁰ Deposition of A. D., 25 July 1925, NAI, JUS/H234/1065.

²⁶¹ *Ibid.*

²⁶² O'Malley, *Sexual offences: law, policy, punishment*, p. 38.

evidence required for the graver offence of rape,²⁶³ or perhaps charging these perpetrators with the lesser offence of unlawful carnal knowledge was preferable, as a matter of policy, because there was no need for cross-examination of the girl on the crucial issue of consent.

It is also evident that some of the victims did not properly understand the nature and implications of the conduct because of their age. At the Easter sitting of the Dublin Circuit Criminal Court in 1931, eight-year-old L. G. attested during the trial of H. B. that 'I wasn't crying or didn't tell him to stop because I couldn't he was lying on top of me.'²⁶⁴ In the same court in 1925, nine-year-old A. O'B. told the court that thirty-three-year-old W. McG. 'didn't hurt me' and that she 'didn't call out' when the defendant attempted to have intercourse with her.²⁶⁵ Similarly, in Cork in 1929, fourteen-year-old B. D. gave evidence that 'I made no outcry and I made no struggle against him. I did not know he was doing me any harm',²⁶⁶ while in Offaly in 1929 fourteen-year-old E. C. stated that when T. W. knocked her down she did not cry because she 'didn't know what he was going to do'.²⁶⁷ Furthermore, it was clear that other victims, by virtue of their age, 'did not appreciate the seriousness of the conduct'.²⁶⁸ Certain civil servants, on occasion, scarcely fared any better. For instance, one senior official wrote that the young female 'voluntary permitted the accused to have connection with her on five occasions',²⁶⁹ but little consideration appears to have been given to the fact that she was a mere ten years of age at the time. In another particularly disturbing case in 1933, seven-year-old R. F. returned to the street to play with her friends after the offence,²⁷⁰ but was encountered by a neighbour who observed blood streaming down the child's leg to her wellington boots.²⁷¹ The perpetrator, twenty-year-old T. C., was sentenced to two years' hard labour with the trial judge, Justice Wyse Power, stating that only for his youth he would have sentenced him to five years' penal servitude.²⁷²

Conversely, in a small number of cases, there was evidence of some objection or resistance by the victims at the time of the offence. The resistance in most of these cases could be best described as vocal protestation. In Kilkenny in March 1931, twelve-year-old K. C., a school girl, gave evidence to the court that she cried out when she was being assaulted but 'no person came to her assistance',²⁷³ while in Dublin in 1930, sixteen-year-old B. M. testified that

²⁶³ *Attorney General v. R. B.*, précis of evidence, 18 Jan. 1932, NAI, JUS/H234/4180.

²⁶⁴ *People (AG) v. B.*, Circuit Criminal Court, Dublin City, Easter 1931.

²⁶⁵ *People (AG) v. McG.*, Circuit Criminal Court, Dublin City, Trinity-Michaelmas 1925.

²⁶⁶ Deposition of B. D., 6 June 1929, NAI, JUS/H234/3162.

²⁶⁷ Deposition of E. C., 12 July 1928, NAI, JUS/H234/2793.

²⁶⁸ Glynn to chief superintendent, 12 Dec. 1932, NAI, JUS/18/566; form of inquiry as to prisoner's eligibility for Borstal treatment, 18 June 1935, NAI, JUS/18/1034.

²⁶⁹ Form of enquiry as to prisoner's eligibility for Borstal treatment, 5 Nov. 1931, NAI, JUS/H234/4083.

²⁷⁰ Kilroy to chief superintendent, Castlebar, 16 Feb. 1934, NAI, JUS/H234/6040.

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ Kenny to commissioner, 11 Jan. 1934, NAI, JUS/18/71.

'she did not consent to his having connection with me. I told him to stop. I told him to stop. I did not struggle. He had a hold of my hands.'²⁷⁴ Similarly, in Cork in 1931, eleven-year-old C. L. screamed, but the perpetrator put his hand on her mouth and said 'hush'.²⁷⁵ Other victims actively resisted and made unsuccessful attempts to escape the perpetrator. In Cork in 1934, eight-year-old M. K. 'endeavoured to make her escape, but failed',²⁷⁶ while in Cavan in 1931, J. McH. stated that she 'tried to get away from him but he was too strong'.²⁷⁷ There were, however, some examples of positive physical resistance. In Roscommon in 1934, thirteen-year-old S. K., who was described as 'big and strong for her years, resisted' her assailant successfully,²⁷⁸ while in Sligo in 1934, fifteen-year-old B. A. M. told the court that 'she did not shout for help', but that she 'struggled' with the accused, 'ordered him away', and that she 'resisted for a considerable time'.²⁷⁹ Physical resistance was also evident in the aforementioned case of J. K. in 1929, where fourteen-year-old N. M attempted to physically resist the accused by picking up his walking-stick and hitting him with it. She testified that she was 'going to hit him again', but he took it from her before proceeding with the assault.²⁸⁰ The defendant, who was described as 'a bit below normal intelligence' but 'by no means an idiot', was convicted and sentenced to eighteen months' hard labour.²⁸¹ The trial judge, Justice Gleeson, described him as a 'menace to young girls' and stated that the 'proper place for him was a mental home'.²⁸²

IX

Writing in 2013, Tom O'Malley observed that it is occasionally claimed that child sexual abuse was unknown or at least unrecognized until relatively recently.²⁸³ True, there was little open discussion of sexual violence in Ireland until the 1970s, but what can be stated with some certainty is that children were abused, sexually and otherwise, throughout the formative years of Irish independence, that only a fraction of this abuse was reported, and that some of the perpetrators who were apprehended for these offences were tried and convicted.²⁸⁴ Moreover, it is clear that there was some public awareness of child sexual abuse.²⁸⁵ Newspapers reported on over half of these cases – albeit often in a coded fashion that obscured the precise nature

²⁷⁴ Deposition of E. O'C., 31 Oct. 1930, NAI, JUS/H234/3368.

²⁷⁵ Confidential police report, 13 June 1932, NAI, JUS/18/349.

²⁷⁶ McCarthy to commissioner, 25 Feb. 1936, NAI, JUS/18/626.

²⁷⁷ Deposition of J. McH., 10 Nov. 1931, NAI, JUS/H234/4180.

²⁷⁸ O'Tuama to superintendent's office, Roscommon, 21 Dec. 1934, NAI, JUS/18/229.

²⁷⁹ Molloy to chief superintendent, Sligo, 20 Jan. 1935, NAI, JUS/18/760.

²⁸⁰ Deposition of N. M., 15 June 1931, NAI, JUS/234/4099.

²⁸¹ Kennedy to Department of Justice, 21 Jan. 1932, NAI, JUS/234/4099.

²⁸² Kennedy to chief state solicitor, 26 May 1933, NAI, JUS/234/4099.

²⁸³ O'Malley, *Sexual offences*, pp. 17–18.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

of the offence²⁸⁶ – and parents warned their children to stay away from predatory individuals within their communities.²⁸⁷ In one case, for instance, it was stated that the perpetrator had ‘the reputation for interfering with young girls in the locality’,²⁸⁸ while in another case it was revealed that accused’s presence in the community was ‘a perpetual source of worry to parents of young female children and the Gardaí found it necessary to keep him under special observation for some time prior to his arrest as a result of complaints that had been received regarding his conduct’.²⁸⁹ Child sexual abuse, as a recent body of literature reveals, was not quite as hidden as oft-perceived.²⁹⁰

What is also notable about the findings of this study is the degree of similarity with more contemporary contextual and situational studies of sexual crime.²⁹¹ The majority of the victims were exploited in childhood by someone who was known to them; the offences were predominantly exploitative in nature; many of these offences were crimes of opportunity; occasionally the offence included some type of threat, bribe, or inducement to silence the victim; and proceedings were not instituted simply as a corollary of the wider concern about the perceived increase in illegitimate births. Furthermore, the evidence that emerged from extant prisoner files challenges the contention that invariably it was ‘girls and women rather than boys and men who were seen as sexual deviants’.²⁹² Men and boys were also seen as deviant and culpable, and the convictions secured in these cases may call for a reappraisal of the view that ‘many of these girls were simply not believed or that offenders were given the benefit of the doubt’.²⁹³ Finally, these findings, to use Sinéad Ring’s words, leave us with a question that is very difficult to answer: ‘why did the sexual abuse of children go unrecognised as a societal problem for so long?’²⁹⁴ It was not that there was no awareness of sexual crime in the early years of Independence: parents, police, priests, doctors, judges, juries, journalists, women’s organizations, and social workers were all aware of sexual crime during this period, even if they were, perhaps, unaware of the psychological and emotional suffering it caused victims, particularly young children.²⁹⁵

²⁸⁶ Thirty-five of the sixty-five cases were subject to newspaper reports.

²⁸⁷ Maguire, *Precarious childhood in post-independence Ireland*, p. 126.

²⁸⁸ Mansfield to chief superintendent’s office, Metropolitan Division, 16 Dec. 1929, NAI, JUS/H234/3006.

²⁸⁹ Carroll to chief superintendent’s office, Bray, 18 Jan. 1934, NAI, JUS/18/11.

²⁹⁰ For representations of child sexual abuse in modern Irish literature, see J. Valente and M. Gayle Backus, *The child sex scandal and modern Irish literature: writing the unspeakable* (Bloomington, IN, 2020).

²⁹¹ H. McGee, R. Garavan, M. de Barra, J. Byrne, and R. Conroy, *The SAVI report: sexual abuse and violence in Ireland* (Dublin, 2002), pp. 68–94.

²⁹² Ferriter, *Occasions of sin*, pp. 7–8.

²⁹³ *Ibid.*, p. 132.

²⁹⁴ Ring, ‘The victim of historical child sexual abuse in the Irish courts (1999–2006)’, p. 563.

²⁹⁵ *Ibid.*; see also Maguire, ‘The Carrigan Committee and child sexual abuse in twentieth-century Ireland’, p. 86; Ferriter, *Occasions of sin*, pp. 8–9, 183; O’Malley, *Sexual offences: law, policy and punishment*, p. 18; U. Crowley and R. Kitchin, ‘Producing “decent girls”: governmentality and the moral

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