The Prison Journal
http://tpj.sagepub.com

Published by:
SAGE
http://www.sagepublications.com

On behalf of:
Pennsylvania Prison Society

Special Issue on Prisons in Ireland
Guest Editor: Liam Leonard PhD
The Prison Journal
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INTRODUCTION: THE SIGNIFICANCE OF THE PRISON IN IRISH NATIONALIST CULTURE

The issue of imprisonment in Ireland has traditionally been problematic for a number of reasons, including Ireland’s colonial past and the struggle for independence from British rule in both jurisdictions which led in turn to the use (and abuse) of imprisonment by forces opposed to the independence project. In turn, a sentimental residue of tacit opposition to the prison system has remained a salient characteristic of contemporary Irish life. Essentially, the prevailing system of justice (and the prison system in particular) became a symbol of injustice and oppression throughout the history of British rule for Irish nationalists in either jurisdiction.

Consider this list of events from Irish nationalism’s catalogue of injustices that have become part of the fabric of pan-Irish nationalist (and rogue) culture in Ireland, Britain, the US and Australia: the imprisonment and execution of leaders such as Robert Emmet in Kilmainham Gaol in 1798, the deportations of Irish nationalist activists (alongside regular convicts) to Australian prisons throughout the 1800s, the imprisonment of nineteenth century nationalist leaders such as John Mitchel, Michael Davitt and Charles Stewart Parnell (see Behan, this issue), the legend of Ned Kelly in Australia, the trial and imprisonment of Irish writer Oscar Wilde, the ‘Molly Maguires’ trials in the US, the imprisonment and execution of the leaders of the 1916 Easter Rising in Kilmainham Gaol, the imprisonment of republican prisoners in Frongoch military prison in Wales and the escape of nationalist leader Eamon DeValera (assisted by Michael Collins) from the same prison, the history of past imprisonment of members of the early Dáil, the imprisonment of republicans in the Curragh military prison during World War II, the imprisonment of Irish writer Brendan Behan for his role in the pre-war IRA bombing campaign and the publication of his work ‘Borstal Boy’, the impact of internment without trial for large sections of the Catholic population in Northern Ireland in the early 1970s, the socio-political impact of politicisation of many of those imprisoned from both Republican and Loyalist communities at this time, the impact and legacy of the Hunger Strikes and blanket protests in the Maze, the role of political prisoners in the creation of the Peace process, the imprisonment of the ‘Rossport 5’ and so on. Its only after examine this surmise of the role of prisons in the history of the Irish people, can the significance of prison on the Irish psyche be achieved before contemporary debated about human rights and prisons are broached.

THE CONTRIBUTION OF IRISH ACADEMICS TO PENOLOGY

Perhaps as a result of this legacy, the issues of Ireland’s prisons and Irish penology per se have been somewhat neglected by academics over time. If the fact that ‘Criminology could be described as Ireland’s “absentee discipline” according to
Kilcommins, O’Donnell, O’Sullivan and Vaughan (2004, p. iv), then penology is its hidden sibling, sheltered from inquiry by a both disinterest amongst wider society and a somewhat secretive culture amongst the relevant bureaucracy, a situation heightened by years of understandable security concerns in both jurisdictions. However, this special issue of the Prison Journal goes some way to address that gap. This collection of papers represents some of the best academic research into the issue of prisons, penal reform and alternatives to incarceration in Irish academic system, both North and South. As guest editor for this special issue, I am pleased at both the geographical spread and the gender balance of the contributors to this collection, in addition to being impressed by the quality of papers included within the edition. To begin with I must pay tribute to the Editor of the Prison Journal, Rosemary Gido, for her foresight and generosity in extending this invitation to Irish penologists and criminologists to contribute this dedicated collection on prisons in the Irish case to the august pages of the Prison Journal, which has itself become such an integral part of the American and global prison canon. In addition, I must pay tribute to those academics who have paved a discernable pathway in Irish criminology and prison studies for others to follow, namely Ian O’Donnell, Paul O’Mahony, Ciaran McCullagh, Dermot Walsh, Shadd Maruna, Phil Scraton, Peter Shirlow and more recently Azrini Wahidin and Mary Corcoran, who have all contributed to the wider understandings of the experience of imprisonment for men and women in Ireland for many years and created a pool of knowledge from which each of our contributors have drawn on in the development of their own penological perspective. Nonetheless, the contributors to this special issue in themselves constitute a significant body of academics and practitioners in the area of prison studies in Ireland. Together, this group of contributors have all played a significant role in the areas of penology research, teaching and engagement with the prison systems in both jurisdiction through training or teaching with staff or prisoners.

THE PRISON JOURNAL IRISH ISSUE

This special issue contains a series of comprehensive articles on prisons in Ireland, North and South written by contemporary researchers who are active in the field of prison studies in Ireland. The first two articles in the collection focus on the historical background to prison policy in the Republic of Ireland. In the first of these, Cormac Behan examines the issue of enfranchisement of prisoners. This issue began as a highly political concern, and subsequently became something of a legal debate, finally passing into law in recent years without the due consideration provided for this subject in other states. For Behan, the lack of concern shown by early members of the Dáil Éireann (the Irish Parliament founded in 1922 after Independence) for prisoners was hard to understand, given that many of them boasted of their time spent inside as part of their contribution to the independence struggle. The second article in this issue is an insightful analysis of Irish penal policy by Mary Rogan. Here, the significance of the relationships between Ireland’s Justice Ministers and their senior civil servants is detailed. Rogan suggests that ‘engagement with the policy-making process can provide meaningful data to explain the nature of criminal justice policy’. The article takes a detailed examination of the relationship between the former senior civil

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servant Peter Berry and former Irish Taoiseach (Prime Minister) Charles Haughey, during the latter’s time as Minister for Justice in the 1960s.

This article is followed by an article by Liam Leonard and Paula Kenny, which applies a meta-analysis to the ‘functionalist exchange’ which occurs as a result of participation in Restorative Justice conferencing events which were held under the supervision of An Garda Síochána (Irish Police) in the Dublin region between 2002 and 2005. This article’s analysis of these case studies provides a greater understanding of the significance of participation for those attending restorative events, underpinning the importance of restorative justice as a viable alternative to the failed punitive measures of successive Irish governments which have led to the criminalisation of many incarcerated for minor offences, while creating an inhumane and uneconomic over-crowding crisis in the Irish prison system.

The fourth article in this collection is by Agnieszka Martynowicz, who is a Research and Policy Officer with Ireland’s main penal reform group, the Irish Penal Reform Trust (IPRT) in Dublin. This article investigates the conditions for prisoners within Irish prisons, and the procedures which follow the death of prisoners when incarcerated in the Irish prison system. The article concludes with an understanding, based on recommendations from the European Committee for the Prevention of Torture (ECPT), that ‘some significant reforms are needed in Ireland in this respect to ensure effective protection of prisoners’ rights’. Linda Moore’s article is a graphic and hard-hitting investigation into the abuse of female prisoners in Northern Ireland’s prison system during the ‘Troubles’ or civil conflict which occurred in the province between the outbreak of the conflict with attacks by the Royal Irish Constabulary (RUC) and British Army on unarmed Catholic Civil Rights groups in 1969 through to the signing of the Good Friday Agreement in 1998 after thirty years of conflict. This conflict included the tragic loss of life of many civilians and those in uniform, and was also marred by the suspension of basic rights through the introduction of internment without trial for large sections of the Catholic population during the 1970s. The politicisation of the prisoners’ rights issue during the ‘Hunger Strikes’ of the 1980s by republican prisoners became an significant episode of the ‘Troubles’, and Moore’s article on the mistreatment of female prisoners during this period provides a detailed account of conditions within the North’s prison system at this time. The final two articles in this Irish edition of The Prison Journal deal with the issues health promotion and prisoner education in the contemporary prison system in the Republic of Ireland. In their article on health promotion in prisons, Catherine Casey and Patricia Mannix McNamara outline the need for health promotion interventions in Irish prison, based on a qualitative research design that incorporated semi-structured interviews with a purposive sample of twelve leading figures in prison policy in Ireland. The paper also discusses ‘the influence of organisational culture on attitudes of prison staff to engaging in health promotion with prisoners’ and explores the problems posed by ‘the lack of national policy and funding for health promotion initiatives in the prison setting’. The final article in this edition, by Anne Costelloe, explores the importance of the educational experience for prisoners incarcerated within the Irish system. Costelloe argues that such educational experiences for prisoners prepare the prisoner for life as a citizen on the outside, representing a significant step in the rehabilitation process. Ultimately, each of these articles makes a significant contribution to the wider understanding of the issue of prisons in the Irish case, and as such reflects the extensive research that now is going some way towards
addressing the scholarly neglect of Irish penology in the past. For that, we should be grateful to both the contributors and The Prison Journal alike for shedding light on this once most under researched and imperceptible issue.

Liam Leonard, July 2010

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1. ‘THE BENEFIT OF PERSONAL EXPERIENCE AND PERSONAL STUDY’: PRISONERS AND THE POLITICS OF ENFRANCHISEMENT

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Prisoners and ex-prisoners have played a prominent role in modern Irish history. Yet, despite using their prison experience for political advancement, on release, few political leaders became vocal advocates of penal reform in general or prisoner enfranchisement in particular. Prior to the passing of the Electoral (Amendment) Act in 2006, Irish prisoners were in an anomalous position: they were allowed to register, but no facility existed, for them to vote. However, this did not prevent prisoners from engaging with, and at times, challenging the political system, both north and south throughout the twentieth century. Much has been written about political activity among prisoners in Northern Ireland but relatively little about their endeavours in the Irish Republic.

This article begins with an examination of political participation among prisoners in the early decades of the Irish State. Despite the legal and political struggle by prisoners and penal reformers to achieve enfranchisement, when it was granted it was in the context of electoral, rather than penal reform. Prisoner enfranchisement did not become a major issue in Ireland in contrast to other countries and reasons why are examined from a historical and political perspective.

Key Words: Prisoner Enfranchisement, Prisoners Rights, Electoral Reform.

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INTRODUCTION

Prisoner enfranchisement is a major source of debate and controversy internationally. In recent years there have been both political and legal developments concerning the enfranchisement of prisoners and ex-prisoners (Rottinghaus & Baldwin, 2007). In Israel (Ewald 2002), Canada (Mofina, 2002), South Africa (Muntingh, 2004), Australia (Redman et al., 2009), Europe (Easton, 2009), Hong Kong (Hong Kong Constitutional and Mainland Affairs Bureau 2009) and the United States (King, 2006), there have been impassioned political and philosophical discussions and legal arguments about the enfranchisement of the incarcerated. In December 2006, the Oireachtas (Irish parliament) passed the Electoral (Amendment) Act which allowed prisoners to vote by means of postal ballot. As a result, Irish prisoners had the first opportunity to exercise their franchise in a general election in May 2007.
This article examines the case of the Republic of Ireland and prisoner enfranchisement. It begins by outlining the political involvement of prisoners in the early decades of a state founded by prisoners with much political agitation taking place behind bars. Despite being denied the opportunity to vote, this did not prevent them from engaging with the political system, both north and south of the border throughout the twentieth century. (For an examination of the contribution of northern prisoners to the political process, see McEvoy, 2001.) Prior to enfranchisement, Irish prisoners were in a somewhat anomalous position – they were legally allowed to register, but did not have the facility, to vote. When prisoner enfranchisement was achieved in 2006, it was not in the context of penal reform or a civil rights act, but rather a stand-alone piece of electoral reform after relatively little discussion and almost no controversy that might accompany a similar measure in other countries (Behan & O’Donnell, 2008).

PRISONERS OF THE PAST

Political History and Penal Politics

Prisoners and ex-prisoners have played a prominent role in modern Irish history. Many nineteenth-century political leaders were imprisoned, including John Mitchel, Michael Davitt and Charles Stewart Parnell. Michael Davitt, the internationalist and labour leader was one of the few political leaders who used his prison experience to campaign for penal reform. He spent seven years in Dartmoor prison for gun-running as part of the Fenian movement. During his year in Portland jail for involvement in agrarian agitation he wrote *Leaves from a Prison Diary; Or, Lectures to a ‘Solitary’ Audience* (1885), which chronicled prison life and his reflections on penal reform. Davitt was subsequently a member of the Humanitarian League’s criminal law and prisons department which “sought to humanize the conditions of prison life and to affirm that the true purpose of imprisonment was the reformation, not the mere punishment, of the offender” (Bailey, 1997, p. 306).

It was in the years immediately after the 1916 Rising that prisoners began to take centre stage in Irish politics with an upsurge in republicanism and the rise of support for Sinn Féin and the Irish Volunteers. It is estimated that the British government interned nearly 2,000 prisoners after the Rising (Lee 1989: 37). In the period
afterwards, many candidates standing at elections wore as a badge of honour their violent (and illegal) opposition to British rule. In 1917, the first bye-election after the Rising returned former prisoner Count Plunkett, (father of executed rebel leader, Joseph Mary Plunkett) as an independent Member of Parliament (MP) for Roscommon North with Sinn Féin support. In the next bye-election, Joe McGuinness stood as a candidate for the South Longford seat. At the time, McGuinness was serving a sentence in Lewes gaol, Suffolk for his part in the Rising and his election slogan was "Vote him in to get him out!" Later that year, future president of the Executive Council, W.T. Cosgrave won a seat for Sinn Féin in the Kilkenny bye-election from his prison cell.

The first post World War I election held in the United Kingdom (including Ireland) was under the terms of the Representation of the People Act 1918. This had abolished property requirements and allowed all men over 21 and women over 30 to vote (Foot, 2005, p. 233). The Irish electorate rose from 700,000 in 1910 to just under two million for the 1918 election (Connolly, 1998, p. 206). Of the 105 seats at stake, Sinn Féin won 73. In keeping with their abstentionist platform, instead of taking their seats in the Westminster Parliament, Sinn Féin MPs convened the First Dáil. All 105 MPs elected to the British Parliament in the 1918 election were invited to attend the First Dáil (Lower House of Parliament). However, participation would have been anathema to the six Irish Parliamentary Party and 26 Unionist MPs. At the inaugural meeting in the Mansion House, Dublin on 21 January 1919, only 27 of the 73 Sinn Féin TDs (Teachta Dála – Members of Parliament) were in attendance. Of those who could not attend, 35 were listed in the official records of the Dáil as “fé ghlas ag Gallaibh” (i.e. “imprisoned by the foreign enemy”: Roll of 1st Dáil, 1919). Of the 73 constituencies that returned Sinn Féin MPs, four were elected in two constituencies. Thus, half of the 69 Sinn Féin representatives elected to the First Dáil were in prison. Former prisoner Cathal Brugha presided over the largely symbolic proceedings. In April 1919, after his escape from Lincoln jail, Eamon de Valera was elected as president of Dáil Éireann. Despite the parliament being recognised only by Soviet Russia, this meeting is listed on the Oireachtas website as the First Dáil (see http://historical-debates.oireachtas.ie/en.toc.D.F.O_19190121.html). The British authorities banned the Dáil in September 1919.
In November 1922, after the Irish Free State was established, the Minister for Home Affairs (with responsibility for justice, including prisons), Kevin O’Higgins proudly proclaimed in the Free State parliament, that there “is not a member of this present Government who has not been in jail...We have had the benefit of personal experience and personal study of these problems.” He continued:

I think that everyone here would agree that we should aim at improvement and reform in the existing prison system. I think we would be unanimous in the view that a change and reform would be desirable. Personally I can conceive nothing more brutalising, and nothing more calculated to make a man rather a dangerous member of society, than the existing system. But one does not attempt sweeping reforms in a country situated as this country is at the moment. (Kevin O’Higgins TD, Dáil Debates, 1922, Vol. 1, col. 2321-22)

With so many prisoners and ex-prisoners achieving prominent political positions, there may have been an expectation that this might impact positively on the development of penal policy. Nevertheless, on release, few, if any, championed prisoners’ rights or prisoner enfranchisement. Most of these and future former prisoners sought to make a break with their past. Indeed while many took pride in their penal experience, the released politicians were quick to put their prison past behind them and some who went on to have political responsibility for the penal system became quite punitive, showing little or no interest in penal reform. Despite the new state being built by prisoners and ex-prisoners, penal reform and prisoners’ rights would have to wait for another day. The newly elected and now respectable politicians needed to get on with state building as O’Higgins suggested. Many former prisoners including Arthur Griffith, Eamon Duggan, Gerald Boland and Sean MacEoin went on to serve as Ministers for Justice (or Home Affairs) in the new state (Kilcommins et al., 2004, p. 88). In 1928, seven years after being released, Sean Kavanagh returned to Mountjoy Prison to serve nearly 34 years behind the walls; this time as governor (Carey, 2000, pp. 231-2).

When the Irish Free State was established in December 1922, the electoral laws inherited from the period of British rule still applied. Section 2 of the Forfeiture Act 1870 declared that an individual imprisoned for over twelve months was “incapable of
being elected, or sitting, or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise whatever within England, Wales or Ireland.”

In the period before the majority of the people had access to the vote, due to property and gender restrictions, prisoner disenfranchisement was unlikely to have been an issue of much practical concern. The Free State constitution was introduced in 1922 and under Article 14, all citizens “without distinction of sex, who have reached the age of twenty-one years and who comply with the provisions of the prevailing electoral laws, shall have the right to vote for members of Dáil Éireann.” The next year, just before a general election, the Prevention of Electoral Abuses Act 1923 provided for a prohibition on voting for those convicted of personation or “aiding, abetting, counselling or procuring the commission of that offence.” Depending on whether it was a first or subsequent offence, there were various penalties, from two months imprisonment up to three years penal servitude. Added to these penalties was an electoral punishment. A person who was guilty of these practices was barred for seven years from the date of conviction from holding any public or judicial office, being a member of parliament or a local authority, being registered for or voting in general and local elections or voting for any public office (Prevention of Electoral Abuses Act 1923, Section 6(2-4)). This effectively meant that an individual could be incarcerated for a period of up to three years and on release not allowed to stand for office or cast their vote for a further four years.

Even before the Irish Free State had been formally established, Civil War (1922-23) had begun. There was widespread internment of anti-government opponents with estimates of up to 12,000 detainees, including both sentenced prisoners and internees (Lyons, 1973, p. 467). The Civil War was, by international standards, quite short, lasting for less than year, but it left a bitter political legacy. Perhaps understandably, the new state sought to prevent prisoners from using the fact of their confinement to win support for a political cause. The Electoral Act introduced in April 1923 disqualified from being elected or sitting as a member of the Dáil, prisoners undergoing a sentence of imprisonment with hard labour for a period of six months or of penal servitude for any term. Similarly if “any person who has been duly elected a member of the Dáil should, while he is so a member, become subject to any of the
disqualifications mentioned…he shall thereupon cease to be a member of the Dáil” (Section 51, (4)). It was under this section of the 1923 Act that Henry Coyle lost his seat due to imprisonment in May 1924. It is somewhat ironic that it was a TD from the government party that introduced the legislation who is the only parliamentarian in the history of the state to have been disqualified from parliament after he was sent to prison for three years for fraud.

Opponents of the new government would soon turn from physical force to politics, but to try to catch them off guard and establish a firmer mandate, the government called an election for August 1923. Even though the Civil War had ended in April 1923, by the time of the election there were still up to 10,000 internees, some of whom were on hunger strike. Despite pleas from prominent clergymen, the government refused to contemplate mass releases at this stage (Keogh, 1994, p 17). Prior to the August election, there was a debate in the Dáil on a proposal from Farmers Party TD, Michael Doyle that, “all political prisoners and internees be afforded an opportunity to vote at the coming elections” (Dáil Debates, 1923, Vol. 4, col. 1379). If prisoners were allowed to vote, Independent TD, Alfred Byrne argued, “nobody will be in a position to say that they [parliamentarians] were unrepresentative or that the Dáil elected was unrepresentative” (Dáil Debates, 1923, Vol. 4, col. 1381). Anticipating government inaction on the issue, or arguments about the logistics of the procedure, the leader of the Labour Party, Tom Johnson, suggested that a postal voters’ list could be prepared for this purpose and internees could vote in their home constituencies (Dáil Debates, 1923, Vol. 4, col. 1382). If the government felt that it was logistically too cumbersome to create a postal voters list, he had a solution: “I suggest there is a much better way to meet the grievances, and that is release [the internees], not to wait until after the elections but to release before the elections” (Dáil Debates, 1923, Vol. 4, col. 1382). Later in his speech, he anticipated the symbolism discussed in many future debates about prisoner enfranchisement:

If we are going to encourage the idea that the vote is a matter of importance to the voter, and that he should look upon the vote as something valuable, as symbolic of civic responsibility, then I think we should take this opportunity of adding to the force of that lesson (Dáil Debates, 1923, Vol. 4, col. 1382).
Responding for the government, former prisoner and now Minister for Local Government, Ernest Blythe, stated that this would entail special legislation. Setting the scene for future political priorities concerning prisoners and the franchise, he said that while the government was looking into it, “this matter is not one of prime importance.” He suggested that while there was no law in place barring prisoners from voting, special arrangements would have to be made and “[t]here is no real reason for that, except the desire to shut mouths” (Dáil Debates, 1923, Vol. 4, col. 1383). The proposal was rejected by the governing party that had just been involved in an inconclusive Civil War with those they had interned and was in no mood to listen to sympathetic pleas on their behalf.

Nevertheless, considering that many prisoners were incarcerated for politically motivated activity, the lack of access to franchise was unlikely to prevent political engagement. Barring a return to a separate or silent system of imprisonment, the government could not prevent debates about the political situation. During the Civil War, prisoners had been politically active. Magazines were produced, including C-Weed and The Trumpeter: When Gabriel Sounds the Last Rally (Carey, 2000, p. 199). Following the recent tradition, prisoners were nominated to stand as candidates in the election to try to boost support for the anti-Treaty side. In Mountjoy Prison, mock elections were organised by prisoners as a civic engagement exercise, to teach them about proportional representation, the complicated new electoral system introduced in 1920. With a history of civil disobedience, violent political disorder and non-compliance, many prisoners were understandably ignorant of the finer points of the electoral system. One of those in Mountjoy at the time, Ernie O’Malley, explained how anti-Treaty prisoners reacted to the election.

Meetings were addressed from the landing-rails or empty butter-boxes in the exercise-rings; waves of oratory flowed to and fro on rocks of interruption and hecklings. Businessmen, farmers, imperialists, separatists, educationalists spoke seriously or in mock parody. Rival candidates offered jail utopias for votes…Polling day was a frenzy, a principal difficulty the prevention of impersonation. We discussed the making of box kites carrying election slogans which could be flown from the wings and the strings cut before the
Staters could seize them. The kites might have amused the city electors but were never made (O’Malley, 1978, p. 237).

Even though O’Malley professed little interest in standing for the Dáil, he was elected for the North Dublin City constituency, rather ironically, as he pointed out, with second preference transfers from the Free State Minister for Defence, Richard Mulcahy (O’Malley, 1978, p. 238). Another of those elected from Mountjoy was IRA leader and Socialist, Peadar O’Donnell. His mother had protested in a letter to the Derry Journal the week before election day that her son and daughter, Bridget, both in prison were not on the electoral register and therefore not entitled to vote (Hegarty, 1999, p. 145).

During the election campaign, leader of the anti-Treaty side, future Taoiseach (Prime Minister) and president, Eamon de Valera, was arrested at a political rally in his Co. Clare constituency and imprisoned for nearly a year (Ryle Dwyer, 1980, 73). He was elected a member of the Dáil from his prison cell; the same prison where he had been condemned to death seven years earlier by the British. The prohibition on prisoners sitting as members of parliament was somewhat irrelevant in practical terms as despite the new political dispensation, de Valera’s anti-Treaty Sinn Féin continued to stand on a platform of abstentionism. However, he out-pollled his Cumann na nGaedheal opponent by 17,762 to 8,196 (Keogh, 1994, p. 18).

Of 153 members of the fourth Dáil (elected in August 1923), 44 Sinn Féin TDs were elected, of whom 18 were prisoners (O’Malley, 1978, p. 237). The anti-Treaty side would certainly have received more votes, if not seats, had the thousands of internees been allowed to vote. However, the result provided a morale boost in the prisons. “We went half wild with delight…they were whacked,” recorded a euphoric O’Donnell. “We hadn’t lost…we felt our release was a remote thing; that there was too much resistance left in the country to risk letting the prisoners loose” (Peadar O’Donnell, quoted in Hegarty, 1999, p. 146). However, after the euphoria of their electoral victory, the prisoners in Mountjoy returned to more traditional methods of achieving freedom. Once more they drew up plans for an escape.
At the first meeting of the new Dáil, the President of the Executive Council and former prisoner, W.T. Cosgrave, spoke of the crack-down on political resistance among his former comrades (now political enemies) in the prisons. He complained about the practice of those on the anti-Treaty side using prisoners as candidates for political gain. He drew on the concept of the social contract, so prominent in the argument of those wishing to disenfranchise prisoners:

Is the future political history of this country to be written in this manner: that a man or woman has only to get into jail and has only to stand for election and get elected, and our courts and our institutions, and the order of citizenship that we have established, are to be swept away in order that a number of persons returned in a constituency perhaps under false pretences, can order the Courts to open the doors and demand their freedom and do and say whatever they like? Forty-four of these people have been elected; eighteen of them are in jail. What are the twenty-six doing? What contribution are they going to make to the stability of this State? What apology have they got to make for the wrongs they have done this country? Until we get some evidence of a real change of heart I say it is not for us to be swept off our feet by sentimentalism because an actual minority of forty-four people say they are going to determine and mark out the progress of this country (Dáil Debates, 1923, Vol. 5, col. 31-32).

Many of those who went on to form Fianna Fáil governments in the 1930s were former prisoners, including Frank Aiken, Oscar Traynor and Sean Lemass. In 1937, Eamon de Valera (who had been imprisoned by both Irish and British governments), as Taoiseach, introduced a new constitution, Bunreacht na hÉireann. This stipulated that voting for Dáil Éireann was open to every citizen who had reached the age of 21 years and who was “not disqualified by law and complies with the provisions of the law relating to the election of members of Dáil Éireann” (Article 16). This constitutional caveat would have allowed legislation to bar prisoners from voting; nevertheless, no law was enacted in 1937 or thereafter to specifically prevent prisoners from exercising their franchise.
ELECTORAL REFORM AND PRISONER LITIGATION

Electoral Reform

Due to the failure of politicians to act on prisoner enfranchisement, prisoners were in electoral limbo, not legally barred from voting, but because of their location and the failure to introduce postal voting or other measures, barred from voting physically. However, as the decades passed, there were opportunities to legislate either, for or against voting for those incarcerated in Ireland’s penal institutions. In 1963, a new Electoral Act was introduced which widened eligibility for a postal vote to include members of the Garda Siochana (Police Force) and the Defence Forces. Prior to this, it was only available to latter. A parliamentary committee had rejected postal voting for prisoners prior to the enactment of legislation. The government was happy to concur with this analysis and the act did not allow for special measures to allow prisoners to exercise their franchise (Joint Committee on the Electoral Law (Final Report), 1961, 105).

The issue of postal voting or special facilities for those unable to access polling stations was raised during the case of Nora Draper, a registered voter who suffered from multiple sclerosis. Commentators speculated that this case established the state’s liability to voters (Gallagher, 2001, pp. 13-17; McDermott, 2000, pp. 332-3). Draper held that the state was in breach of its constitutional obligation to facilitate her in exercising her franchise by way of postal voting. The High Court found that the legislature was justified in striking a balance between the right to vote and protecting the electoral system against abuse. Justice McMahon held that:

Postal voting cannot be regarded as a privilege under our Constitution. Postal voting necessarily involves some risk of abuse and it is for the legislature to strike a balance between the right to vote of the physically disabled and the risks of abuse of postal voting. (Draper v. Attorney General, 1984)

The Supreme Court found in favour of the State. Chief Justice Thomas O’Higgins ruled that the facilities available to allow members of the Garda Siochana and the Defence Forces to vote by postal ballot were justifiable because “in these two categories, the probability of the ballot paper reaching the designated address by post is high and the possibility of abuse is low.” He concluded:
In the opinion of the court...the Electoral Acts provides a reasonable regulation of elections to Dáil Éireann, having regard to the obligation of secrecy, the need to prevent abuses and other requirements of the common good. The fact that some voters are unable to comply with its provisions does not of itself oblige the State to tailor that law to suit their special needs. The State may well regard the cost and risk involved in providing special facilities for particular groups as not justified, having regard to the numbers involved, their wide dispersal throughout the country and the risks of electoral abuses (*Draper v. Attorney General*, 1984).

Shortly thereafter, the Minister of the Environment announced that he would introduce legislation to facilitate those unable to attend polling stations due to disability, and limited other categories of voters, although this would not include prisoners. The Prisoners Rights Organisation (PRO) pointed out that with this government decision, “Only one minority grouping in Irish society will be deprived of the right to vote – that is the Prison population.” While criticising successive Ministers for the Environment for their failure to introduce legislation to allow prisoners to vote, the PRO felt it “was imperative at this point in time, when the postal vote is being extended, that the Government consider the desirability of extending the postal vote to prisoners” (Costello, 1985). Their plea fell on deaf ears. In 1986, the Oireachtas enacted the Electoral (Amendment) (No.2) Act and it contained no reference to prisoners.

Throughout the 1980s and 1990s there were sporadic parliamentary discussions about whether prisoners should be allowed to vote. In 1981, the Minister for Justice, Gerard Collins in reply to a parliamentary question said that “as far as is known from available records” (*Dáil Debates*, 1981, Vol. 326, col. 65), there was never any facility to allow prisoners to vote. Unless electoral law were to be changed, this would “involve taking some 1,300 prisoners to polling booths near their normal place of residence. Such a project would be entirely impractical” (*Dáil Debates*, 1981, Vol. 326, col. 65). Some months later, the Minister for Justice stated that there was no provision in place to allow remand prisoners to vote and it was not practical to escort approximately 120 remand prisoners to polling booths in their constituencies. While conceding that there was “no law which prohibits prisoners from voting at local
polling booths” the Minister looked for some understanding of the difficulties with such an undertaking. “I am sure the Deputy appreciates that it would be impracticable and impossible” (Dáil Debates, 1981, Vol. 328, col. 1072). If remand prisoners were to be allowed to vote by post, the Minister for Justice replied, then it was the responsibility of the Minister for the Environment to enact legislation. Opposition TD, Michael Keating responded angrily that, “the Minister is satisfied that citizens in the circumstances in the question are to be deprived of their right to vote since he does not propose to lift a finger to do anything about it” (Dáil Debates, 1981, Vol. 328, col. 1073). Ten years later, the matter was raised in the Dáil again; this time the Minister for the Environment conceded that “there are no proposals for special voting arrangements for prisoners” (Dáil Debates, 1991, Vol. 404, col. 1824).

In 1992 a new Electoral Act was introduced. The issue of voting rights for prisoners was raised during the Oireachtas debates and Senator Joe Costello, former Chairman of the Prisoners’ Rights Organisation proposed that prisoners should be allowed to register either in prison or at their home address. The government rejected the amendment, one of the reasons being that “the vast majority of prisoners are short term and that, having regard to the fact that a period of 18 months elapses between the qualifying date for a register and the expiry date for that register.” Therefore, “registration of prisoners at the prison where they are detained would be a pointless exercise unless special voting arrangements were put in place to allow them to vote” (Dan Wallace TD, Minister for State at Department of the Environment. Seanad Debates, 1992, Vol. 132, col. 1732-3). While the government was unwilling to introduce special measures for prisoners, Senator Maurice Manning, a senior member of the main opposition party, Fine Gael supported the government in refusing to enfranchise prisoners. He believed that on imprisonment, one should lose “the right to liberty but also the right to vote.” He continued: “I think the ordinary humane person outside would find on this particular issue, that it was a step too far” (Seanad Debates, 1992, Vol. 132, col. 1736).

Under the Electoral Act 1992 to be eligible for election to the Dáil, one had to be an Irish citizen and over 18 years of age. Among those not allowed to be members of the Oireachtas was any individual “undergoing a sentence of imprisonment for any term exceeding six months, whether with or without hard labour, or of penal servitude for
any period imposed by a court of competent jurisdiction in the State” (Section 41). If, while an individual is a member of the Oireachtas, they are sentenced to the above, they forfeit their seat. The registration of prisoners as electors was specifically set out in Section 11(5), which provided that: “Where on the qualifying date, a person is detained in legal custody, he shall be deemed for the purposes of this section to be ordinarily resident in the place where he would have been residing but for his having been detained in legal custody.”

While the 1992 Act stated explicitly that prisoners had a right to register to vote, with little likelihood of ballot boxes being provided in prisons and no procedure to allow postal voting, the registration was somewhat moot. There was clearly a degree of arbitrariness to this situation. Under some circumstances, serving prisoners would have been able to vote. For example, if a prisoner was on temporary release on the day of the election, and s/he was registered, s/he could have voted in their home constituency. However, there was no legal obligation on the government to put in place provision for voting for those physically present in prison on polling day.

**Prisoner Litigation**

In 1994, the Supreme Court rejected an application from a prisoner, Patrick Holland to suspend the European Parliament elections to allow him to pursue constitutional proceedings because he was denied the facility to vote. In 1998, the European Commission on Human Rights (ECmHR) considered his contention that both Irish and European law was being contravened by the refusal of the government to facilitate his right to vote. While acknowledging that the applicant had not exhausted all legal remedies at a national level, it noted that that the European Convention on Human Rights had not been enacted into Irish law. However, the “domestic courts recognise”, according to the Commission, “that an inevitable practical and legal consequence of imprisonment is that a great many of the constitutional personal rights of the prisoner are for the period of imprisonment suspended or placed in abeyance” (*Patrick Holland v. Ireland*, 1998). The Irish government argued that it would be impractical to have hundreds of ballot boxes in prisons throughout the country to facilitate prisoners from the different constituencies and it was too much of a security risk and a burden on the prison service to allow the release of all 2,300 prisoners. There was, the government maintained, no constitutional or convention guarantee of a
postal vote. Previous opinions from the Commission had found that “the deprivation of the right to vote, pursuant to a conviction by a court for uncitizenlike conduct” was not arbitrary. In rejecting the application, the Commission:

felt bound to conclude that the legislator in exercise of its margin of appreciation may restrict the right in respect of convicted persons. Such restrictions could, in the Commission's opinion, be explained by the notion of dishonour that certain convictions carry with them for a specific period, which may be taken into consideration by legislation in respect of the exercise of political rights (Patrick Holland v. Ireland, 1998).

Two years after the Holland judgment, another prisoner, Stiofan Breathnach, challenged the State on its refusal to provide facilities for prisoners to vote and met with initial success. The High Court ruled that prisoners retained the right to vote under the Electoral Act 1992. The Court declared that the failure of the State to provide a means whereby a prisoner could vote breached the constitutional guarantee of equality before the law. It ruled that prisoners enjoyed a right, which had been conferred on them by the constitution, to vote at elections for members of Dáil Éireann, and no legislation was currently in force that removed or limited that right in any way (Breathnach v. Government of Ireland, 2000). During the hearing the State had acknowledged that the extension of postal voting to prisoners would not impose undue administrative demands, but Justice Quirke noted that no legislative provisions existed for such a facility.

Prior to the government lodging an appeal, opposition politicians sought clarification. The Minister for Justice, Equality and Law Reform, John O’Donoghue TD, acknowledged that the “prison rules do not prohibit the right of a prisoner to vote” (Dáil Debates, 2000, Vol. 523, col. 1145). However, under current legislation, “it would be prohibitive for the Prison Service to provide a means by which prisoners could exercise their constitutional right to vote at their home polling station” (Dáil Debates, 2000, Vol. 523, col.1145-6).

In July 2001, in a reserved judgment, the Supreme Court unanimously rejected the right of citizens to exercise their franchise while serving a sentence in custody. The
court found that while prisoners were detained in accordance with the law, some of their constitutional rights, including voting, were suspended. “It is of course clear,” Chief Justice Ronan Keane pointed out that:

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despite the deprivation of his liberty which is the necessary consequence of the terms of imprisonment imposed upon him, the applicant retains the right to vote and could exercise that right if polling day in a particular election or referendum happened to coincide with a period when he was absent from the prison on temporary leave (Breathnach v. Ireland, 2001).
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Justice Denham acknowledged that the law providing voting facilities for those who could not physically access polling stations had developed in the previous seventeen years since the *Drapier* case. However, she ruled that imprisonment was only part of the punishment:

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The applicant in a special category of person - he is in lawful custody. His rights are consequently affected. The applicant is in the same situation as all prisoners: there is no provision enabling any prisoners to vote. Consequently, there is no inequality as between prisoners…The applicant has no absolute right to vote under the Constitution. As a consequence of lawful custody many of his constitutional rights are suspended. The lack of facilities to enable the applicant vote is not an arbitrary or unreasonable situation

(Breathnach v. Ireland, 2001).
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This put sentenced prisoners in a unique but similar situation. They were all prevented from voting, so there was no discrimination against the individual who took the case when the reference group was deemed to be other prisoners, rather than fellow citizens. However, the Chief Justice did point out that remand prisoners were in a different category, as they were not convicted. It was suggested that the state might have to consider putting in place some practical arrangements to allow remand prisoners to vote.

The Supreme Court had set out the constitutional position. Even with this legal clarity, there was still some confusion about the voting rights of prisoners, leading some international and domestic commentators to point out what seemed like an
inconsistency of being allowed to register, but effectively denied the opportunity, to cast a vote. Manza & Uggen (2006, p. 235) included Ireland in the ‘No restrictions’ section in a table on International Disenfranchisement Laws and the Voting Rights of Prisoners. Rottinghaus & Baldwin (2007, p. 697) stated, “Ireland’s Constitution, for instance has a provision allowing prisoners to vote but had never in practice established a formal arrangement for prisoners to vote.” The UK Department for Constitutional Affairs claimed that “Ireland…prohibits all prisoners from voting” (DCA 2006, p. 12) but it later recognised that while there was no legal ban in place, there was no mechanism to allow prisoners to vote (DCA 2006, p. 20). These observations seemed to concur with the Irish government’s position. In response to a parliamentary question, Michael McDowell TD, Minister for Justice, Equality and Law Reform pointed out that there was no law on the statute books that prohibited prisoners from voting. However, he noted that the Supreme Court “held that the State is under no constitutional obligation to facilitate prisoners in the exercise of that franchise” (Dáil Debates, 2004, Vol. 586, col. 1345).

With government politicians reluctant to champion the rights of prisoners, and clarification provided by the Supreme Court judgment, it seemed the matter was closed. However, the issue did not go away and there continued to be some low-key debate about the enfranchisement of prisoners. In 2002, a report from a government-appointed forum on the reintegration of prisoners recommended that the development of a “Charter of Prisoner Rights (including consideration of extending voting rights to prisoners)” (NESF, 2002, p. 71).

In 2003, the Irish government introduced the European Convention on Human Rights (ECHR) into Irish domestic legislation (Egan, 2003). Two years later, the Grand Chamber of the European Court of Human Rights (ECtHR) by a margin of 12 to 5, found that the UK government was in breach of the ECHR in relation to the voting rights of prisoners. While the ECtHR accepted that each signatory to the ECHR must be allowed a margin of appreciation in this sphere, “the right to vote is not a privilege.” The automatic blanket ban lacked proportionality and encompassed those who served from one day to life in prison, from those who were convicted of minor to the most serious offences. According to the ECtHR, to deny the right to vote to prisoners is “tantamount to the elected choosing the electorate” (Hirst v. United
In response to the *Hirst* judgment, Fine Gael Member of the European Parliament, Avril Doyle suggested consideration should be given to the enfranchisement of prisoners because, “All citizens shall, as human beings be held equal before the law” (quoted in Hennessy, 2004). In 2005, Gay Mitchell TD, a senior member of the opposition party, Fine Gael, introduced a private members bill on prisoner enfranchisement, but to no avail. The Tánaiste (Deputy Prime Minister) Mary Harney TD, told the Dáil that the “Government has cleared the legislation to provide for prisoners’ voting by way of a postal ballot in their own constituencies” (Dáil Debates, 2005, Vol. 612, col. 1115).

**Prisoner Enfranchisement**

In 2006, the government introduced a relatively small piece of legislation which would allow prisoners to vote by postal ballot. The passage of the legislation and the events surrounding it are dealt with elsewhere (Behan & O’Donnell, 2008) and space only allows a brief outline. Introducing the Electoral (Amendment) Bill to the Dáil in October 2006, Dick Roche, TD, Minister for Environment, Heritage and Local Government proudly stated: “Ireland is one of the most progressive nations in the world” (Dáil Debates, 2006, Vol. 624, col. 1978). The legislation would modernise existing electoral law and referring to the *Hirst* judgment, he argued that while the legal position in the UK differed significantly from Ireland “in light of the judgment it is appropriate, timely and prudent to implement new arrangements to give practical effect to prisoner voting in Ireland” (Dáil Debates, 2006, Vol. 624, col. 1978). During the debates in the Oireachtas, other speakers referred to the *Hirst* judgment and the situation on felon and ex-felon disenfranchisement in the United States.

Rather ironically, the legislation to allow prisoners vote was introduced by a coalition government made up of Fianna Fáil and the Progressive Democrats, centre-right and right-wing parties respectively, not known for their liberal attitude towards prisoners. During the 1997 election, the main party in the coalition, Fianna Fáil, had stood on a zero tolerance platform (O’Donnell and O’Sullivan, 2003). In the Dáil that debated the legislation, four TDs had been imprisoned previously. They included two...
members of Sinn Féin (linked to the Provisional IRA), jailed for paramilitary activity and Socialist Party TD, Joe Higgins who was imprisoned for a month during the lifetime of the 2002-07 parliament.

Gay Mitchell TD, who had previously attempted to introduce his own bill for enfranchisement, believed that there was not widespread public support for this measure. However, he was keen to assure his parliamentary colleagues that we “are not about being soft on criminals…People not only have rights but they also have responsibilities. It is time to stop recycling prisoners as if they were some sort of commodity and creating an environment in which prisoners have rights but no responsibilities” (Dáil Debates, 2006, Vol. 624, col. 2004). Previously he had argued that giving votes to prisoners “would acknowledge their rights and also underline their responsibility for themselves and to society.” Echoing other advocates of prisoner enfranchisement he was suggested that “it might encourage politicians to take a greater interest in penal reform” (quoted in McKenna, 2003). One opposition politician suggested that there was a wider context; the bill concerned not only prisoners but, if enacted, would lead to the enhancement of the democratic system. Fergus O’Dowd TD, proclaimed that, “It is important our prison system forms part of our reform agenda...It is an important social step and democratic reform which will...strengthen our electoral process (Dáil Debates, 2006, Vol. 624, col. 1984).

**Penal Continuity and Political Developments**

Why was there such reluctance on the part of prisoners and ex-prisoners to promote penal reform or prisoner enfranchisement? And why did the issue cause such little controversy when prisoners were eventually enfranchised? There were a number of reasons, political, electoral and penal. Politicians in the early decades of the state were eager to use their illegal opposition to British rule for political advantage, yet wished to gain respectability by purging their prison past from their present policies. Despite the prevalence of ex-prisoners in Irish political and civic life until the 1960s, there was very little discussion of prisoners’ rights or their access to the franchise. On release, few of those political prisoners would have identified with, or showed much interest in the rights of those they left behind. Considering that the state was built on the struggle of both prisoners and ex-prisoners for political rights and representation,
it is somewhat ironic that prisoners’ issues in general and political enfranchisement in particular, remained low on the political agenda of ex-prisoners. There were exceptions: Dominic Cafferkey spent one month in Sligo prison for land agitation in the 1940s and inspired by this experience campaigned for prison reform during his nine years in the Dáil (Cassidy 2001).

**Penal Continuity**

The creation of the Irish Free State as result of the Treaty in 1922 did not herald a radical change in social, economic or penal policy. “The most obvious, long-term effects of independence on the system of government were superficial” argued Coakley (1999, p. 29). “The face and accents were different, but the business of government itself was little changed.” In penal policy, the transfer of authority was “relatively unremarkable” and there was “no rush to make alterations to the system or the manner of prison governance” (Rogan, 2009, p. 3). Once “the civil war was over, the now divided Irish prison system faded from view” (Tomlinson, 1995, p. 200). It was not until 1947 that Gerald Boland, ex-prisoner and now Minister for Justice introduced new Prison Rules. During the debate, he reminded the Dáil that “some people in this House know all about prison conditions, first hand, from inside as well as outside” (Dáil Debates, 1947, Vol. 105, col. 594). These Prison Rules were in operation for 70 years and only updated in 2007, despite being criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) on repeated visits to Ireland, in the Irish courts as outdated and even by the Minister for Justice, Equality and Law Reform, who in 1998 told the Dáil that he was “conscious of the need to implement new Prison Rules...at the earliest opportunity” (John O’Donoghue TD, Dáil Debates, 1998, Vol.495, col. 806). The attitude of the state towards prisoners and the franchise perhaps mirrors the country’s prison policy, which since its foundation has “pursued a somewhat singular and idiosyncratic course” (Rogan, 2009, p. 3). Ireland’s closed institutions would only slowly and somewhat erratically open to the influences of social change, international standards and European policies.

The lack of concern with modernising penal policy was possibly also due to the low numbers incarcerated throughout much of the 20th century. By 1928, after political prisoners were released, there were only eight prisons and a Borstal in Ireland. The
combined daily average population was 792 (O’Sullivan & O’Donnell, 2003, p. 34) and by 1947, there were only five prisons in operation with the daily average number of prisoners at 584 of whom 67 were women (O’Donnell et al., 2005, p. 147). In 1965, there were just 560 in Irish prisons. By 1984, this had reached only 1,594 (O’Donnell et al., 2005, pp. 150-153) and by the time of the enactment of the legislation to enfranchise prisoners in 2006, the average total prison population was 3,331, with 140 on temporary release (Irish Prison Service, 2007, p. 16). The low level of imprisonment was undoubtedly one reason for the absence of discussion about penal policy or prisoner enfranchisement.

**Prisoner Representation and Penal Reform**

Irish prisoners do not have a strong tradition of representation and this undoubtedly impacted on lack of improvements in penal policy. The 1960s and 1970s was a period when “prisoners attempted to find a collective voice” (Ryan, 2003, p. 49) with prisoners’ organisations and support groups springing up internationally. Prisoner unions were formed in the U.S. (De Graffe, 1990; Huff, 1974), Scandinavia (Ward, 1972) and the United Kingdom (Ryan, 2003; Ryan & Sim, 2007), and there were attempts to organise prisoners in Ireland. In the 1970s, a group of Republican prisoners in Portlaoise established a committee to ‘work for basic human rights for all prisoners’ which eventually led to the creation of the Prisoners Union. In 1973, the Prisoners Rights Organisation was established. It published a newspaper - *Jail Journal*, held regular meetings and demanded that prisons be ‘rehabilitative rather than punitive’ (Kilcommins et al., 2004, p. 71). By the late 1980s, the Prisoners Rights Organisation was moribund. With prisoners’ mail censored and lack of prisoner voice within the system, this not only led to stunted understanding and knowledge about imprisonment in the Irish republic (O’Donnell, 2008), it also suggests that whatever grievances prisoners had, individually or collectively, rarely permeated the prison walls.

Although there were “moments” when “republican prisoners brought the prisons into the spotlight” (Tomlinson, 1995, p. 200), these attempts to improve their conditions and status did not always widen out into concern for non-political convicts. As the State responded to protests, it also “deflected a large amount of attention, resources and energies from ‘ordinary’ prison matters” (Rogan, 2009, p. 8). While the election
to the Dáil of two prisoners on hunger strike in Long Kesh in June 1981 highlighted prisoners’ grievances in Northern Ireland and their struggle for political status, this did little to raise the issue of penal reform in general. Standing on an abstentionist platform from a prison cell Paddy Agnew and Kieran Doherty were elected and they hoped to mirror the support generated by the election of Bobby Sands to the Westminster parliament some months earlier. Kieran Doherty TD died on hunger strike on 2 August after 73 days but his and Agnew’s election caused domestic political controversy due to a slender government majority in the Dáil rather than discussion about reforms within the general prison population, north or south (For the 1981 Hunger Strikes, see Beresford, 1987; Campbell et al., 1994).

Successive Irish governments have not been receptive to representation on prison reform from inside or outside the prison. In 1973, a Prison Study Group was established in University College Dublin. It was defined as a “voluntary non-political study group” whose purpose was to “find out the factual situation, not to agitate for prison reform” (Prison Study Group, 1973, quoted in Kilcommins et al., 2004, p. 70). It was made up of community activists, solicitors, a priest and academics. Despite several attempts by the Group to establish relations, the Minister for Justice, Patrick Cooney, TD and his officials declined to co-operate in any way with the Group’s work; nor were they allowed to visit any prisons. The Group described a ‘very closed system’ that ‘imposed severe limitations’ on their research (Prison Study Group, 1973, p. 5, quoted in O’Donnell, 2008, p. 125).

In the late 1970s, ex-prisoner, former Minister for External Affairs and winner of the Nobel and Lenin Peace Prizes, Sean MacBride chaired a Commission of Enquiry into the Irish Penal System on behalf of the Irish Section of Amnesty International, the Association of Irish Jurists and the Prisoners Rights Organisation. Members of the Commission included Michael D. Higgins, then Chairman of the Labour Party; Michael Keating TD, Fine Gael Spokesman on Human Rights and Law Reform and a former member of St. Patrick’s Institution Visiting Committee and Mary McAleese, Professor of Criminal Law and future President of the Republic of Ireland. The government was unreceptive towards the deliberations of the committee, but with high profile and distinguished members, the potential remained that their final report might carry some weight. The Commission endorsed prisoners’ right to form
associations and unions “in accordance with Article 40, paragraph 6.1 of the Irish Constitution.” It suggested that, “Provision should be made in the Prison Rules for the exercise of their franchise by all prisoners in local and national elections and referenda” (MacBride, 1982, p. 93). Despite the credentials of the chair of this Commission, the involvement in its deliberations of the Prisoners’ Rights Organisation led the Minister for Justice, Gerard Collins, to refuse to engage with it, because he did not wish “to be put in a position of appearing to give some form of official approval for an exercise prompted by the organisation” (quoted in MacBride, 1982, p. 108). Prisoners’ representatives were, it seems unwelcome in furthering the rights of prisoners.

In 1983, the Council for Social Welfare, a committee of the Irish Catholic Bishops Conference published what they termed an information document, The Prison System. While no mention was made of enfranchisement, they set out the rights of prisoners (Council for Social Welfare, 1983). Some debate about the state of Irish prisons and the rights of prisoners surrounded a high level committee’s deliberations in the mid 1980s to examine the penal system. It led to the Whitaker Report, a wide-ranging account of conditions in Irish prisons. “The fundamental human rights of a person in prison” the report asserted, “must be respected and not interfered with or encroached upon except to the extent inevitably associated with the loss of liberty” (Whitaker, 1985 p. 12). While there was no mention of the enfranchisement of prisoners, there was recognition of the rights of prisoners with a recommendation that they should be allowed access to the Ombudsman (Whitaker, 1985, p. 16). Despite this being a government-appointed commission, the “official reception to the Report was not particularly welcoming and its proposals did not translate into official practice” (Rogan, 2009, p. 8).

The exception rather than the rule
When the Minister for the Environment introduced the Electoral (Amendment) Act 2006 to the Dáil, he argued that this new law would make Ireland “the exception rather than the rule” in terms of prisoner enfranchisement (Dáil Debates, 2006, Vol. 624, col. 1978). What makes the Irish case somewhat exceptional is that when enfranchisement came it passed so quietly: it went relatively unnoticed. While prisoner enfranchisement is major issue internationally (Ewald & Rottinghaus, 2009),
it was remarkable for its almost invisible passage through parliament. The debates may have made reference to the international situation, but the impetus for reform was more complex and local. In contrast to circumstances elsewhere, the Irish legislature was not instructed by domestic courts to take action; indeed the courts interpreted the law so as to preserve the status quo. In the course of the debates over the bill, no TD or Senator spoke against the enfranchisement of prisoners. Amendments were put forward to make sure prisoners would have trust in the electoral process. Outside parliament, there was little debate about prisoners and enfranchisement in the lead up to, or during the discussion surrounding the legislation (see Behan & O’Donnell, 2008 and Hamilton & Lines, 2009 for discussion on introduction of legislation). In an attempt, perhaps to avoid possible political fallout from such a decision, those who introduced the new law reminded prisoners of their responsibilities and the obligations of citizenship, while reassuring the general public of their abhorrence of crime. But with no political or media opposition to the legislation to enfranchise prisoners and at little cost, this smoothed the passage of a far-sighted and progressive piece of penal reform. However, the legislation succeeded partly because it was promoted as a process of electoral, rather than penal reform. Therefore, this allowed for its successful passage through parliament and avoided the controversy that might occur if it was put forward as a concession to prisoners or enhancing their rights.

In a state built by prisoners and ex-prisoners who proudly proclaimed their time behind bars in their political biography, it was not those who had experience of imprisonment who reformed the franchise to embrace the incarcerated. That was left to future generations of politicians. The lack of improvements in penal system and the failure to enfranchise the incarcerated reflected a lack of general interest in developing a new modern penal policy when the state was established. When it came, prisoner enfranchisement was a stand-alone item. It was not part a programme to enhance the electoral system. Nor indeed was it part of a penal reform agenda. The wider agenda of reform and the modernisation of the Irish penal system would, as those who founded the State reminded us, have to wait for another day.
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Irish prison policy is notable for the absence of an ideological agenda driving its direction and content. This article examines the impact of the relationship between Minister for Justice, the member of Cabinet responsible for the criminal justice system and prisons in Ireland, and the most senior civil servant within that Department, in the creation of this policy landscape. The Minister-Secretary General dyad in the area of Irish prison policy during the early 1960s is explored in order to assess the importance of this relationship in the formation of prison policy. This period was one of the few in Irish penal history when momentum to change the prison system was evident. The article draws on emerging scholarship on policy analysis within criminology. It suggests that engagement with the policy-making process can provide meaningful data to explain the nature of criminal justice policy.

PENAL IDEOLOGY IN IRELAND

It has been said that it is difficult to categorise, or even discern, a prevailing ideology in Irish prison policy or in Irish crime control policy more generally. Many of the most vividly punitive elements of contemporary penal administration are not present. The rate of imprisonment in Ireland is 94 per 100,000, behind many of its European counterparts and sitting around the lower end of the middle tier of European countries. In a referendum in 2000 the Constitution was amended to prevent the reintroduction of capital punishment. That said, conditions in many of the state’s prisons are overcrowded and slopping out remains a feature of daily life for around 30% of prisoners and there remains no provision to expunge convictions for any offences committed by adults (Irish Penal Reform Trust, 2010). There are plans to build the first large prison in Ireland, though it appears the size of that prison – up to 4 times as large as any current institution – was based on a rationale which emphasised economies of scale rather than an intention to warehouse prisoners in austere and deliberately oppressive conditions (Brangan, 2009). Indeed, those plans appear to
have been stalled if not derailed given the current financial position of the state. This picture of Irish prison policy therefore has a number of contradictory elements, some which could be considered progressive, others less so. Equally, the ideological basis for many of these developments is uncertain. The penal ideology of Ireland is ill-defined and changeable. Neither punitive nor more liberal sentiments are deeply embedded. The sensibilities which make up Irish conceptions of prison policy have somewhat shallow roots, giving rise to a form of prison policy which incorporates sometimes conflicting penal approaches and objectives. Given this lack of an entrenched penal ideology, particular incidents, events and indeed people can have particularly long lasting and important effects on the nature of penal administration, legislation governing the prison system and the development of particular aspects of prison policy.

Another feature of Irish prison policy relates to the manner in which changes or key moments in that policy have come about and this is explained, in part, by the varied and malleable nature of conceptions of the objectives of punishment and the desired approach to prison policy. Historically, the prison system has undergone long periods of political and administrative neglect, punctuated by bouts of heightened interest and activity (O’Donnell, 2008; Rogan, 2008a; Rogan, 2009). At times this activity has centred on prisoners allied to various incarnations of the Irish Republican Army. The death of an IRA prisoner on hunger and thirst strike and after a prolonged period of imprisonment in 1947 led to political pressure for penal reform and the introduction of the Prison Rules 1947 (Rogan, 2008b). In the 1970s the outbreak of violence in Northern Ireland also had an impact on the prison system in the Republic. The difficulties in housing politically motivated prisoners along with a general increase in the prison population led to a period of crisis management and a rapid, reactionary and poorly thought out period of penal expansion. In the 1990s, a programme of prison building was again instigated. This occurred shortly after official policy documents declared that imprisonment should be a measure of last resort and a cap placed on the prison population (Department of Justice, 1994). The plans for increased prison places were made in the context of a time of heightened political interest in the prison system and in crime and against the backdrop of electoral competition (Kilcommins et al, 2004). However, other important factors in the formation of those plans were the improved economic position of the state, an
administrative appetite for large capital projects and the lingering effects and memory of times of severe overcrowding and the use of temporary release as a mechanism to ease the pressure on space. The plans themselves were based on rudimentary projections for the prison population and were subject to a number of revisions, largely unsupported by evidence of need (O’Donnell, 2004).

In many respects the nature and trajectory of Irish prison policy is similar to that which has occurred in social policy more generally, including the areas health and education. The Irish welfare state is notoriously difficult to place in any of the standard categorisations of welfare regimes (Carey, 2007; Fanning, 2003; Korpi, 2002; Cousins, 1997; National Economic and Social Council, 2005). Its history is one of a slow and almost niggardly development towards increased social provision. Catholic bodies and voluntary sector were furthermore heavily relied on by the state to provide various services to its population, with the Catholic sector keen to maintain its position in such provision (Foster, 1989). Many initiatives, such as the introduction of the Children’s Allowance system were undertaken *ad hoc*, being championed by individual reforming Ministers rather than being part of a generalised political commitment to a particular conception of what social policy should be designed to achieve (Cousins, 1995). Universalism is not a feature of the Irish social welfare system, though provision for certain groups, such as senior citizens, is comparatively generous. It has been said that the Irish welfare state has a “mongrel” quality, with no particular ideology present (National Economic and Social Council, 2005). Added to this, the Irish political system is similarly unusual and hard to classify according to international typologies. In broad terms, a system of proportional representation has led in recent decades to a series of coalition governments in which the need for compromise, along with a clientilist approach which prioritises the local over the national has given rise to a pragmatic form of politics (Lee, 1986; Coakley, 2005), dominated by a party with widespread appeal across classes and a flexible approach towards political philosophies. In this field also, there has been little in the way of ideological commitment present.

Within the crime control realm, this pragmatic nature of Irish political ‘ideology’ has made it difficult to pinpoint overall trends or coherent motifs across economics and social policy (Curry, 2003; O’Connell and Rottman, 1992). Instead, political agency,
party politics and a significant amount of opportunism have operated to give such policies, and their constituent elements, their particular complexion (O’Sullivan, 2005). This means that policy developments in a variety of areas cannot be considered manifestations of a particular political philosophy. Instead, a confluence of individual and particularistic factors must be appraised. Across all these aspects of the social and political context in which penal and other policies are made therefore, the flexible, *ad hoc* and pragmatic approach taken has, it appears, operated to insulate Ireland from some of the excesses associated with more recent crime control policies in the Anglo-American world (Kilcommins et al, 2004).

**THE INFLUENCE OF MINISTERS AND CIVIL SERVANTS ON THE FORMATION OF PRISON POLICY IN IRELAND**

Another key consequence of this state of affairs is the subject of this paper. Without a strong ideological basis for policy, individuals with the power to make changes affecting the prison system can have a particularly significant effect on the shape of prison policy. If those individuals so desire, they do not need to fight any particularly strong penal agenda or developed sensibilities around punishment. Those with especially high levels of energy or interest can make comparatively rapid progress in altering prison policy as they see fit and in a direction of their own making. Usually, these individuals have been Ministers for Justice, charged with responsibility for the prison system, with campaigners or reform groups having less impact of this nature. Since Irish independence in 1922, four Ministers in particular have been influential in the development of prison policy, bringing either their own zeal or ideas to bear on the prison system. As has been explored elsewhere, these Ministers included: Kevin O’Higgins, responsible for a major security focus to prison policy during the early years of independence; John O’Donoghue, a Minister who oversaw the development of the prison building programme of the 1990s and took office on a ticket pledging ‘zero tolerance’ towards crime and Michael McDowell, largely responsible for the plan to build the large prison at Thornton Hall (Rogan, forthcoming; O’Sullivan and O’Donnell, 2003).

Charles Haughey, the fourth such Minister, was responsible for some comparatively far reaching and radical changes in Irish prison policy during the 1960s. This article assesses his role and influence. However, while Haughey’s influence was significant,
the most senior civil servant in the Department of Justice, the Secretary General Peter Berry, also had a less publicly obvious but equally fundamental role and his actions are also examined. The article argues that the dyadic relationship between Minister and senior civil servant is of major importance in the formation of penal change and such political relationships warrant further attention within criminological scholarship.

The early 1960s witnessed developments in Irish prison policy which marked a major break with the past, which had been one of few developments and little interest in the penal system. These changes included the establishment of a Training Unit, which had the aim of providing vocational and educational training to equip prisoners for release, the establishment of an Inter-Departmental Committee (within the civil service) to analyse elements of the criminal justice system and reforms to educational provision within the prisons as well as the provision of post-release accommodation.

The language of ‘rehabilitation’ began to dominate Irish political discourse on prison policy. During this period, Department of Justice officials began to look more closely at the prison system than at any time previously. In addition, plans were made to transform the system of punishment to one based almost entirely on a rehabilitationist model. Though perhaps modest in retrospect, the extent of the break with the past can only be understood by reference to the manner in which prison policy had been made in the previous decades.

THE DEVELOPMENT OF IRISH PRISON POLICY FROM INDEPENDENCE TO THE 1960S (AND A WORD ON PENAL-WELFARISM)

Prison policy in Ireland in the four decades following Independence gave rise to few developments and fewer innovations. Apart from periods of violence associated with various incarnations of the IRA, the prison system attracted little interest from the public, penal administrators or government. Prison policy was very much a marginal area of Irish public policy (O’Donnell, 2004; 2008). The numbers of prisoners were very low, standing in the mid 300s during the 1950s, and a cautious Department of Justice was reluctant to make waves. Financial difficulties and a lack of political imagination were significant factors in creating a prison system which had changed little since the late nineteenth century. Decisions to close prisons constituted the bulk of the legislative and administrative output in the area for years. Overall, Irish prison policy from Independence until the 1950s can be characterised as “stagnant” (Rogan,
2008a, Rogan, 2009). By contrast, the early part of the 1960s was, comparatively, packed with penal developments. In the early 1960s, Irish prison policy moved from a culture of stagnation to one of change (O’Donnell, 2008; Rogan, 2008; Rogan, 2010). Social, economic and cultural alterations in the Ireland of the 1960s were reflected in those occurring within the prison system. A general opening up and defrosting of Irish social life, increasing attention to social issues and a climate of ‘change’ within the political system were all relevant factors leading to modifications in thinking about and creating prison policy. What is known as “the Lemass era”, named after the reform-minded Taoiseach or Prime Minister who led the Government between 1959 and 1966 is much lauded as one when fairly radical change took place across the economic, social and cultural landscape of Ireland (Girvan and Murray, 2005; Bew and Patterson, 1982; Lee, 1985). The introduction of systemised planning for the economy, greater investment in social infrastructure and greater emphasis on long-term strategising across the public sector are all key features of these years.

Social policy became the subject of increasing scrutiny and action. Efforts were made to improve social provision, liberalise old-fashioned practices and modernise the state. This was accompanied by a growing media focus on social affairs and investigation into other long forgotten topics such as the education system and the industrial and reformatory schools, used to detain thousands of children considered at risk of becoming involved in criminal activity or simply moral degradation, often in poor and abusive conditions (Kennedy, 1970). A general ‘defrosting’ of Irish social life is apparent during this period (Whyte, 1979; and the state also became more open to outside influences, economically, socially and culturally, with the diversification and greater activity of the media important influences (Cathcart and Muldoon, 2003). The discourse emanating from government Ministers, the media and those interested in reform was self-consciously ‘modern’ and the efforts of all the relevant actors were framed as a way of modernising the country and bringing it ‘up to date’ with enlightened opinion and practice (Chubb, 1980; Whyte, 2003). This notion of refashioning archaic structures and an impatience with what were perceived to be old-fashioned attachments permeated the political, social and cultural spheres. ‘Change’ per se was one of the central driving forces in Irish political culture, economics, social practice and policy during this period and its penal culture was similarly affected. However, while these social and cultural shifts were undoubtedly influential in the
alterations taking place within the prison system, it cannot be said that the period was one in which an ideology, in this case one emphasising rehabilitation or encompassing the tenets of penal-welfarism, (Garland, 1983) became entrenched in Irish penal thinking. The far looser concept of a belief in the need for and desirability of ‘change’ generally or a desire for modernisation would instead be a more accurate description of the main impulses behind the alterations taking place during the 1960s (Rogan, 2008). For example, rehabilitationist programmes were not present to any significant or developed degree within Irish prison regimes, the treatment model held no particular sway, welfare staff and psychologists were few and far between.

During the 1970s, the movement towards penal-welfarism which appeared to be evident in the previous decade petered out. They were not overthrown, there was no backlash against them, an alternative, more punitive agenda did not appear. Instead, the alterations becoming apparent in the 1960s continued to be present, but the momentum behind them had fizzled out as will be explored further below. This was partly due to the fact that the roots of those developments were not deep (Rogan, forthcoming). The ‘conditions’ for penal-welfarism identified by Garland and others, such as a social democratic political environment, an underpinning in criminological and other forms of social expertise and a favourable and expansive economic context were not present to any significant degree. However, equally as important was the absence of the support of “social elites” considered by Garland to be the broad penal policy-making community, Government Ministers, civil servants, penal administrators, interest groups, academics and the broader “professional classes” (Garland, 2001). It is not that Irish social elites were actively opposed to penal-welfarist ideas, but they were not interested enough in them or sufficiently willing to develop or implement a penal philosophy of any nature or longevity too ensure that those ideas would become entrenched.

**POLITICAL AGENCY AND POLICY ANALYSIS**

Garland’s work on penal-welfarism and, later, its apparent demise has tended to focus on the structural and cultural changes during the period called ‘late modernity’ (Garland, 2001). The role of social elites and their support for penal-welfarism, or lack thereof, has also been subject to scrutiny. However, this has tended to focus on
either general descriptions of how politicians have come to use criminal justice matters for electoral gain or in assessments of how the middle classes have come to lose faith in more liberal penal policies, or have moved away from their self-conception as humanitarian and enlightened regarding offending (Garland, 2001, Cesaroni and Doob, 2003). Less apparent in these analyses has been in-depth empirical assessments of precisely how those elites have changed their attitudes, developed new conceptions of penal philosophies or how they talk about and perceive of punishment. More recently, policy analysis has emerged as a field of inquiry within criminological scholarship. Broadly, it attempts to understand the politics of crime control in the sense of the way in which political actors, influential groups and ideas come to create particular forms of criminal justice policy. Partly this form of scholarship seeks to act as a counterweight to the generalised, ‘grand narrative’ approaches such as that taken by Garland in *The Culture of Control* in particular. One of the most penetrating and significant criticisms of Garland’s work, particularly in *The Culture of Control*, for example, is that it suffers from over-breadth and generalisation, glossing over localisms, peculiarities and in-depth analysis. In short, this argument asserts that what many of the accounts of contemporary crime control policy lacks is an examination of political agency, i.e. detailed understandings and assessments of how the policy-making process takes shape, how the role, thoughts and intentions of political actors and others with an influence on the policy-making process impact on its results (Jones and Newburn, 2004; 2004; Young 2002).

Jones and Newburn, for example, wish to re-insert political agency into assessments of how contemporary policies come to take shape (Jones and Newburn, 2006). Greenberg (2001) also recommends employing qualitative analyses of how policies were adopted, considering that work such as that conducted by Beckett and Western (2001), which examines the relationship between the manner in which governments deal with social marginality and penal policies by using a sophisticated quantitative model. A number of other scholars have taken such an approach, when conceived of in broad terms. Loader and Sparks call for the need for increased understanding as to how policies can have an emotional appeal amongst policy makers (2004), which also evokes the notion of ‘sensibility’ or the emotional tolerance for particular forms of punishment (Tonry, 2004; Garland, 1990). Furthermore, Loader has provided an impressive and important account of how senior civil servants, politicians, penal
reformers and academic criminologists conceived of their work and their ideas about the correct purpose of punishment (2006). Calling them “the platonic guardians”, Loader found them to be “wedded to the belief that government ought to respond to crime (and public anger and anxiety about crime) in ways that, above all, seek to preserve ‘civilized values’” (Loader, 2006, p. 563). Ryan (2003) has also pointed to the influence of a close network of such individuals, who moved in small circles between Oxbridge colleges, Departments of Government and the dining clubs of Whitehall on the formation of penal policy. Examining more contemporary policy formation, Rock (1995) has also provided a detailed empirical examination of the role of individuals in the creation of policies around victims of crime. Stolz (2002a; 2002b) has also detailed the manner of interactions between advocacy and pressure groups and policy makers in the criminal justice sphere.

Such assessments have much to recommend them, for without an understanding of the political motivation for particular penal policies any assessment thereof is likely to lack a key component. The argument that examinations of penal change need to involve an appraisal of the particular nature of the role of individuals political actors is primarily a methodological one. However, there is also a broader dimension to this argument and indeed a more fundamental tension within criminological scholarship which is beginning to achieve increased prominence. This is what can be conceived of as the debate between the global accounts of penal change and the localised ones. A number of accounts of, in particular Anglo-American penality, make claims about Western penal policy of a general nature, arguing that similar impulses are at work across these countries leading, in the main, to more punitive and authoritarian responses to crime. Several influential works have, in particular, identified a form of ‘convergence’ in policy, or a ‘common’ criminal justice culture, particularly between the US and the UK (Garland, 2001; Christie, 2000; Parenti, 2000). A criticism that has been levelled at such analysis, as had already been stated of Foucault, is that it denies or erases the impact and importance of individual actors and agency in the creation and formation of policy and ‘movements’ in the dispensation of punishment. The detail of the policy-making process, the manner in which political actors talk about a particular issue, the way in which problems are represented and solutions debated feature rarely in these broader assessments. Jones and Newburn, for example, warn that cultural
accounts such as those of Garland, when taken to extremes, can diminish the role of political agency in the creation of policy (2005).

These debates have merged into a more fundamental attack on the very project in which Garland has been engaged in The Culture of Control. This asserts that generalised accounts of penal change are doomed to failure as, essentially, penal policies are curiously local, explicable by reference to local conditions be they political, cultural or otherwise. This criticism, put forward by O’Donnell in 2004 has been asserted stridently by Michael Tonry who takes issue with the idea that penal policies are converging or indeed disputes the value a methodology which takes such a cross-country perspective, arguing that understanding penal policy requires an understanding of local influences rather than cross-national ones (Tonry, 2007). Though taking an explicitly policy analysis perspective, Jones and Newburn make this kind of argument more specifically when they say:

In order better to understand the tensions between the global and the local, we argue there is a need to place the study of human agency and political processes closer to the centre of the account that is offered. This approach focuses more closely on the details of policy development and political influence, and moves from these to the broader issues of emergent social routines and cultural sensibilities (2005, p. 76).

As they state succinctly elsewhere, “economic forces, social structures, cultural sensibilities do not lobby for penal innovations, frame legislation, pass sentences or vote in elections, people do” (2002, p. 178). Indeed, Garland himself warns “politics and policy always involve choice and decision-making and the possibility of acting otherwise” (Garland, 2001, p. 139). Garland has also stated that penal ethnographies at a national level or of individual policies would operate to fill in some of the detail of these choices which his broader perspectives provide. Loader and Sparks (2004) argue, however, that providing explanations of penal change which are grounded in the political process and local conditions is not simply a way of providing further detail, but a different methodological approach, involving a process of “detailed recovery” of particular critical moments which become emblematic of changes in response to crime. Such recovery implies a methodology of close assessments of
policy documents and the statements of policy actors such as Ministers, civil servants, pressure groups, academics and others. It also requires analysis of the process of policy formation, the streams of identifying problems, debating possibilities and deciding on solutions (Jones and Newburn, 2006), recognising the messy and volatile nature of the process (Downes and Morgan 2007; Rock, 1995) as well as role of rhetoric or ‘policy styles’ (Stolz, 2002a). It is not possible to resolve these debates within the confines of this article. However, the argument that it is important to understand the specific details of policy formation when analysing and theorising about the nature of penal policy informs the approach taken in this article. As will be seen later, it is also submitted that the methods employed here and the findings have application far beyond the Irish context. While a greater explanation of Irish prison policy is achieved through this process of historical recovery, the finding that the relationship between Minister and senior civil servant had a particularly profound influence on the direction of Irish prison policy during the 1960s should also prompt others to investigate similar dyads and relationships in order to fully understand the nature of penal change. This relationship will now be examined.

MINISTERS AND CIVIL SERVANTS AND THE CREATION OF PENAL CHANGE: CHARLES HAUGHEY AND PETER BERRY

Charles Haughey had an intriguing political career (Collins, 1992; Joyce and Murtagh, 1983; O’Brien, 2002; Ryle Dwyer, 2005). Having always looked like achieving great political success, he suffered a major setback during the 1970s after being prosecuted but acquitted of acting to bring arms into the state during the Northern Troubles. He then rose to the position of Taoiseach during a period of great turbulence in Irish politics in the 1980s, his reputation was later tarnished by allegations of financial impropriety in public office. Haughey was elected to the Irish parliament (the Oireachtas) in 1957 and was promoted to the position of Parliamentary Secretary in the Department of Justice, a junior Ministry, in 1962 under the then Minister Oscar Traynor, a veteran politician who retired two years later aged 75. At 37, in 1961, he took officer as Minister for Justice. At the starting point of his career, he was determined to make his way up the political ladder. Haughey is also considered to be a symbol of the generational shift in Irish politics during the 1960s, when power moved away from the founding fathers of the Irish state to a younger breed, more
anxious and impatient for progress, change and modernisation (Farrell, 1971; Lee, 1979; Chubb, 1983; Murphy; 1979; Whyte, 2003).

As Parliamentary Secretary Haughey had already become accustomed to the workings of the Department of Justice. He had also established himself by steering several Bills through the Oireachtas successfully. The Secretary of the Department of Justice recalled later that as Parliamentary Secretary, Haughey immediately sought “blocks of work” which he could finalise without having to refer to Traynor as his “overlord” (Berry, 1980, p.48). After his elevation to Minister, Haughey approached his task with vigour and energy. Peter Berry described him as a “dynamic Minister … a joy to work with and the longer he stayed the better he got” (quoted in Ryle Dwyer, 2005, p.13-14), going so far as to rate him the ablest Minister of 14 under whom he served, arguing that he managed to break the traditional inability of Ministers for Justice to extract money from the Department of Finance. Lee remarks: “when Lemass appointed … Charles Haughey, as Minister for Justice, it can only have been in anticipation of significant change in a traditionally conservative department” (Lee, 1989, p. 408).

The contrast with his predecessors was striking. From Independence, successive Ministers for Justice had pursued a conservative and cautious agenda towards prison policy, with few significant innovations apparent (Rogan, 2008a; Rogan, 2008b; O’Donnell, 2008). Oscar Traynor, Haughey’s immediate predecessor, was cast in the mould of a long line of Ministers who seemed extremely reluctant to effect change in the Irish prison system. Inertia in policy-making was clearly present and it was only in times of subversive threats to the state that such inertia was overcome. Prison policy in these years was, in the main, driven by a near obsession with financial cutbacks, retrenchment of the system and minimal intervention by the state. There were few innovations propagated and little by way of change and the picture of prison policy was essentially one of stasis. Prison closures were the main events punctuating an otherwise unaltered penal landscape. No documents laying out the official ‘vision’ for imprisonment in Ireland were produced; no reports were commissioned by the Government; no statement of policy of any description ensued (Rogan, 2008). There were no pressures on those Ministers to make changes. The crime rates were low, prison numbers were small, there was no criminological community to speak of and
the policy community was effectively made up of governmental actors exclusively, who betrayed no desire to make waves. During the 1950s, each Government Department was required to submit a Progress Report of activities during the year. In not a single year in that decade did the Department of Justice consider its activities worthy of report. More broadly, the socio-political and cultural climate of the time was not one conducive to radical shifts in direction or restructuring social policy. This was both a practical and philosophical influence on the nature of the state’s prison policy during these years, removing the potential for an ideological impulse to instigate change (Rogan, 2008). Oscar Traynor’s tenure reflected this image of prison policy in Ireland from independence until the late 1950s. Traynor described minor administrative developments in prison policy such as the introduction of sprung mattresses and a fourth meal for prisoners during the day as “out of all imagination” (Traynor, 1959) reflecting an uninventive and staid approach to prison policy which had endured for decades. In 1959, he also stated that:

[Penal reform] could not be carried out in this country as in, say, Great Britain, for the simple reason that we have not got the prison population to enable us to do it. In fact, if we attempted to carry it out, we would probably have more prison officials than prisoners.

Haughey’s arrival as Minister signalled a change in approach almost instantly. In March 1962, Haughey announced:

My Department's programme for 1962 includes an examination of the whole penal reform system, a beginning on the revision of the prison statutes and rules and a continuation of the improvements recently sanctioned in the dietary and scale of gratuities paid to prisoners for good conduct and industry. (Haughey, 1962).

A thirst for action was itself something of a new feature in Irish penal discourse. Haughey’s frustration with the constraints operating on the Department he inherited and his agenda is demonstrated by the manner of his introduction to the Departmental Estimates for 1962/1963. He stated:
when I first came to the Department … it was very much understaffed. I found also that many worthwhile and desirable things could not be undertaken because of lack of resources. I wanted to see … a re-examination of our penal system with emphasis on the causes and possible cures for juvenile delinquency an examination of our probation system … (Haughey, 1962a).

The proposals he outlined for prison policy were part of much wider plans for change in the areas within his remit. In January 1962 a White Paper was published detailing a Programme of Law Reform which had the ultimate aim of having all statute law consolidated in Acts of the Oireachtas. The penal system was placed second in a list of projects he wished to tackle, coming only behind law reform. Later academic comment would describe 1962 as a ‘turning point’ for Irish prison policy (O’Flynn, 1971, p. 11), and the evidence suggests that this was a fair reflection. By September 1962 Haughey’s initially limited proposals for change were expanded upon enormously to become a full Inter-Departmental Committee, drawn from high ranking civil servants, which was set up to investigate methods for the prevention of crime and the treatment of offenders. The Committee was chaired by the Secretary of the Department, Peter Berry, and there were six other members drawn from the Departments of Health, Education and Justice. It was charged with examining present arrangements for the prevention of crime and the treatment of offenders, including juvenile delinquency, the probation system, the institutional treatment of offenders and after-care. Around the time the Committee was established Haughey made several speeches indicating his ideas about punishment and penal reform. Shortly after the Committee had been established, Haughey stated in the Dáil (the lower House of Parliament):

Prison will always be a place of punishment, but it seems to me that our prisons nowadays must to an increasing extent become places of rehabilitation as well. In so far as rehabilitation may save a person from the misery and degradation associated with a life of crime, it is entirely justifiable on humanitarian grounds alone. In addition, however, it can be regarded as something which brings a positive benefit to the community as a whole. It can mean the difference between a former prisoner continuing as a burden on the community or becoming a useful member of society.
All connected with the prisons service — particular members of my office staff, the governors, the chaplains, medical officers, the prison officers and the visiting committees are concerned to do what they can for the rehabilitation of prisoners (Haughey, 1962b).

As well as having what appears to have been a genuine interest in penal affairs, a colleague, George Colley T.D., appealed to another element of Haughey’s nature regarding the political value of penal reform, which may have acted as a further catalyst of change. In October 1963, Colley wrote to Haughey suggesting that he inaugurate a ‘crash’ programme for the training and education of illiterate and semi-literate inmates at St Patrick’s, utilising teachers with qualifications in psychology. Colley wrote: “let me whisper it! – I don’t think it would do you any harm politically”. While Haughey’s efforts in penal reform pre-date this letter quite considerably, a Minister of ambition and desirous of favourable coverage would not have been immune to such sentiments. Much positive media comment was indeed generated about the Minister and his plans (see Rogan, 2008a). Haughey was also open to developments happening abroad, many of which were in the penal-welfarist or rehabilitationist mould during the early 1960s. The Home Office of England and Wales’ White Paper *Penal Practice in a Changing Society* was circulated amongst members of the Inter Departmental Committee and Haughey expressed a personal interest in ideas from elsewhere:

As I have already mentioned elsewhere, I have in mind to examine closely the whole field of penal reform. I am aware, in a very general way, of the efforts at penal reform that are going on in Britain, in Denmark, in France and in other countries. This year and last year, I attended conferences of European Ministers of Justice and I was impressed with the evident anxiety on all sides to establish a code of prisoners’ rights and to find better methods of dealing with juvenile delinquency. It is a problem of worldwide dimensions, in the solution of which, I hope, this country can play a part. (Haughey, 1962c).

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2 Personal communication from George Colley to Charles Haughey, October 8 1963, uncatalogued Department of Justice Files, 93/182/8.
In fact, this greater interest in international experiences of prison and justice matters generally was most clearly reflected in the holding of the Third Conference of the European Ministers of Justice in Dublin in May 1964. This gathered together Ministers from the countries comprising the Council of Europe. Such a hosting was a very significant development. It appears to be the case that States extended invitations to the body of the Ministers for Justice to host these conferences. Ireland would therefore have made this invitation in 1963, under Charles Haughey as Minister. Kilcommins et al, argue that the establishment of the Inter-Departmental Committee can be attributed in part to the particular modernising zeal displayed by the new Minister (Kilcommins et al, 2004, p.70). This is demonstrably correct. The inability to separate the Committee from the personality of Haughey is further evidenced by the fact that, at times, the Committee itself was referred to as “the Haughey Committee”. Newspaper reports at the time also referred to “the Haughey plan”, which involved three steps – the Juvenile Liaison Scheme (prevention), probation and the prisons.(Anon, 1964a).

THE CIVIL SERVANT: PETER BERRY

However, it was not just Haughey, who created the conditions for change within the Department of Justice. Work had been underway by civil servants in various areas of law reform and penal policy for some time. with the Criminal Justice Act 1960 which had introduced temporary release – seven years prior to its introduction in England and Wales - a key pointer in this regard. While Haughey’s role in the creation of the Inter-Departmental Committee was pivotal, it is not entirely correct to attribute its establishment entirely to a “solo-run” (Kilcommins et al, 2004, p. 70) on his behalf. Civil servants within the Department of Justice were also considering fundamental change in Irish prison policy during the same period. The role of Peter Berry, who had assumed the position of Secretary General in 1961, must be acknowledged as being most significant in this area. As the files on the Inter-Departmental Committee reveal, Berry was very much at the helm of its work, taking a strong personal interest in its workings and recommendations. Berry himself asserted that the assumption of power

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3 This moniker is contained in an unsigned letter to the Archbishop of Dublin, Archbishop Walsh, presumably from the Department of Justice dated January 12 1963. Dublin Diocesan Archives, uncatalogued Files, Archbishop Walsh Files, Government Box 1.
by Haughey “opened the way for new developments in penal reform: for instance, it enabled the implementation of the ‘parole’ system and the sleep-in-work-out system for which Mr Haughey was to be given credit for initiating” (Berry, 1980, p. 48).

Berry had already a very long career within the Department of Justice, entering it in the 1920s and leaving in circumstances of great personal strain during the Troubles in 1974.

The policy documents available lends further credence to the contention that a major driver behind the Inter Departmental Committee’s establishment came from the Department of Justice, which had already drawn up a list of matters for study and made preliminary investigations on particular issues before the formal creation of the Inter-Departmental body. At one of the Committee’s meetings, for example, Peter Berry stated: “the Committee’s activities had come about as the result of serious rethinking in the Department of Justice on these matters” (Berry, 1962a). Furthermore, included in the material relating to the Committee’s first meeting is a list of matters the Committee ‘might consider’. This memorandum seems also have been a creation of the Department of Justice (Berry, 1962b). In January 1962 the Department of Justice had already drawn up memoranda for consideration by ‘the Committee’, which itself indicates that the Inter-Departmental Committee was contemplated within the Department for some months before its creation. One of the proposed areas for discussion was the creation of a Corrective Training Unit within Mountjoy Prison, an institution which had the specific object of assisting prisoners to reintegrate to society on release with improved educational and employment skills. The Department of Justice had also already explored the potential of re-establishing the school at Mountjoy and proposed the expansion of the shoemaking industry in the prison, bringing it up to modern standards and the introduction of training in the techniques of dry cleaning in place of the outmoded tailoring industry (Department of Justice 1962a) Advice from the Governor of Mountjoy Prison was also sought regarding the provision of education, training and the extent of recidivism. Haughey’s outlook and activities were therefore at the very least, patently accepted and facilitated by Department of Justice officials, if not actively encouraged and directed by them.

Later, plans of a radical nature were contemplated by the Department of Justice. These appear to have come from within the Department rather than from the Minister.
it is evident that the Department of Justice in the early 1960s was contemplating far-reaching changes in Irish prison policy. These appear never to have been presented before the Committee, again suggesting that the real catalyst for change during these years was the Department. One such proposal was to investigate the possibility of providing farm work for prisoners on a hitherto unprecedented scale. The Department of Justice mooted the possibility of assessing the abandoned farms in Ireland with a view to providing temporary or permanent housing in abandoned homesteads for groups of prisoners or for single prisoners with their families. It was suggested that the prisoners would be paid at a rate lower than the minima for such work, with a contribution made by the state. No legal or constitutional objections towards such a scheme were envisaged. The proposals were discussed using explicitly rehabilitationist language, and characteristically penal-welfarist discourse. In a Department of Justice memorandum on the topic it was stated:

[F]or the prisoner whose chief trouble is inadequacy, such a scheme might prove helpful in restoring self-confidence, and might even open a new way of life. It might be found practicable to apply it either generally, as part of pre-release treatment, or in selected cases only. There could be no question of supervision by prison officers: the security for good behaviour would be fear of return to conditions of maximum security and loss of privileges (if this does not keep out of trouble a prisoner who is on the way to rehabilitation, he is not likely to keep out of trouble after final release anyhow, and little has been lost) (Department of Justice, 1962).

This was a startling proposal. While it did not get further than tentative outline on paper, the fact that it was even conceived of is a patent indication of the direction it was hoped prison policy would travel. The combination of agricultural productivity, the continued lure of ‘the land’ for penal administrators and the optimism that trust and assistance could have beneficial results was a potent one with symbolic resonance for policy-makers. The idea that that prisoners would receive state aid to run their own farmsteads was radical, visionary and liable to sustained objection and excoriating criticism, yet the Department of Justice was not only willing to contemplate it, it appeared to them a viable and serious proposal.
Around the same time, the Department was considering another forward thinking scheme for examination by the Committee. In this case, the Department’s officials were deliberating the introduction of legislation to provide for what appears to be a form of reparation to victims in cases of robbery, theft and other ‘monetary’ crimes, predating legislation introduced in 1993 to give compensation to victims. In such cases, it was felt that where the spoils had not been recovered, and where there was reasonable certainty that they had not been dissipated, committal to prison could be executed until the offender made restitution in full or in part to the victim (ibid). Most significantly, the Department of Justice anticipated the extension of the corrective training programme, with it being “suggested that this approach could be carried considerably further” (ibid). In a further signal of Departmental thinking and hopes for the future, it was suggested that the prevailing status of prison officers involving mainly disciplinary and supervisory functions would “bear re-examination” (ibid) and that the requirements of security and detailed supervision would become less pressing in future.

THE DYAD: GETTING THINGS DONE

The combination of the activities of the Minister and the Secretary in the Department of Justice led to some quite significant and concrete changes in Irish prison policy. Its first meeting, held on September 18 1962, the Inter-Departmental Committee decided to recommend to the Department of Justice that two welfare officers, who would assist prisoners during their incarceration and with preparations for release, should be appointed to the prisons. An After-Care Society, designed to assist with reintegration was further recommended for Mountjoy Prison, it being hoped that this Committee would work in conjunction with existing Prisoners’ Aid Societies. An in-prison hostel was also proposed for Mountjoy, where prisoners going to outside employment while on temporary release could live, segregated entirely from other prisoners and enjoying a more liberal regime. Such prisoners would be freer from supervision than others and assume a progressively greater degree of responsibility for their own conduct. The fact that all of these matters were approved at the very first meeting of the Committee indicates once again that the Department of Justice had already given significant thought to the matters involved and was clearly influential on the other members of the body. There is no evidence of correspondence ongoing between the
representatives of the various Departments in advance of this meeting and many of the suggestions appear to be foregone conclusions, being most likely proposed by Berry and approved by those present. Overall, the Committee can be considered responsible for several important developments. These included:

1. A 20-bed psychiatric ward and the renovation and modernisation of the hospital wing at Mountjoy.
2. The introduction of a new padded cell and the repair of an existing one at Mountjoy.
3. The renovation of the dentist’s surgery at Mountjoy.
4. The re-opening of the school at Mountjoy.
5. The expansion and modernisation of prison trades, particularly regarding shoe-making, dry cleaning and gardening.
6. The introduction of some in-service training courses for prison officers.
7. The establishment of conferences of prison governors.
8. Support for the establishment of the Corrective Training Unit.

Also under the stewardship of Haughey and Berry, in 1964, one of the most significant developments in Irish prison policy occurred. An in-prison hostel was completed at Mountjoy and opened, marking “an important step forward in the penal reform programme”, according to the Department of Justice (Department of Justice, 1965). The Hostel was designed, primarily, for individuals selected to take advantage of temporary release to work in the community, returning to a less prison-like environment on return each evening. This marked the final element of the proposed pre-release treatment continuum within the Training Unit at Mountjoy, and was another Departmental innovation. On opening the Hostel, Haughey stated it was the “latest move in prison rehabilitation” (Anon, 1964), Considering it to be of particular use for those in “the uncertain region between responsibility and complete irresponsibility” (ibid).

THE IMPORTANCE OF BOTH ELEMENTS OF THE DYAD

The demise of the Inter-Departmental Committee and subsequent developments in prison policy also show the importance of the combination of the Minister and civil
servant in effecting penal change. After 1964, while there was a significant continuity in discourse and general agreement amongst policy makers and administrators regarding the desired direction for prison policy, the early energy and vigour seemed to evaporate in the latter half of the decade, with far fewer developments to recount (Rogan, 2008a). The Department of Justice remained engaged in and committed to changes of a rehabilitationist nature, but these translated into policy change far less frequently. The Inter-Departmental Committee appears to have no further activity after 1964, though the reasons for its demise are not clear, with best guess probably being that after Haughey left the Justice portfolio the impetus for the Committee died out (Rogan, 2008b). Without the guiding hand and enthusiasm of Haughey it is likely that the raison d’être of the Committee and its vigour for action dissipated.

After Haughey’s move to another Department in 1964, much of the remaining endeavour seems to have been carried out solely by the Secretary of the Department of Justice. Subsequent Ministers did not display the same sense of energy or interest in the prison system as Haughey and the pace of developments became far slower. Later in the 1960s and into the 1970s the rehabilitationist ethos of prison policy was maintained and there were initiatives such as the introduction of more open institutions for juveniles and a declaration that the objective of imprisonment was rehabilitation in the Prisons Act 1970. However, none of the proposals floated in the 1960s came to pass, nor was the promise of major and rapid change in the prison system fulfilled. The period 1961 – 1964 was something of a “policy window” in Irish prison policy history. It was a time when the confluence of two energetic and dynamic individuals who appear to have been personally committed to reform of the penal system led to significant changes in both the discourse surrounding and content of prison policy. Their combined efforts pushed that policy along and created change which would have been hard to imagine even five years previously. After the departure of Haughey, Peter Berry continued to work on penal reform projects, but without a similarly interested or active Minister, the fruits of that labour were far less apparent. It is clear that individuals in such positions of power can have a major impact on the shape and direction of prison policy in any country. However, it is surprising, given this, that the nature of that relationship has been subject to relatively little examination. Another area which would reward further study is how these individuals come to hold particular beliefs about penal policy and how their
biographies play a role in this development. The release of Charles Haughey’s personal archive to Dublin City University in the near future may assist with this.

CONCLUSION: EXPLAINING PENAL CHANGE

It is clear that the combination of Charles Haughey and Peter Berry within the Department of Justice had a profound impact on the development of Irish prison policy during the 1960s. Of course, the context in which that activity took place was also of critical importance. This context was one open to change, of modernisation, of social expansion, economic improvement and increased curiosity about social issues. Those conditions allowed the space for Haughey and Berry to operate, but without their particular actions and interest those conditions would not have been enough to lead to change. While it may be said that Ireland’s lack of commitment to ideology in the economic, social or political fields means that individuals may have a disproportionate impact on policy there than in other countries. However, it is likely, it is submitted, that if analyses similar to that carried out above were replicated elsewhere, the pivotal role of individuals and their personal beliefs, political ambitions, interest and activities would also become apparent. Penal theorising will always, and by necessity, involve assessments of the structural and cultural changes which lead to and affect penal change. However, in following the call to examine the local as well as the global, it is critically important to ensure that those examinations do not fall into the same difficulties as those which look at convergences across countries. In other words, even at the more local level it is not enough to explore the social and cultural conditions in which penal policy develops, a close investigation of the policy-making process and the activities of individual policy actors must also be undertaken to fully understand the nature of penal change in any country.

REREFERNCES


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This article presents an analysis of restorative justice practice in the Republic of Ireland. This will be achieved through an examination of data on restorative justice conferencing events in various venues around Ireland. From this data, the authors will analyse these restorative events through an examination of the ‘functionalist exchange’ which occurs during the interaction between participants in such events. The extent of functionalist exchange will be measured through an application of the Meta-Analysis first utilised in relation to restorative justice practice by Jeff Latimer, Craig Dowden and Danielle Muise (The Prison Journal 85: 2, 2005 pp. 127-144).

The article will measure the extent to which functionalist roles become significant in restorative conference outcomes. The article argues that to be truly ‘restorative’ events must incorporate the extent to which remorse and subsequent satisfaction is expressed. In addition, the theories of restorative justice are shown to require a further analysis from the practitioners’ perspective, which this article provides. By examining the concepts such as Tomkins’ Affect Theory (1992) and Nathanson’s ‘Compass of Shame’ (1992) alongside the practitioner based perspective of Morris and Maxwell (2004) this article will construct a wider understanding of the significance of the functionalist roles of participants during restorative events.

Keywords: restorative justice; functionalist exchange; restorative conferences, participants

INTRODUCTION

In line with many states which have sought to look beyond established punitive versus rehabilitative measures, policy makers in the Republic of Ireland have sought to introduce Restorative Justice as a ‘third way’. Restorative Justice has subsequently become a significant aspect of innovative justice policy in the Republic of Ireland. This article examines the effectiveness of restorative justice in Ireland through a meta-analysis of the ‘Functionalist Exchange’ which occurs during restorative conferences. By utilising the meta-analysis first applied by Latimer et al (2005 pp.127-144), the process of Meta Analysis is set out in that study as follows:

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4 The authors wish to thank Rosemary Gido and anonymous reviewers for their insightful comments.

5 A meta-analysis can be understood as a statistical analysis of a collection of studies that aggregate the magnitude of a relationship between two or more variables (Glass, McGaw, & Smith, 1981 cf Latimer et al 2005 pp.127-144).
• Literature review: identifying and gathering relevant research studies
• Data collection: extracting data through predetermined coding procedures
• Data analysis: analyzing the aggregated data using statistical techniques (Latimer et al. 2005 pp.127-144).

From these three components, understandings of significant variables can be derived. For the purposes of this article, the variables investigated are the remorse expressed by offenders and the satisfaction derived by participants such as victims or victims’ families. The unit of analysis is six restorative conferences which were held in the greater Dublin area over a number of years. The author’s have devised a theory of ‘Functionalist Exchange’ based on the role-based functional interaction which occurs at such events. This concept of ‘functionalist exchange’ provides the basis for understanding the extent of remorse or satisfaction expressed by the conference participants. A further area of analysis will be the application of the wider practitioners’ perspective to the findings. This practitioners’ perspective is derived from the theories of Nathanson’s ‘Compass of Shame’ (1992) and Tomkins’ (1992) ‘Affect Theory’, both of which are central to the work of restorative justice conferencing. By applying the practitioners’ view to the meta-analysis of events at the conferences through the prism of ‘functionalist exchange’, this article provides a deeper understanding of the restorative processes which occur at such events, and measures the extent to which remorse is expressed or satisfaction is achieved therein.

DEFINING RESTORATIVE JUSTICE

‘Restorative Justice is a process whereby the victim of a crime and the young person responsible for it, provided they are freely present, are enabled to participate actively in resolution of matters arising from the crime. Restorative Justice takes place with the help of an impartial third party’ (Garda Restorative Justice Information Leaflet, 2001).

The traditional argument made by advocates of restorative justice is primarily one of social reform; such advocates hold that criminal justice policy should move away
from punishment of the offender towards restitution and reparation with a view
towards restoring the harm done to both the victim, the community and where
possible, to the offender. Restorative Justice is not a new idea in criminology or in
crime control; most traditional systems of justice in continents such as Africa and
Asia have been based on restorative justice (Maguire et al, 1997). Celtic, Aboriginal
and Native American forms of justice are just three examples of systems that operate
on the basis of restoration and reparation. Unlike modern societies, traditional forms
of justice were inextricably linked to the religious and cultural make up of the people
whose lives criminal behaviour affects. The philosophy of restorative justice
embraces a wide range of human attributes including healing, compassion,
forgiveness, mercy, mediation, reconciliation and where appropriate sanctions
(Consedine, 1995)⁶.

RESTORATIVE JUSTICE IN IRELAND

The restorative element in Irish understandings of the relationship between justice
and civil society can be traced back through history. Early Celtic law contained
elements of social restoration. Brehon Law also contained a balance between the
sometime competing aims of ‘law’ and ‘justice’, for both victim and offender, in the
areas of compensation and redress, which could be negotiated. According to the
ancient law text An Críth Gablach, laws could be interpreted according to the
understanding of the crime and the rank of those involved, such as royalty, craftsmen
and the fili or court poets. The legal framework of the Celts represented the initial
involvement of the wider population in law in ancient Ireland, which recognised up to
seven ranks within its civil society, distinguishing Brehon Law from its more rigid
Saxon counterpart (Leonard and Kenny 2010 a). In recent years, relevant actors in
civil society such as practitioners, academics and policy makers have given
restorative justice considerable attention as an alterative approach to existing criminal
justice practices. With the passing of legislation in Ireland, restorative justice has
been enshrined in law and is enacted through Garda policy and more specifically the

⁶The United Nations defines restorative justice as a follows: Restorative Justice...seeks to re-establish social
relationships that are the end point of restorative justice and seeks to address the wrongs in the doing and the
suffering of a wrong that is also the goal of corrective justice (United Nations, Restorative Justice, Report of the
Secretary-General, 2002:3).
National Juvenile Office. It is an important area of the Irish Criminal Justice system especially in the area of juvenile crime. While restorative justice is provided for within the Irish criminal justice system, its application is confined under statute to juvenile offenders.

The primary elements of the restorative justice movement in Ireland are, in the main, embedded in the structures of civil society. This incorporates many local and national non-governmental organisations (NGOs), agencies and community based groups who are advocating for justice reforms. Amongst the many groups involved with restorative justice at the civil society level is the programme for Real Justice, the Restorative Justice Network Ireland, the Irish Penal Reform Trust (IPRT), Amnesty International’s Irish section, Barnardos, the Children’s Rights Alliance, the Irish Council for Civil Liberties (ICCL), amongst others. In addition, international networks are created with restorative justice advocates internationally. Agencies of the state that work in the area of restorative justice include An Garda Síochána, the Department of Equality and Law Reform, the Courts Services and the Human Rights Commission, the HSE Social Workers and the Probation and Welfare Service. The overlapping elements within these two aspects of third and state sector create a functioning civil society which has the potential to engender reforms in the area of justice provision in Ireland, making the restorative justice a more effective element of contemporary civil society activism.

METHODOLOGY

This article applies relevant theoretical arguments to six case studies of restorative conferencing in the Republic of Ireland. These case studies were conducted in Dublin.

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7 This article deals primarily with the Republic of Ireland.
8 In October 2007 the National Juvenile Office (NJO) introduced a new training programme for Juvenile Liaison Officers (JLO). The training programme was developed by a working group comprised of JLO’s, staff of the NJO and staff of the Garda College. The programme consists of five modules delivered over an eighteen-month period: 1. Introduction to the work of a JLO and appointment of a mentor. Familiarisation visit to the National Juvenile Office and presentation of training pack and reading material. 2. One week training programme that includes presentations and discussion on The Children Act 2001, Youth Offending, Sexual Offending, Communication Skills, Garda Procedures, Ethics and Best Practices in Youth Justice. 3. Restorative Justice Training; three days training in the REAL JUSTICE model of cautioning and the principles of Restorative Justice. 4. Eighty hours mediation training delivered over a four month period. Training is certified by the Mediation Institute of Ireland. 5. A revision module covering all aspects of learning to date.
9 In Northern Ireland, Religious and pastoral groups have worked in restorative justice and community mediation as part of the wider mediation following on from the Peace Process.
and surrounding counties, Kildare, Louth and Wicklow. This is achieved by applying various forms of case study analysis to episodes of restorative practice\(^\text{10}\).

These include ‘documentation’; ‘the use of archival records’; ‘interviews’; ‘direct observation’; ‘participant observation’ and ‘physical artefacts\(^\text{11}\).’ The authors were able to use these during the fieldwork on the six case studies, combining the data and findings of each source of information to address wider understandings of restorative justice in policy and practice. This research set out to identify the key unit of analysis (restorative conferencing) and in so doing created further understandings of the links between restorative justice theories and philosophies and the realities of restorative policy and practice, through the six cases being analysed. The six case studies are used to present triangulated research, combining theoretical concepts with investigative data to create more informed understandings and findings on the benefits of restorative justice, both theoretically from the perspective of writers such as Braithwaite (1989), or from a practitioner’s viewpoint, as presented by Tomkins’ Affect Theory (1992) and Nathanson’s ‘Compass of Shame’ (1992).

**TRIANGULATION**

The triangulated research strategies provided in this thesis explains the relevance of events before, during and after the conferencing process. This is achieved using multiple data sources, including relevant files, Acts, literature and artefacts, providing validity and meaning for the research that had been undertaken. In this research, the authors have combined data, theory and methodological triangulation with the investigative approach of fieldwork and analysis over five years. The initial collection and analysis of field data on restorative conferencing took place over a three-year period, between January 2002 and August 2005. The relationship between these practices and restorative justice theory was then analysed during the second period of the study, between 2007 and 2010. Relevant patterns and responses of participants in

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\(^{10}\) This analysis of restorative justice includes forms of case study methods such as the ‘exploratory’, ‘explanatory’ and descriptive’ (Yin, 2008); or ‘intrinsic’, ‘instrumental’ or ‘collective’ (Stake, 1995). Exploratory case studies provide holistic examinations of the background to salient cases of restorative justice, by way of a preface to a more extensive examination of studies of the subject matter; the six episodes of restorative conferencing witnessed by the researchers. With explanatory case studies providing an understanding of the significant criteria surrounding restorative justice’s process of ‘cause and effect; field observations are then combined with the gathering of documentary evidence to provide a deeper understanding of restorative justice in theory and in practice.

\(^{11}\) Leonard (2005)
restorative practices were analysed through the key theories and philosophies surrounding restorative justice in both the Irish framework and within an international context. Field research on restorative practices was undertaken in three main stages. The first of these was the collecting of data through participant observation at the six restorative conferences, where the authors were invited observers.

This stage of the research included attending conferences in the counties surrounding Dublin and in County Tipperary in the west of Ireland. The second stage included interviewing participants in the restorative process, as well as the gathering of secondary sources such as Department of Justice, Equality and Law Reform (DJELR) reports on restorative policy. The authors have applied their field research into a four-fold structuring for the application of a case study (Yin, 2008). This four-fold model of restorative practice includes the explanation of the links and background to restorative events; the description of the contexts of restorative conferences; an account of the restorative event itself; and the evaluation of the outcomes of this restorative conferencing event.

VALIDITY

Validity and reliability will be established by using multiple sources from the six cases as evidence, within a case-study approach as suggested by Yin (2008). External validity is provided by an interpretation of these findings within a theoretical framework based on relevant sociological, criminological and restorative justice theories. The use of six case studies, provided both positive and negative aspects to the study, and these became apparent throughout the period of research. Yin (2008) argues that the strengths and weaknesses of using this type of evidence may be used to underpin field research. For instance, this documentation provides a ‘stable and repeated review of data’ (ibid) with precise coverage over a particular time frame. Direct and participant observation allowed coverage of the events as they happened, and place these restorative events within a wider context. However, these observations took time to develop, and were dependent on the researcher’s ability to contextualise events over time (Leonard 2005). Ultimately, the observations of the six restorative conferences conducted in this study provide greater insights into restorative justice events that an over reliance on restorative theory alone might not
have provided. The combination of both observational and documentary evidence establishes ‘a chain of evidence’ (Yin, 2008) of restorative processes to be established.

A FUNCTIONALIST ANALYSIS OF RESTORATIVE JUSTICE

As a theory Functionalism emerged from Durkheim’s sociological positivism, which sought to identify and explain the social facts that come to define the structures of society. Durkheim’s understanding of society’s attempt to build cohesion and solidarity during periods of transformation was based on the members of that society’s ability to explain and apply understandings of social functions that in turn produce social order and control. In relation to crime and deviance, the importance of functionalism can be seen on two levels. For Durkheim (1964) crime and deviance are everyday phenomenon that in turn can be seen as ‘social facts’. This functionality stems from the collective response of society to criminal and deviant acts. This collective rejection of deviant behaviour in turn creates the norms, mores and laws by which society is governed. Evidence of the functionalist perspective in restorative justice practices can be seen in the work of Durkheim. Durkheim recognised that crime as a normal occurrence and believed that it is impossible to have a society totally devoid of crime, ‘it is a factor in public health and integral part of all societies, crime is then, necessary’ (Durkheim, 1964:46).

THE PRACTITIONER’S PERSPECTIVE

12 Durkheim sees elements within the response to crime form the wider society as functional because these responses create a sense of community and they allow for the rituals of punishment and restitution. Therefore a functionalist perspective of crime understands that crime and deviance allows for the creation of rules, consensus, conformity and restraint. These functional elements come to define the values inherent in that particular society. In addition, Durkheim establishes an understanding of anomie in society. For Durkheim anomie indicates the breakdown of the rules and norms of society. His understanding of anomie or anomic society was presented through his study of suicide. His understanding of the functionalist of anomie in society in turn influenced Robert Merton in his own studies on dysfunctionality (McLaughlin & Muncie, 2005).

13 Durkheim believes that the presence of the criminal allows the rest of society to draw together and reaffirm their values. Therefore through opposition to criminal behaviour, the social group or society is strengthened. Durkheim regards the criminal as someone who provides the community with an opportunity to reassert standards, which he or she had broken or opposed. His pioneering study of the production of order and cohesion in modern industrial society had noted that, as societies become more advanced and complex, punishments become less severe (Durkheim, 1964). He cited imprisonment replacing death and mutilation as the sanction for most crimes. Durkheim argues that repressive forms of law, such as criminal law, tend to diminish, with conformity being secured more and more by restorative law, which is law concerned with complaints between individuals rather than crimes against the state/society.
Whilst Braithwaite’s theory of ‘Reintegrative Shaming’\textsuperscript{14} has been the fore within the field of restorative justice, Sylvan Tomkins’ (1992) theory provides a greater understanding of the benefits of the restorative conferencing process for diverse groups. Tomkins\textsuperscript{15}, ‘Affect Theory’ is based on a psychological theory of human affect. Tomkins’ theory has been analysed and presented in more detail through the work of Nathanson (1992). ‘Affect theory’ is a very effective tool in explaining the success of the scripted conference. The conferencing process encourages free expression of affect, which is the biological basis for emotion and feeling. The conference provides an opportunity for participants to express true feelings while minimising negative affects and maximising positive affects. According to Tomkins’ theory this kind of environment is the ideal setting for healthy human relationships. The restorative based conference script utilises open-ended questions, which allow for the expression of the nine basic affects, which Tomkins identifies as being present in every human being\textsuperscript{16}.

Tomkins presents most of these affects as word pairs which name the least and the most intensive expressions of that affect. The negative affects are the most obvious when participants take their seat in the circle and when the conference itself begins. When participants respond to the scripted questions such as, ‘What happened?’ ‘What have your thoughts been since?’ ‘How has this affected/harmed/hurt you and others?’ and ‘What has been the hardest/worst thing?’ they may express all or some of the negative affects and feelings. Anger, distress fear and shame are diminished throughout the sharing process amongst participants. Their expression helps to reduce the intensity of the affects, and may be applied with relevant cultural sensitivity. As a restorative conference proceeds participants experience a transition, which is characterised by the neutral affect of surprise-startle (Nathanson, 1992). Victims, offenders and their supporters are usually surprised by what people say during the


\textsuperscript{15} The term ‘Affect’ which Tomkins uses specifically refers to the biological portion of emotion or what he calls the hard-wired, pre-programmed, genetically transmitted mechanisms that are present in each human being. These mechanisms when triggered precipitate a known pattern of biological events. However it is also acknowledged that in adults, the affective experience is a result of both the innate mechanism and a complex system of nested and interacting ideo-affective formations.

\textsuperscript{16} These nine affects are listed as Enjoyment-Joy, Interest-Excitement, Surprise-Startle, Shame-Humiliation, Distress-Anguish, Disgust, Fear-Terror, Anger-Rage and ‘Dissmell
conference and how much better they begin to feel as a result of the expressions of affect by others. This may also reduce ethnic tensions. When the conference reaches the agreement phase, participants are usually expressing positive affects of interest-excitement and enjoyment-joy. This is particularly evident when participants are asked to respond to the following scripted questions ‘What do you think/feel about what has been said?’ ‘What do you think about what had happened here?’ ‘What would you like to come out of the meeting?’ People recognise the affects seen on others’ faces and tend to respond to the same affect. When one is angry, others become angry. For instance, when one feels better and smiles so do others. Tomkins refers to this as ‘affective resonance’ or empathy. Through this ‘affective resonance’ conference participants make the emotional journey together feeling each other’s feelings as they move from anger, distress and shame to interest and enjoyment. For the conference the prospective facilitator can take comfort and gain confidence in understanding that Tomkins’ (1992) ‘Affect Theory’ is reliably demonstrated by the scripted conference process. Participants consistently move from negative to positive feelings in the safe and structured environment created by the script (O’Connell et al., 1999).

Conferences can help people move beyond the compass of shame through acknowledgement and expression of shame and through subsequent reintegration. Due to the fact that the restorative conference affirms the intrinsic worth of the wrongdoer and condemns only the objectionable behaviour, parents and offenders feel less threatened and more equipped to acknowledge responsibility. O’Connell (1999) also argues along with other theorists such as Braithwaite (1989) and Daly (2003) that victims also experience shame. Victims may blame themselves for the incident, withdraw and hide their feelings and sometimes distract themselves. Victims may also ‘lash out’ at others close to them who are not responsible for the offence. In

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37 Nathanson’s (1992) ‘Compass of Shame’ makes it very clear how people from diverse backgrounds react to each other and express their shame. Nathanson argues that people usually react with one or more of four general patterns or ‘scripts’ which depict as directions on a compass: attack other, attack self, withdrawal and avoidance. For example, when parents of their offending children blame and criticise the school or the police officer, when confronted with an offence, they demonstrate the attack other response. These parents of offenders try to avoid shame by putting the responsibility on others. This is the most common response to shame demonstrated in today’s society. Another contemporary response is avoidance through alcohol, drug abuse or thrill seeking behaviour such as joy riding in a stolen car. However several decades ago the common responses to shame were attack self and withdrawal. In attack self the shamed individuals are self-punishing and unreasonably hard on themselves. In withdrawal the shamed individuals hide as a result of being overwhelmed by the shame. These responses to shame are normal however they are harmful and need to be addressed (O’Connell et al., 1999).
providing an outlet for expressing feelings and moving beyond shame to resolution, restitution and reintegration, the restorative conference is as important to victims as it is to offenders (O’Connell et al, 1999). This process paves the way for improved cultural understandings in place of mistrust and misunderstandings from poorly informed cultural assumptions.

CASE STUDIES

The following six case studies were observed by the authors over a period between 2002 and 2008 in the greater Dublin region. Case 1 involved an assault by a young male on another young male in a parkland area. The participants comprised the offender, his mother, the victim’s parents, the facilitator and the Juvenile Liaison Officer 18. This case study provided an example of Functionalist Exchange in the following way; from a parental perspective the parents assumed an authoritative role expressing dissatisfaction in their child behaviour. The victim’s parents also expressed disappointment and dissatisfaction in the behaviour, extending the functionalist role of the parent, from parent-child to parent-community. From the perspective of the offender there role was to express some level of remorse and amends and in so doing, this allows both victim and offender (and all other participants) to achieve restoration. The dual roles of the facilitator and the Juvenile Officer were fulfilled through their provision of a neutral context for this restoration. They also support the authoritarian role of the parents. In this way a wider extent of community restoration is achieved.

Case 2 involved larceny and damage to several motor vehicles in a residential area. The offender (aged 15) had been cautioned along with another juvenile for the same offence on a previous occasion. The Juvenile Liaison Officer felt that the victim and the offender would benefit from a restorative conference. In this case the role of the victim was more significant as he provided the main example of Functionalist Exchange by assuming the authoritative role, which the other adults’ participants at the event followed. He assumed the role of the offender’s father by expressing

18 Two participants were absent, firstly the victim who felt uncomfortable at being present and secondly the offender’s aunt who was unable to attend. The victim’s parents decided to come as they felt that they could still get something out of the conference.
dissatisfaction at the offenders behaviour and encouraged restoration through greater involvement in sporting activities. From the perspective of the offender, they were able to fulfill their role by expressing some level of remorse and amends and in so doing, this allows both victim and offender (and all other participants) to achieve restoration. Similarly, the dual roles of the facilitator and the Juvenile Officer were fulfilled through their provision of a neutral context for this restoration. They also supported the authoritarian role of the parent in this case. In this way a wider extent of community restoration is achieved.

Case 3 involved an assault on an elderly lady as well as trespassing on the grounds of a suburban railway station. Participants present included the facilitator, the Juvenile Liaison Officer, the offender, his father, a policeman who was involved in arresting the young offender and a security manager from the rail company. The victim was not present as she was advised not to attend by her solicitor as she was taking a civil case against the rail company. This case provides an example of Functionalist Exchange in a different context to previous cases. This distinction was due to the absence of the victim in this case. From a parental perspective the offender’s father assumed a functional and authoritative role by expressing dissatisfaction in his child’s behaviour. From the perspective of the offender their role was to express some level of remorse and amends and in so doing, this allowed the offender (and all other participants) to achieve restoration.

The dual roles of the facilitator and the Juvenile Liaison Officer were fulfilled through their provision of a neutral context for this restoration. They also supported the authoritarian role of the father. The most interesting aspect in this case was that the father assumed the role of the victim after the JLO had read out their statement. The context of assuming the victim’s role had to be created by the JLO. The offender’s father conveyed the victim’s pain and suffering when given the opportunity to take on the victim’s role. In this way a wider extent of community restoration is achieved.

Case 4 involved two youths breaking and entering a vehicle causing damage to the vehicle with intent to steal it in the early hours of the morning. Participants present

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19 The victim, who was elderly, felt too afraid to attend
included the facilitator, the Juvenile Liaison Officer, the offenders, the offender’s mothers, the victim and her partner. This case was interesting as the offender’s mothers assumed the authoritative role, as the fathers were absent on this case. In assuming the authoritative role the offenders mother strongly expressed their dissatisfaction and disgust in their children’s actions. From their perspective the children’s roles were fulfilled through their expression of remorse and regret. They also made financial reparation directly to the victim, which enabled restoration to occur. Another interesting aspect of this case was that the victim’s partner assumed the role of victim on behalf of their partner who was more subdued. The dual roles of the facilitator and the Juvenile Liaison Officer were fulfilled in this way a wider extent of community restoration was achieved.

Case 5 involved bullying, which culminated in assault by five girls. The participants present were the two facilitators, the Juvenile Liaison Officer, the victim, her parents and boyfriend, the five offenders. Four of the offenders had a parent each present. This case was unusual as both offenders and victims were female. Also some of those involved were absent. The functionalist roles of the victim were adopted by the young female victim and her boyfriend. Attempts at both offering and receiving restoration were mixed. The parents attempted to provide an authoritarian backdrop however there was no consistency in their contributions. Finally the Juvenile Liaison Officer and the facilitator provided a neutral context for this larger group.

Case 6 involved three youths taking a car without permission and driving it to a local viewing point. The driver did not hold a drivers licence nor were they covered by insurance. Present at the conference were the facilitator, the Juvenile Liaison Officer, the three offenders, their parents and the victim and her parents. It became apparent before the conference began that the parents of the offenders were friends. This case was interesting as the victim and the main offender were siblings. All the parents who participated provided a strong authoritarian role by expressing significant levels of disgust, anger and dissatisfaction at the behaviour of their children. The victim role in this case was a dual one; as she expressed anger but also initiated restoration. The offenders fulfilled their role by expressing remorse and offering restitution. The

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In addition there was a much wider number of people involved as most of the parents of the offender were present.
Juvenile Officer and facilitator in this case provided a good context for such restoration to be achieved on a neutral footing.

CASE STUDY ANALYSIS

The six Dublin cases provide a variety of indicators, which underpin understandings of the functionalist aspect of the restorative conferencing process. Furthermore, the case studies provide a fuller understanding of the significant of gender and family socialisation when it comes to restorative conferencing practice. Whilst these cases provide some evidence that Braithwaite’s ‘Reintegrative Shaming’ occurs during the conference process, this study demonstrates that this process is far more complex than this theory suggests. The authors devised a series of questions to measure participants’ reaction. These questions were based on the Garda/IIRP Evaluation Framework (see also page 15):

**Question 1** ‘To what extent were the people observed by the researcher to be actively involved in the conference?’ The six cases show that 77% of offenders, 67% of the offender’s family, 80% of the victims (the victim was not present at two of the restorative events), and 77% of offenders family participated.

**Question 2** ‘To what extent were the people observed by the researcher involved in making the decisions?’ The six cases show that 75% of offenders, 75% of offender’s family, 80% of victims and 75% of victim’s families were involved.

**Question 3** ‘To what extent did the people observed by the researcher appear to understand what was going on?’ The six cases show that 80% of offenders, 80% of offender’s family, 80% of victims (the victim was not present at two of the restorative events) and 80% of victim’s families appear to understand the process.

**Question 4** ‘To what extent did the people observed by the researcher appear to have their say?’ The six cases show that 75% of offenders, 80% of offender’s families, 80% of victims (the victim was not present at two of the restorative events) and 80% of victim’s families were given the opportunity to have their say.

**Question 5** ‘To what extent did the people observed by the researcher appear to understand what was decided at the end of the conference?’ The six cases show that 80% of offenders, 85% of offender’s families, 80% victims (the victim was not
present at two of the restorative events) and 80% of victim’s families understood the decision reached at the end of the conference.

**Question 6** ‘To what extent did the people observed by the researcher agree with the decisions?’ The six cases show that 83% of offenders, 67% of offender’s families, 75% of victims (the victim was not present at two of the restorative events) and 80% of victims families agreed with the decisions reached during the conference.

**Question 7** ‘To what extent did the people observed by the researcher appear too intimidated to say what they really felt?’ None of the participants present at any of the conferences appeared to have been too intimidated at any stage to say what they really felt.

**Question 8** ‘The young offender was treated fairly and with respect during the conference’; the researcher observed that in all six cases this was fully the case.

**Question 9** ‘The young offender was given the opportunity to make up for what he/she did’, in the majority of cases observed by the researcher this was achieved, however greater opportunity could have been given in some cases.

**Question 10** ‘The young offender accepted responsibility for the offending behaviour’, in all cases observed by the researcher the offender accepted some level of responsibility for their offending behaviour. This was higher in cases where the victim and both parents of the offender (s) were present.

**Question 11** ‘The young offender indicated that he/she could see the victim’s point of view’; this was only the case where the victim was present at the restorative event.

**Question 12** ‘The young offender expressed shame during the conference’, in all cases observed by the researcher the offender accepted some level of shame or remorse. This was higher in cases where the victim and both parents of the offender (s) were present.

**Question 13** ‘People make it clear that the young offender could put the whole thing behind him/her’, in all cases observed by the researcher the offender was advised and actively encouraged to put the episode behind them and move on. However it was higher in cases where the victim and both parents of the offender (s) were present.

**Question 14** ‘Victim (s) appeared satisfied with the process and the outcome’. Varying levels of this only occurred during the cases in which the victim or a member of the victim’s family was present.
Question 15 ‘People were looking out for the best interests of the young offender’; in all cases observed by the researcher these sentiments were expressed. This was higher in cases where the victim and both parents of the offender(s) were present.

The first seven questions examined the extent to which offenders, offender’s families, the victim and the victim’s family participated and were involved in the restorative conference. The participation and involvement of participants were high in all cases as they were run in line with international best practice. From a critical perspective the evaluation observation sheet is set out in such a way as to bring a neutral observer towards a positive outcome rather than a critical appraisal of the process. This process of appraisal leaves little scope for participants or observers to formally express their satisfaction with the process. This has implications for both theorists and practitioners alike as a critical analysis of restorative processes is an important element of evaluation. Questions 8-12 examined the extent to which the young offender(s) were treated or demonstrated respect, fairness, the opportunity to repair the harm, and to accept responsibility/ show some level of remorse or expressed shame at their behaviour during the restorative conference. Similarly from a critical perspective the evaluation observation sheet is set out in such a way as to bring a neutral observer towards a positive outcome rather than a critical appraisal of the process. However in this instance there is greater scope for the observer to be critical of the process. Questions 13-15 examined the extent of support and acceptance and levels of satisfaction amongst participants to the offender(s) and the restorative process.

The key link in this bridging of theory and practice, which underpins the findings of the six case studies, is found in Tomkins’ (1992) ‘Affect Theory’ and Nathanson’s (1992) his ‘Compass of Shame’. By examining the findings of the six case studies in relation to this perspective or filter built from restorative justice practice, a clearer understanding of the impact and outcomes of restorative justice theory and practice’s potential is established through the study. Essentially, this triangulation of restorative theory and practice provided the research with a framework for a deeper examination of the functionalist roles of the key participants in restorative conferencing events.

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21 The researchers’ experience as qualified restorative facilitators and as an experienced observer of restorative events at both masters and doctoral levels have been combined to provide a deeper understanding and analysis of the transformative processes that occur during these six restorative events.
order to establish this understanding of the significance of each functionalist role within the restorative justice context, an analysis of the extent of shame, remorse and restoration achieved by each participant in the case studies has been undertaken. This form of organic research is facilitated by the case study methodology employed in the study, which allows for a systematic analysis of the contributions and responses of participants in the cases outlined in the work. Theoretically, applying a Functionalist theoretical perspective to the emotional intelligence on display throughout the restorative conferences presented through the case studies provides a better sociological understanding of the significance and importance of those roles on individuals, families and wider society.

This combination of findings from theory and practice provides further validity and triangulation emerging from the research’s methodological framework, case study methodology, fieldwork and analysis of the case studies and main theoretical premises. In particular, by establishing this triangulated structure in the study’s findings, a critique of one of the key theorist of restorative justice, that of John Braithwaite’s (1989) concept of ‘Reintegrative Shaming’ is developed. The issue of gender relations and family socialisation manifest themselves within the context of restorative events. This section will discuss the implications the issues of gender relations and family socialisation within the layers of the engagement with the restorative conferencing process. According to sociological theorists socialisation plays a prominent role in the creation of norms, values, and behaviours in different circumstances within society. In addition we are conditioned into gendered roles and responses. This study has demonstrated that the responses and reactions of individual family members reflect the different roles that the family assume. Many of the cases discussed in this thesis play themselves out according to the gendered and family responses of the individuals involved, in addition the ‘facing the demons’ and

By applying these expressions of functionalist exchange to the six case studies undertaken as part of the thesis’ fieldwork, the following outcomes are achieved: Practitioner Outcome: A better understanding of the functional roles of participants in restorative conferences is established and Theoretical Outcome: A better understanding of Functionalist theory is achieved, as the theory is brought to life through its application to the participants in the six cases. Furthermore, a ‘framework of functionalist exchange’ is established, based on the extent to which the key aspects of Tomkins’ (1992:84-88) ‘Affect Theory’ and Nathanson’s (1992) ‘Compass of Shame’ are displayed. These key expressions are divided into positive or negative sections, including ‘Interest-Excitement’ and ‘Enjoyment-Joy’ as the positive affects, ‘Surprise-Startle’ as the neutral affects and ‘Shame-Humiliation’, ‘Distress-Anguish’, ‘Fear-Terror’ and ‘Anger-Rage’ (Nathanson, 1992) as the negative effects displayed during restorative conferencing events. In order to develop this framework of functionalist exchange further, Nathanson’s ‘Compass of Shame’ (1992) The four points on this compass ‘Withdrawal’, ‘Attack Self’, ‘Attack Other’ and ‘Avoidance’ is also utilised in the analysis of the six case
'burning bridges’ films provide us with interesting examples of gendered responses to restorative events.

In a number of cases the various responses were proven to have a gendered basis for instance the response of the offenders mother assumes the role of re integrative shaming as outlined by within the context of Braithwaite (1989) ‘reintegrative shaming’ see also Daly (2002). On the other hand the role of the father is less focused on shaming and more focused on discipline and protection of the family unit. Siblings of the offender/victim often have an important role to play. The role of siblings in restorative events is also shaped by gender. The case of an incident between siblings highlights further aspects of the gendered relationship within the context of the family. This case demonstrates an instance the mother wanted to shame the son whilst the father wanted to protect the daughter.

MEASURING SATISFACTION FOR PARTICIPANTS

In the course of the research the author discovered that Restorative Justice has a number of advantages and benefits over ore traditional methods of administering criminal justice. Victims and offenders become key stakeholders in the process, they are empowered to become involved the criminal justice system. The victim is given the opportunity to address the offender and show the pain that they have suffered as a result of the incident. They may receive an apology, reparation or in many cases both. Emotionally victims receive satisfaction from actively participating in the process. The offender is given the opportunity to atone for his or her behaviour and take responsibility for their actions. It gives both the victim and the offender the opportunity to be reintegrated into society, especially the offender as they account for their actions. The benefits of Restorative Practices include: victims and the community are involved in the judicial process. Practices such as restitution, community service, mediation, family group conferencing, and victim impact panels, are utilised consistent with restorative justice values. Victims are given choices and a sense of control, which decreases fear of re-victimisation. Utilising restorative justice processes allows victims and offenders to view the system as fairer overall and also
more satisfying. Court caseloads are lowered by utilising a variety of restorative justice processes. The judicial system is changed the by engaging the political strength of victim advocacy.

QUANTATIVE META ANALYSIS OF THE SIX CASE STUDIES USING GARDA/ IIRP GUIDLINES

In line with the evaluation framework utilised by An Garda Síochána based on the International Institute of Restorative Practices guidelines for measuring outcomes of restorative events, the researcher has formulated the following questions, which were then subjected to statistical analysis in order to aid measurement the transformative process that occurs during restorative events. Looking particularly at the area of participation and involvement the six cases are ranked on a scale of 1 to 5 with 1 representing ‘not at all’ and 5 representing ‘fully’. The extent to the, which people were involved is presented from the perspective of the offender, the offender’s family, the victim and the victim’s family.

The first seven questions examined the extent to which offenders, offender’s families; the victim and the victim’s family participated and were involved in the restorative conference. The participation and involvement of participants were high in all cases as they were run in line with international best practice. From a critical perspective the evaluation observation sheet is set out in such a way as to bring a neutral observer towards a positive outcome rather than a critical appraisal of the process. This process of appraisal leaves little scope for participants or observers to formally express their satisfaction with the process. This has implications for both theorists and practitioners alike as a critical analysis of restorative processes is an important element of evaluation. Questions 8-12 examined the extent to which the young offender(s) were treated or demonstrated respect, fairness, the opportunity to repair the harm, and to accept responsibility/ show some level of remorse or expressed shame at their behaviour during the restorative conference. Similarly from a critical perspective the evaluation observation sheet is set out in such a way as to bring a neutral observer towards a positive outcome rather than a critical appraisal of
the process. However in this instance there is greater scope for the observer to be critical of the process. Questions 13-15 examined the extent of support and acceptance and levels of satisfaction amongst participants to the offender(s) and the restorative process. The researcher’s experience as a qualified restorative facilitator and as an experienced observer of restorative events at both masters and doctoral levels have been combined to provide a deeper understanding and analysis of the transformative processes that occur during these six restorative events.

POLICE/GARDA MEASUREMENT OF SATISFACTION/QUALITY ASSURANCES

The research findings presented indicate that the Garda scheme facilitates the following to be restored to the victim, property loss through reparation, injury and a sense of security, harmony based on a feeling that justice has been served, a sense of empowerment and deliberative democracy and social support. Disempowerment is part of the indignity of being a victim of crime. Disempowerment can be linked to the republican theory of criminal justice, which states that a crime should not be defined as a crime unless it involves some domination of us that reduces our freedom to lead life as we chose (Braithwaite and Petit, 1990). It follows on from this that the restorative process allows victims to restore any loss of empowerment as a result of the crime. The Garda scheme through its facilitation of restorative events allows victims, offenders and their supporters to deliberate over the consequences of crime, how to deal with crime and prevent recurrence, it restores the deliberative control of justice by its citizens. This contrasts with the professional justice of judges and lawyers who decide which rules apply to particular cases and then constraining their deliberation with technical debate over the use of those rules.

However, at the close of the event all acknowledge that it was a satisfactory way of dealing with crime. The participant’s acceptance of the restorative process is in line with Consedine’s contention that restorative justice is a process whereby those affected by criminal behaviour, be they victims, offenders, the families involved or the wider community, all have a part to play in resolving the issues that flow from the offending (Consedine, 1995). The Garda Restorative Justice initiative proves that the process empowers victims and offenders to take more central roles in the criminal
justice system with the state taking a back seat, it allows restoration of social support. Victims of crime need support from their loved ones during the process of restoration. As my research has shown they sometimes need encouragement and support to engage with deliberation to restore harmony in their lives. Friends and relatives may sometimes blame the victim or commonly are frightened off by a victim suffering emotional from the offence. Restorative justice facilitates the gathering around of friends and relatives during this time.

CONCLUSIONS

By applying a meta-analysis to the processes of each restorative event, it becomes apparent that there is in the continuity in the structure of these events. The meta-analysis in this article takes the variables of the evaluation of the six Dublin case studies, the ‘functionalist exchange’ which occurred as part of the processes of the six case studies and an analysis of the six case studies from the practioners’ perspective, in order to create deeper understandings of the remorse or satisfaction expressed as a result of the roles adapted by participants during the conferences studied. Victim satisfaction was very high in the majority of cases observed by the authors. However, it must be noted that of the six events observed only four events had the victim in attendance. The author was impressed by the extent of reconciliation in the cases some of which involved serious crimes. It was apparent from the proceedings that the victims were sympathetic towards the offender and appeared to be interested in reintegrating the offender into the community. Victims did not appear to be upset during the restorative events observed and appeared to leave the event satisfied with the outcome. Support for and acceptance of the young offenders was a strong element of all the restorative events. Expressions of offender support and acceptance were not explicitly sought by either the facilitator or the Juvenile Liaison Officer. Parents or Guardians of the young offenders spoke up on behalf of the offenders, discussed giving the offender another chance but noted that it would take time for them to treat the offender as being trustworthy. Victims showed that they were prepared to support the offenders during the restorative events by encouraging them to get involved in sporting activities and advising them to avoid a life of crime. Only in one case was it implied that the family could not cope with the offender. No victim was involved in this case and it was clear that the reason for the offender having problems was due to
his living arrangements. Four out of the six restorative events observed by the author held a post conference or caution social. The value of the social in restorative justice is recognised symbolically and materially. Sharing refreshments can help to resolve residual tensions and mark a new beginning for victims and offenders. However, its value may be reduced if the young offenders are uncomfortable.

The police findings state that the young offender found it difficult to make a sincere admission of responsibility and remorse. The report states that the facilitator often had to resort to employing leading and prompting questions in order to achieve a result. In the instance of the process being balanced by respecting the rights of both the victim and the offender, the Garda report notes that both victims and offenders had high rates of satisfaction with the process and were satisfied that they had a fair opportunity to have their say. In the case of the police report it was not possible to deduce if the process was being delivered in a manner that was fair to all parties due to the fact that there were no victims present. Both reports state that the use of a standard script contributed to the consistency of standards throughout the restorative events. In relation to the role of the facilitator as a ‘guardian of the process’ both reports state that the facilitators encouraged and facilitated dialogue between the offender, the victim and the other participants. It is reported in the Garda report that victim and offender levels of satisfaction were high and that the outcomes of the process were generally positive for both parties.

**BENEFICIAL OUTCOMES**

This article has investigated the remorse expressed by offenders and the satisfaction derived by participants in six restorative conferences which were held in the greater Dublin area. The authors’ theory of ‘Functionalist Exchange’ based on the role-based functional interaction which occurs at such events provides the basis for understanding the extent of remorse or satisfaction expressed by the conference.
participants. Further analysis was applied through the practitioners’ perspective to the findings. This practitioners’ perspective is derived from the theories of Nathanson’s ‘Compass of Shame’ (1992) and Tomkins’ (1992) ‘Affect Theory’. By applying the practitioners’ view to the meta-analysis of events at the conferences through the prism of ‘functionalist exchange’, this article has provided a deeper understanding of the restorative processes which occur at such events, and has measured the extent to which remorse is expressed or satisfaction is achieved during these events.

The benefits for victims and offenders who engage in restorative justice processes far out weight those offered by more traditional methods. Firstly victims are given the opportunity to meet the offender and relate to him or her of their version of events and how the offence has affected them. Meeting with the offender also gives the victim the opportunity to understand the reason for the offence and perhaps realise that they were not singled out. The meeting may also empower them to overcome worries about possible re-victimisation. As the research has shown victims are empowered through restorative justice and are satisfied by receiving an apology, reparation for the harm caused and an assurance that there will not be a reoccurrence. Restorative cautions or conferences provide the offender with the opportunity to take responsibility and account for their actions. The restorative approach empowers them to express genuine remorse, to apologise directly to the victim and make some form of reparation financial or otherwise. It further empowers offenders to address underlying problems, which they may be having, and provides them with the opportunity to work with their parents and authorities to fully integrate themselves back into society.

FINDINGS

Restorative Justice provides the Criminal Justice System with an alternative means of dealing with crime control. However in Ireland it is only legal at present to deal with matters relating to juvenile crime through convening restorative events. The benefit of restorative justice for society and the criminal justice system is that it has implications for social control in the form of reducing future rates of crime. The juvenile offenders of today are the major criminals of tomorrow. For offenders, restoring a sense of security and empowerment can rebuild their confidence in
finding employment, achieving educational success, sporting success and of feeling confident and secure in the future. Through rehabilitation and reintegration rather than traditional punitive measures offenders come to realise that there is nothing to be gained from leading a life or crime. The restorative justice philosophy involves all of those affected by the criminal behaviour be they victims, offenders, the families involved or the wider community all play their part in resolving the issues that flow from the offending. As Braithwaite contends the restorative justice process empowers all parties to restore the deliberative control of justice by its citizens (Braithwaite, cited in Johnstone et al, 2003:87).

The following elements are influential in encouraging future law abiding behaviour from offenders. Firstly in order for offenders to fully partake and benefit from the restorative event they are required to express remorse, during and after the event by remembering the event, completing the tasks set down in the agreement, feeling sorry for what they have done, showing it and feeling that they have repaired the harm they have caused. Offenders should be shamed but not stigmatised, they should not be made to feel like they are a bad person and they should be forgiven and accepted by society. Offenders should fully participate in the restorative events especially in the decision making process and finally meeting with the victim and apologising to him or her. Restorative Justice provides an opportunity to achieve a fairer and more satisfactory criminal justice system for all members of society. Restorative Justice Principles are making slow but steady progress in Ireland. There is a growing acknowledgement among professionals and academics that we need to develop other responses to crime. The Restorative Justice process has much to offer as it centres on the greater use of non custodial sentences will bring about changes not only in the law but will have significant implications for social control.

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4. OVERSIGHT OF PRISON CONDITIONS AND INVESTIGATION OF DEATHS IN CUSTODY: INTERNATIONAL HUMAN RIGHTS STANDARDS AND THE PRACTICE IN IRELAND

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This article looks at the mechanisms currently available in Ireland for the oversight of prison conditions and for investigating deaths in custody in Ireland. It further analyses those against international human rights standards. The setting up of appropriate oversight and investigative mechanisms is increasingly important in the context of the deteriorating conditions in Irish prisons which have been regularly criticised by international bodies such as the European Committee for the Prevention of Torture. This article concludes that some significant reforms are needed in Ireland in this respect to ensure effective protection of prisoners’ rights.

Key words: prisons; oversight; inspection; deaths in custody; international human rights; prisoner ombudsman.

INTRODUCTION

The prison population in Ireland is on the rise, with the number of prisoners in the State doubling in recent years. Despite the significant expansion of the prison estate in the same period, the system experiences chronic overcrowding and the physical conditions, as well as regimes in many prisons, remain poor. Regular independent oversight of prisons is one of the fundamental principles of human rights-compliant prison policy. At a time when the prison system is under continuous significant pressure, such oversight is even more important to ensure that the rights of those in the custody of the State are effectively protected. In Ireland, despite some encouraging developments in this area, the system of independent oversight of prisons remains underdeveloped. This situation impacts negatively on the protection of prisoners’ rights, and often leaves prisons beyond the reach of external independent mechanisms ensuring transparency of State practices. The lack of such system is most acutely noticeable in cases of deaths in custody where currently there is no
mechanism to investigate systemic issues that may have contributed to the death. Lessons from violent incidents for the practice in prisons are therefore potentially lost. The first part of this article briefly describes the current situation in prisons in Ireland to provide a background to the analysis of available oversight mechanisms. I then go on to a more detailed analysis of such mechanisms in the context of international human rights standards, including those pertaining to investigations of deaths in custody. I argue that existing systems of prison oversight and investigation of deaths available in the jurisdiction are not fully compliant with international human rights obligations. I conclude that there is an urgent need in Ireland for the establishment of an Office of Prisoner Ombudsman (or a similar dedicated body) with a remit of investigating individual complaints from prisoners, as well as investigating deaths in prison custody in Ireland to bring such system into compliance.

IMPRISONMENT IN IRELAND: POLICY AND PRISON CONDITIONS

*Imprisonment in Ireland – facts and figures*

The daily prison population in Ireland has more than doubled in the last 20 years, from 2,100 prisoners in 1990 to over 4,300 in June 2010, and continues to grow. The same increased by over 400 prisoners between June 2009 and June 2010 alone, bringing the rate of imprisonment up to 97 per 100,000. Additionally, nearly 950 people were on Temporary Release (TR) in the community in June 2010 (The Irish Times, June 21, 2010). This adds up to over 5,200 people who are subject to custodial sanctions.

Ireland also continues to have a very high rate of committals to prison. Over 13,500 people were committed to prison in 2008 (Irish Prison Service, 2009), up from 11,934 in 2007 (Irish Prison Service, 2008). Nearly 80% of committals are for sentences less than 12 months, with 60% for less than six months (Martynowicz and Quigley, 2010).

The continuous increase in the prison population occurs in the context of significant expansion of the prison estate with the building of 1,720 new prison places since 1997 and a further planned expansion with the building of new prisons at Thornton Hall in Dublin and Kilworth near Cork (Irish Prison Service, 2009). The expansion significantly increases the cost to the State, and has not so far resulted in improved conditions, or indeed resolved overcrowding in the system.
Cost of imprisonment and re-imprisonment rates

Imprisonment in Ireland is the most expensive in Europe. One prison place costs on average €92,717 per year (Irish Prison Service, 2009). This cost does not necessarily translate into high quality facilities with high quality provision of rehabilitative services. In many of the prisons the opposite is true. The Irish prison system is chronically overcrowded and both the prisons, as well as service providers from outside agencies in the statutory and voluntary sector, struggle to engage with the vast majority of prisoners in a meaningful way despite marked improvements in service provision in recent years (Martynowicz and Quigley, 2010). One of the effects of this failing prison policy is the high rate of re-imprisonment, with nearly 50% being re-imprisoned within 4 years (O’Donnell, et.al., 2008). Provision of support is also made more difficult by the physical conditions prevailing in many of the facilities.

Conditions in Irish prisons

The number of prisoners in Ireland almost permanently now exceeds the number of available prison places. On 25th June 2010, the number of prisoners in custody was 4,317. On the same day, the reported ‘bed capacity’ of the prison estate in Ireland was 4,066 spaces. However, official ‘bed capacity’ figures – achieved by ‘doubling-up’ of prisoners in cells designed for single occupancy - hide the fact that the design capacity of the prisons is significantly smaller. Throughout 2008, almost half of the 14 Irish prisons operated above their bed capacity, with the Dóchas Centre (women’s prison in Dublin) operating at 122% and Mountjoy Prison (male) at 109% (Irish Prison Service, 2009). This meant accommodating prisoners in areas such as prison showers (Inspector of Prisons, 2009b). The physical conditions in prisons in Ireland, as well as poor regimes prevailing in the system, have been subject to a long-standing criticism by international and national monitoring bodies. Following its visit to Ireland in 1998, the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment (the CPT) expressed the view that it was “unlikely that providing additional accommodation will alone provide a lasting solution to the problem of overcrowding.” (CPT, 2000) At the time, the CPT called on the Irish authorities to put in place a multifaceted strategy to address prison overcrowding. Following its visits in 2002 and in 2006, the CPT again noted the ongoing overcrowding, and also commented on the fact that the operational ‘bed capacity’ of the system was being inflated far above its design capacity (CPT, 2003; CPT, 2007).
Reference was made to poor material conditions which exacerbate the problems faced by prisoners and staff alike, including with access to meaningful activity and access to available services. Far from improving, the overcrowding problem became more acute since the last CPT visit, with all 14 establishments running well above the design, as well as above the operational ‘bed capacity’. It can be therefore expected that the CPT will again raise this issue with the Government in their report following a visit to Ireland in January 2010. Overcrowding and poor physical conditions have also been subject to a long-standing criticism nationally. In his Annual Report for 2008, the Inspector of Prisons assessed the physical conditions resulting not only from overcrowding, but also from lack of adequate sanitary facilities, as ‘inhuman and degrading’ (Inspector of Prisons, 2009b). In the more detailed report on Mountjoy Prison in 2009, of particular concern were his findings regarding holding of large number of prisoners in the reception area of the prison (Inspector of Prisons, 2009e). Not only were the conditions in these cells found to be grossly inadequate (lack of drinking water, dirty and limited toilet facilities), they were also potentially dangerous to prisoners due to the limited opportunity for observation of what is happening in parts of the cells. Considering the high levels of violence in Irish prisons, this is of real concern.

**Violence in Irish prisons**

In 2006, the CPT was very concerned about the high levels of inter-prisoner violence in prisons and described the situation in three of them as ‘unsafe’ (CPT, 2007). The CPT noted the death of Gary Douch in Mountjoy Prison in August 2006 (see below), and linked it directly to the lack of safety in the establishment, as well as to the absence of individualized risk assessments before placing prisoners in holding cells (CPT, 2007, at paragraph 38 et seq). The CPT went on to stress the duty of care owed by the authorities to detainees in their charge, and the need to act in a proactive manner to prevent inter-prisoner violence. Unfortunately, the 2009 report by the Inspector of Prisons documented that the situation in Mountjoy prison regarding risk assessment has not improved, and that the risk concerning vulnerable prisoners was still not being appropriately managed (Inspector of Prisons, 2009e). Violent incidents continued to be a reality in the prison; one such incident resulting in the death of David Byrne in July 2009.iv

*Prisoners ‘on protection’*
Related to the issue of violence, or threats of violence in prisons, is the need for prisoners to seek separation from other prisoners for safety reasons. Concerns about the number of prisoners on protection in Irish prisons continue, despite being expressed for a considerable time (CPT, 2007; Inspector of Prisons, 2009b). While some solutions have been introduced by the Irish Prison Service in 2010 (for example, a new unit for prisoners on protection was opened in Mountjoy Prison in Dublin), there is still no uniform approach to providing protection across the system. The Inspector of Prisons noted in his *Annual Report 2008* that on the 24\(^{th}\) February 2008, there were 825 prisoners on protection in 9 prisons (Inspector of Prisons, 2009b). This constituted 22% of the overall prison population on that date. A snapshot provided by the Irish Prison Service in their *Annual Report* puts the average proportion of prisoners on protection at 20% of the overall prison population (Irish Prison Service, 2009)\(^{v}\). While necessary in the circumstances of often serious and immediate threat to prisoner safety, the ‘protection regime’ in practice means a very limited out-of-cell time; extremely limited access to education and any meaningful activity (Inspector of Prisons, 2009b). At a time when the prison system is under continuous significant pressure, as evidenced above, independent oversight has to play a significant role in ensuring that the rights of those in the custody of the State are effectively protected. The following section therefore looks at the mechanisms available currently in Ireland.

**CURRENT OVERSIGHT MECHANISMS**

*International obligations*

Monitoring and inspection of places of detention, as well as the establishment of an independent external mechanism for review of prisoners’ complaints, are central to the protection of human rights of prisoners (IPRT, 2009b). By ratifying a number of international human rights treaties, Ireland undertook to treat all persons in any form of detention with dignity and with respect for their human rights (IPRT, 2009a). All such instruments, as well as customary international law, require that Ireland effectively prevents torture or inhuman or degrading treatment or punishment in its prisons (IPRT, 2009a; 2009b). The importance of inspection and independent monitoring to the oversight of practice in prisons to provide such protection cannot be overstated, and is highlighted in the European Prison Rules 2006 (EPR 2006, Rule 9).
At national level, the European Convention on Human Rights (ECHR) Act 2003 made the provisions of the ECHR directly enforceable through Irish courts, and is of direct relevance to the protection of prisoners’ rights. Additionally, the 2003 Act placed an obligation on all organs of the State, including the Irish Prison Service, to act in a manner compatible with the State’s obligations under the ECHR (IPRT, 2009a). Effective protection of the rights of prisoners in the State requires that independent accountability structures be in place (IPRT, 2009b).

**Elements of effective oversight**

To enable appropriate control of the prisons, an effective system of external oversight should fulfill three distinct functions:

a) Preventive function: an inspection regime should deter and prevent violations of rights inside the prisons.

b) Improvement function: bodies authorised to visit places of detention should have the power to publish their findings, and make recommendations for improvement to practices found to be in breach of human rights standards and/or in breach of law governing the management of prisons on the national level. Publication of reports should not be subject to ministerial control, and a follow-up mechanism should exist to ensure the effective implementation of recommendations made.

c) Individual complaints review function – the system of external oversight should include an easily accessible mechanism for external and independent review of individual complaints brought forward by prisoners. Access to the courts, as a lengthy process often limited by its complexity and high cost, cannot be seen as sufficient in this regard (IPRT, 2009b).

**Oversight mechanisms in Ireland**

Two mechanisms of oversight operate currently in Ireland. The statutory inspection of prison conditions and their management is provided by the Office of the Inspector of Prisons. Additionally, each prison has its own Visiting Committee made of members of the community who provide oversight on a voluntary basis. The functions of each of those are discussed in more detail in the next sections.
The Office of the Inspector of Prisons was established in 2002, and placed on a statutory footing by the Prisons Act 2007 (2007 Act). The Minister for Justice, Equality and Law Reform appoints the Inspector (Section 30(2)(c) of the 2007 Act). The 2007 Act states that the Inspector is independent in the performance of his or her functions. The Inspector enjoys unfettered access to places of detention and can request any documents he considers relevant. The Inspector may also investigate any matter arising out of the management or operation of a prison. The Inspector of Prisons carries out announced and unannounced inspections to all prisons, not only during business hours but also at night (Inspector of Prisons, 2009a; 2009b). Reports of such inspections, as well as an annual report on the Inspector’s activities, are presented to the Minister for Justice and Law Reform who in turn is obliged to lay a copy of each report before the Oireachtas, the lower house of the Irish Parliament (The Dáil). While the 2007 Act states that reports should be laid before the Oireachtas “as soon as practicable” after their receipt from the Inspector, these have been delayed in the past. The previous Inspector, the late Judge Kinlen, also expressed concerns about the restrictions on the content of such reports (Inspector of Prisons, 2007). The 2007 Act allows the Minister to omit any matter from any report where he or she is of opinion that: its disclosure may be prejudicial to the security of the prison or the State, its disclosure would be contrary to the public interest, or that it may infringe the constitutional rights of any person (Sections 31(4) and 32(4) of the 2007 Act). Delays in recent years in the publication of Inspector’s reports by the Minister for Justice and Law Reform, as well as the existence of ministerial powers to redact parts of any report are of concern.

While providing the outline of the general areas that should be subject of inspection, the 2007 Act fails to provide any further direction as to what measures (or benchmarks) should be used to assess the situation in prisons. Recognizing this gap, the current Inspector of Prisons published his Standards for the Inspection of Prisons in Ireland on the 24th July 2009, as well as supplementary set of standards for the inspection of the conditions in which 16-17 year old boys are held in St. Patrick’s Institution on 1st September 2009 (Inspector of Prisons, 2009c; 2009d). In their current form, the Standards for Inspection of Prisons in Ireland are not legally binding, although they are based on the requirements of national and international law that the Irish Prison Service is obliged to observe. While he enjoys significant powers
in relation to oversight of prison conditions and management, the Inspector of Prisons is expressly precluded in the legislation from investigating or adjudicating on individual complaints from prisoners, although he or she may examine the circumstances relating to such complaint (Section 31(6) of the 2007 Act). The Inspector used this power recently in relation to complaints lodged by prisoners in Mountjoy Prison (Inspector of Prisons, 2009e) where he found significant delays and lack of effectiveness in their resolution. This has led the Inspector to recommend that an external body with a remit to receive individual complaints should be considered (Inspector of Prisons, 2009e). It is difficult to assess the impact of inspections carried out by the Office. While some very considerable criticism has been expressed by the Inspector regarding the situation in Irish prisons in the published reports (Inspector of Prisons, 2009b; 2009e), some findings escape public scrutiny when the situation is resolved by negotiation with the Irish Prison Service in between – or during – inspections (Inspector of Prisons, 2009b) which take considerable time to conclude. The passage of time in between reports on individual prisons also impacts on the way in which the implementation of recommendations can be assessed on a regular basis. While the work of the Inspector of Prisons in recent years enhanced the public knowledge regarding systematic issues facing the prisons, examples of difficulties in the implementation of the Inspector’s recommendations are evident. One such example is the still unresolved overcrowding in Mountjoy Prison in Dublin where in 2009 the Inspector recommended that no more than 540 people are held there at any given time to ensure their safety. In June 2010, the population in the prison reached nearly 700 prisoners.

**Visiting Committees**

The system of monitoring by the Prisons Visiting Committees was established in 1925 under the Prisons (Visiting Committees) Act (1925 Act) of the same year. Each prison establishment has its own Committee, whose members are appointed by the Minister for Justice, Equality and Law Reform for a term of three years. The 1925 Act outlines the duties and powers of the Committees which include the duty to visit the prison frequently and at regular intervals, to hear complaints from prisoners, to report to the Minister any abuses observed or found in the prison, and to report to the Minister any matters that the Committee feel needs to be brought to his or her attention. In accordance with the 1925 Act, members of the Visiting Committees are
entitled to visit prisons at all times, and should be given access to any person in the prison if they so require (Section 3(2)). A prisoner can also request a meeting with the Visiting Committee or an individual member of it through the Governor of any prison (Section 56 of the Prisons Act 2007). The Visiting Committees report annually to the Minister of Justice and Law Reform. Monitoring of prisons must be conducted independently from the bureaucratic operation of the prison system (van Zylt Smit and Snacken, 2009). Such independence should encompass not only independence guaranteed in law (statute) but also organisational, *de facto* independence, including by provision of funding separate from budgets of the prison system or its parent Government department (van Zylt Smit and Snacken, 2009). As the membership of Visiting Committees is by government appointment, they cannot really be viewed as an independent monitoring mechanism as required by international standards (Hamilton and Kilkelly, 2008). While the 1925 Act states that members of the Visiting Committees can hear complaints from prisoners, their function does not include a formal power to adjudicate on such complaints or to make any binding recommendations to the Governor or any other member of the Prison Service. While recognizing the fact that the Visiting Committees currently report on some important issues such as overcrowding in prisons, their function and effectiveness has been questioned in the past, particularly as their annual reports are seen as providing very few details of the visits undertaken and rarely outlining the nature of complaints made by the prisoners and the outcomes of such complaints (O’Donnell, 2008; Rogan, 2009). Many of those shortcomings in the functioning of the Visiting Committees in Ireland are structural, and relate to the lack of effective powers for the Visiting Committees and the absence of any mechanism for implementation of their recommendations or a follow-up to their observations (Rogan, 2009). An overall reform of the system of Visiting Committees is therefore needed.

**Individual complaints**

One of the most glaring gaps in the system of oversight of prison conditions in Ireland is the lack of an individual complaints mechanism to a body independent of the Government and the Irish Prison Service. The European Prison Rules 2006 (EPR 2006) require that prisoners are provided with ample opportunities to make requests and bring complaints to the prison management, as well as any other competent authority (Rules 70.1 to 70.7). Prisoners should also be provided with an opportunity
to appeal to an independent body should they be dissatisfied with the solution reached or if their requests are denied by the prison authorities (Rule 70.3). Currently in Ireland, the Prisons Act 2007 (the 2007 Act) outlines the procedure to be followed in cases of breaches of discipline by a prisoner, but is silent on the issue of prisoners bringing a complaint to the authorities. An internal process whereby a prisoner can request a meeting with a governor to make a complaint is instead outlined in Rules 55 to 57 of the Prison Rules 2007 (the Prison Rules). The Prison Rules require the governor to record all the details of an individual complaint and detail of any decision and/or action that follows. While not an appeal process, Rule 57 gives a prisoner who is not satisfied with the governor’s decision an opportunity to request a meeting with the Minister for Justice and Law Reform (or his or her officials). There is no process available to make an appeal to external, independent body. In practice, very little is known about the nature of complaints lodged within the prisons by prisoners; little is also known of their outcomes. In 2007, the CPT in its report on Ireland noted that “many prisoners did not have confidence in the complaints system and did not wish to file a complaint, even if it involved ill-treatment” (CPT, 2007). The report went on to state:

The CPT is of the view that an independent complaints system should be established to deal with all prisoner complaints. Such a system would reinforce prisoners’ confidence in the complaints mechanism […] (CPT, 2007, para.37)

Despite the Government’s statement during the CPT’s 2006 visit to Ireland that consideration will be given to the establishment of such mechanism (CPT, 2007, para.37), and despite the recent comments by the Inspector of Prisons supporting such development (Inspector of Prisons, 2009e), to date no progress has been made in this regard.

**DEATHS IN CUSTODY: INVESTIGATIVE MECHANISMS**

As is evident from the analysis above, the system of monitoring prisons in Ireland has significant shortcomings, particularly in relation to the recording and investigation of systemic breaches of rights. In the context of the worsening situation in Irish prisons, this is of concern. The lack of a dedicated oversight mechanism capable of recording systemic issues is, however, most acutely felt in relation to investigation of deaths in
prison custody in Ireland. The following sections, therefore, discuss the nature of the investigative mechanisms available currently and their compliance with international human rights standards.

International human rights standards for the investigation of deaths in custody

When a death occurs in custody, effective mechanisms of investigation must be in place to uncover all circumstances in which the death took place and, if necessary, hold those who may be responsible for such deaths to account. Such mechanism is required by Article 2 of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights (ECtHR) and national courts in other jurisdictions. Such investigation should go beyond the mere apportioning of blame to the direct assailant or assailants, or, in cases of suicide in custody, beyond the establishment of the fact that the prisoner took his or her own life. An investigation into such deaths must look at all circumstances which may have contributed to the loss of life, including the management of the prison and behaviour of prison staff (systemic issues). When deaths occur in custody, it is the duty of the State to provide a satisfactory and convincing explanation as to the circumstances and causes of such death (Salman v Turkey, (2000) 34 EHRR 17). The requirements for an effective investigation of deaths in custody were set out in the case of Jordan v UK in 2003 in which the ECtHR stated that for such investigation to be seen as effective and independent, a number of elements must be in place:

a) the investigation must be undertaken on the State’s own initiative;
b) it has to be capable of leading to a determination of responsibility and the punishment of those responsible;
c) the investigation has to be independent both institutionally and in practice;
d) it has to be prompt;
e) the investigation has to allow for sufficient public scrutiny to ensure accountability; and
f) the next-of-kin has to be allowed to participate in the process (Jordan v UK (2003) 37 EHRR 2).

In Ireland, deaths in custody are normally subject to investigation by the Garda Síochána (Irish Police) if the involvement of a third party is suspected, and/or an inquest into such death is held by the coroner under the Coroners Act 1962. More
recently, a Commission of Investigation has been established in 2007 to investigate the death of Gary Douch (see below) in Mountjoy Prison in August 2006; his death was also the subject of an internal investigation led by a former official of the Department of Justice, Equality and Law Reform Mr Michael Mellet.\textsuperscript{vii} I would argue that currently the cumulative effect of the law and practice concerning investigations into deaths in custody falls short of the requirements of the ECHR, particularly in relation to the involvement of the next-of-kin in the process; the ability to establish responsibility, if any, of the Irish Prison Service and/or other statutory bodies; and the ability to examine the wider context in which the death took place, or any systemic issues. Reasons for such a conclusion are outlined below, together with a more detailed analysis of the individual elements of an effective investigation.

\textit{Criminal proceedings and internal investigations.}

Criminal proceedings do not usually provide an opportunity for examination of systemic or contextual issues going beyond the establishment of individual criminal responsibility in cases of deaths in custody where a specific assailant can be identified. In a UK’s House of Lords ruling in \textit{ex parte Amin} in 2003, Lord Bingham stated that while criminal proceedings may in some cases provide such an opportunity, this would usually happen when a defendant pleads not guilty, and the trial involves full exploration of the facts of the death. This will not necessarily be so in cases where the defendant pleads guilty, the full trial with a disclosure of all evidence and contextual information does not take place, and there is no additional forum where to investigate other circumstances. Full examination of all the circumstances of death may also not be possible if there are doubts about the mental state of the accused individual, and questions arise as to his or her ability to stand trial (\textit{Regina v Secretary of State for the Home Department (Respondent) ex parte Amin (FC) (Appellant)}, [2003] UKHL 51).

Internal processes – such as internal investigation by the Irish Prison Service or a person appointed by the Minister – will rarely have the potential to fulfill the requirements of Article 2 for an effective and independent investigation due to their inherent characteristics. Inquiries set up by the authorities whose actions are subject to an investigation do not, however, always fall short of the requirements of Article 2 of the ECHR. Indeed, in the case of \textit{Edwards v UK} (2002; EHRR 487) the ECtHR found that the inquiry set up by the Prison Service, Essex County Council and North Essex Health Authority was independent in practice as it was headed by a senior member of
the Bar, with judicial experience, who led a team of experts in the prison, police and medical fields. In this case, the issue of independence was overcome in practice by the use of individuals not connected to the authorities implicated in the case. The inadequacies criticized by the Court lay in other areas, such as the lack of powers to compel witnesses. For internal investigation to fulfill the requirements of Article 2, it is necessary that they have all the elements outlined above; this is rarely the case. Other mechanisms should, therefore, be in place to ensure compliance. In Ireland, the two mechanisms with such potential are coronial inquests and Commissions of Investigations. As outlined in the next sections, however, they too currently fall short of the requirements of international human rights law.

Coronial inquests into deaths in custody and the use of Commissions on Investigation/Compatibility with the requirement of investigation being undertaken on the State’s own initiative and of it being independent

In Ireland, under the current legislation governing coronial inquests (the Coroners Act 1962; the 1962 Act), while there exists a general duty to hold an inquest into a death, there is no specific duty on the face of the law to hold an inquest into all deaths occurring in prison custody. This is in contrast to regulations in place in England and Wales, or Northern Ireland, or indeed in contrast to the new statutory regulations regarding inquests in Ireland proposed in the Coroners Bill 2007. The lack of an automatic trigger for investigation of all deaths in custody on the State’s own initiative is therefore of concern. This gap is not rectified by the potential to establish a Commission of Investigation to look into the death. According to the Commissions of Investigation Act 2004 (the 2004 Act), it is a Minister who proposes that such a Commission be established to investigate “any matter considered by the Government to be of significant public concern” (section 3.1.a of the 2004 Act). The legislation does not specify what can be understood as “significant public concern” and Commissions are established on an ad-hoc basis. While the reasons for establishing a Commission are subject to the scrutiny of the Oireachtais, it is of concern that the decision regarding the framing of the terms of reference for a Commission is left to the relevant Minister as this raises questions about the actual independence of a Commission. Considering the nature of the detailed provisions regarding the setting of the terms of reference in the legislation, the process may also raise questions in relation to the level of ministerial control of the Commission’s remit. This concern is
not entirely alleviated by the provisions of section 9 of the 2004 Act stating that “a commission will be independent in the performance of its functions”.

Compatibility with the requirement of promptness
Under the 1962 Act, the coroner is under an obligation to adjourn the inquest on the ground that criminal proceedings are taking place in relation to the death. If the inquest is adjourned in such circumstances, the coroner may decide not to resume an inquest after the criminal proceedings conclude, unless he thinks that there are special reasons to do so. The current provisions do not specify what such ‘special reasons’ may be. An obligation to adjourn an inquest until such time as criminal proceedings are closed may lead to significant delays in establishing all the circumstances of the death. Additionally, if an inquest is not resumed following the conclusion of criminal proceedings and considering the limitations of criminal process in situations mentioned above, a number of circumstances of a death in custody could still potentially be left to be investigated. One of the foremost concerns regarding an investigation by a Commission of Investigation of a death in custody promptly is the need for it to adjourn proceedings for as long as criminal process is taking place regarding any assailants or alleged perpetrators. This is a limitation similar to that imposed on a Coroner as explained above.

Compatibility with the requirement that an investigation be capable of establishing responsibility and liability
The powers of investigation currently conferred upon the coroner by the 1962 Act are limited, and include the power to summon witnesses but not to discover documents or enter premises to examine them first hand. The coroner is explicitly precluded in the legislation from considering any questions of civil or criminal liability and inquests are confined by law to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when and where the death occurred (section 30 of the 1962 Act). The coroner is also precluded from returning a narrative verdict, and therefore from addressing wider, systemic issues relating the death and the circumstances in which it occurred. The coroner is also precluded from giving a verdict that would censure or exonerate any person (section 31 (1)). He or she is able to “make recommendations of a general character designed to prevent further fatalities” which may be appended to the verdict (section 31.2); however, there are
currently no regulations regarding the implementation of such recommendations, or any duty on the part of State to implement the Coroner’s verdict in this respect. The Commissions set up under the 2004 Act have wide power of investigation, including the power to subpoena witnesses and documents, the power to enter and examine premises, and the power to apply to the court to issue a direction to comply in cases of refusal to provide statements or documents. The Commissions are also given a general power to conduct the investigations in a manner that they consider appropriate in the circumstances of the case (section 10.1 of the 2004 Act). This is an important guarantee of procedural independence. As is the case with the coroner, however, the Commission does not have to power to establish civil or criminal responsibility regarding the circumstances of the case.

Compatibility with the requirement for the involvement of the next of kin

At the moment, the 1962 Act does not expressly provide for involvement of the next-of-kin in the inquest, although such involvement may be afforded in practice. There is no explicit provision for the next-of-kin to ask questions at the proceedings, or to put them through their representative. The courts in Ireland found, however, that the next-of-kin have the right to participate in an inquest and be heard during the proceedings (*The State (McKeown) v Scully*, [1986] 1 IR 524) on the basis of natural and Constitutional justice. In practice, therefore, the family and/or the next-of-kin are treated as “properly interested persons” for the purposes of the inquest, and may personally examine a witness or be legally represented by a solicitor or a barrister. Their involvement is, however, often limited due to lack of legal aid in inquest proceedings (*Magee v Farrell and ors* [2009] IESC 60), and limitations on disclosure of certain categories of documents that are available to the Coroner. The 2004 Act makes no provision for the involvement of the next-of-kin in the proceedings (other than possibly giving direct evidence to the commission) or for legal representation of the next-of-kin before a Commission of Investigation. While there is a potential to involve the next-of-kin at the stage of draft report (under section 34 of the 2004 Act) and invite them to make comments and suggest amendments to the draft report, this in no way equates to the opportunity for the next-of-kin to cross-examine witnesses or examine documents presented during the investigation or to at least put questions through the Chair. The Commission can make its own procedural rules and, presumably, would be able to provide for such involvement on the basis of those. As
with the Coroner, however, legal representation of the family and the provision of legal aid to enable the next-of-kin to take part effectively in the proceedings should be guaranteed by statute. This is not the case currently.

Compatibility with the requirement of the investigation being subject to a sufficient level of public scrutiny

While coronial inquests are public in principle, the proceedings of a Commission of Investigation take place in private (except in very exceptional circumstances) and as such, particularly in situations which give rise to the gravest concern such as in the death of a prisoner, may not in themselves ensure sufficient public scrutiny to comply with Article 2 of the ECHR. Under current legislation, a Commission does not have inherent power to publish its own report. The decision to make the report public rests with the Minister for Justice who is required to publish the report, but may apply to the High Court for directions if s/he considers that publication might prejudice any criminal proceedings (section 38 of the 2004 Act). Public disclosure, both of evidence and findings, is vital to ensure that all circumstances surrounding the death, and in particular policies and practices that may have contributed to the death, are brought to public notice. As it stands, the current regulations do not guarantee that this will be the case.

The death of Gary Douch

The shortcomings of the current system of investigation of deaths in prisons in Ireland have been brought starkly to the fore following the death of 21 year old Gary Douch in Mountjoy Prison in Dublin in August 2006 (Irish Prison Service, 2007). Mr Douch, who asked to be placed ‘on protection’ fearing for his safety, was brutally assaulted by another prisoner (Stephen Egan) in a cell which held five other prisoners. Mr Egan had a history of mental illness and was discharged from the Central Mental Hospital back to the prison just two weeks before. The reaction to the death in official circles was swift. The Minister immediately appointed Mr Michael Mellet, a former senior civil servant of the Department of Justice, Equality and Law Reform, to investigate the circumstances of Mr Douch’s death and to make recommendations. The findings of that first investigation have never been released into the public domain and remain unavailable. The main recommendation, however, has been published and referred to the changes in the way in which requests for protection are handled by the Irish Prison
Service (Irish Prison Service, 2007). In April 2007, recognizing that the Mellet report raised serious concerns in relation to the management of the prison and the safety of prisoners, the Minister established a Commission of Investigation to further look into the circumstances of Mr Douch’s death and to make recommendations for policy and practice that are needed to avoid further incidents. The Commission’s work has been delayed by the criminal process regarding Mr Egan, and full hearings of the investigation only started in 2009. Four years after Gary Douch’s death, the Commission of Investigation is yet to report its findings and the publication of the report may be further delayed by the need to consult the draft report with all those whose testimony is included and/or whose names are included in the report. In contrast, investigations by the Prisoner Ombudsman into a number of deaths in custody in Northern Ireland have been finalized and reports published within a relatively short time after a death, enabling work on the implementation of recommendations to prevent further incidents.\textsuperscript{xii}

**A PRISONER OMBUDSMAN FOR IRELAND?**

Considering the gaps in other complaints and/or investigative mechanisms currently available in Ireland, I would argue that an Office of Prisoner Ombudsman should be established and empowered to consider individual complaints from prisoners and investigate all deaths occurring in the custody of the Irish Prison Service. Similar bodies exist, for example, in Northern Ireland and in England and Wales, and contribute significantly to the protection of prisoners’ rights and transparency of practice in the penal system. While the Offices in England and Wales, as well as in Northern Ireland, are yet to be placed on statutory footing, both have all been given a remit to investigate all deaths in custody (in 2004 and 2005 respectively), and already conducted a number of in-depth investigations. Such investigations form an important part of a system that overall brings investigations of deaths in prisons closer to full compliance with the ECHR. Activities of the Ombudsmen in this respect build up knowledge of prison policy and practice, and can provide guidance on good practice in death prevention. Such investigations also should involve less delay than criminal investigations, or investigations undertaken by ad-hoc tribunals, as well as being more cost-effective. The statutory functions of a Prisoner Ombudsman should include a duty to automatically investigate all deaths in custody, as well as a duty to provide
appropriate liaison with the family or another next-of-kin including exchange of information and provision of assistance in relation to the process and outcomes of an investigation. The State should be legally required to implement any recommendations stemming from death investigations, or indeed if systemic issues are uncovered through the analysis of individual complaints from prisoners. It is important to note here that in Ireland the Garda Síochána Ombudsman Commission already investigates all deaths in police custody and could be a useful model for the creation of a Prisoner Ombudsman (Section 102, Garda Síochána Act 2005). The creation of an independent body with a remit to review all deaths in custody of the Irish Prison Service would ensure the equality of treatment, as well as appropriate levels of accountability, across the various agencies responsible for custody of individuals coming into contact with the criminal justice system.

CONCLUSIONS

While certain improvements in the system of monitoring of prison conditions in Ireland can be noted with the placing on a statutory footing of the Inspector of Prisons, I conclude that the system of independent monitoring of prison conditions continues to have serious shortcomings and fails to meet fully the requirements of international human rights standards in this area. These shortcomings are most acute in cases of deaths in custody where the currently available mechanisms rarely give an opportunity for the investigation of systemic issues that may have contributed to the death, such as overcrowding, lack of risk assessment, mismanagement of safety procedures, etc. The current system in Ireland can also be criticized for its unequal treatment of those who are kept in police custody – and who have the right of complaint to the Garda Ombudsman Commission – and those who are held in prisons. In relation to the investigation of deaths in custody, some important improvements will be brought about with the passing into the law of the Coroner’s Bill 2007 which introduces significant changes to the system of coronial inquests in Ireland. In particular, changes will be made to the way in which coroners are informed about a death in custody; the involvement of the next-of-kin and to legal aid. Most importantly, under the Bill, coroners will be in a position to give a narrative verdict, and include in their judgments recommendations with an implementation plan. While those important changes will unquestionably improve the current situation and
bring the system closer to full compliance with international human rights standards, it has to be kept in mind that inquests will remain limited to individual cases. It is unlikely, with the resources available to coroners, that they could be required to report on systemic issues arising from more than one case at a time. Such function should therefore be given to an Office of Prisoner Ombudsman with a remit to make recommendations on systemic issues arising in the context of prison custody in Ireland. More immediately, the Prisoner Ombudsman should be given a remit to investigate individual complaints from prisoners. Such accountability mechanism would ensure that prison conditions are regularly monitored and that systemic breaches of rights can be identified across the system and remedied as necessary on an on-going basis and in co-operation with other oversight bodies, such as the Inspector of Prisons. Establishment of such an office would ensure the implementation not only of the recommendations of national human rights organisations in Ireland, but also of international monitoring bodies such as the European Committee for the Prevention of Torture. Most importantly, however, appropriately established office of a Prisoner Ombudsman would ensure that the rights of prisoners are effectively protected. This would be a marked improvement on the situation currently.

REFERENCES

*Books, articles and position papers:*


**Reports:**


Press and media:

Cases:
Regina v Secretary of State for the Home Department (Respondent) ex parte Amin (FC) (Appellant), [2003] UKHL 51.
The State (McKeown) v Scully, [1986] 1 IR 524.
The daily population figure for 25th June 2010 was 4,317 (information supplied to the Irish Penal Reform Trust by the Irish Prison Service on request). On the same day, the number of people on Temporary Release from prison was 941. The last recorded figure for the estimated general population was 4,459,300 in April 2009.


The daily population figure for 25th June 2010 was 4,317, whilst the official ‘bed capacity’ for the same day was 4,066 (information supplied to the Irish Penal Reform Trust by the Irish Prison Service on request).

Mr Byrne died following an attack by a group of prisoners which took place in June 2009.

The snapshot relates to population numbers on the 5th December 2008.

For example, the Inspector’s Annual Report was submitted to the Minister on the 6 May 2009 (see: http://www.inspectorofprisons.gov.ie/en/IOP/Pages/annual_report_2009_presented, and only published by the Minister on the 14th August 2009, with a four-month delay (see: http://www.inspectorofprisons.ie/en/IOP/Pages/News_&_Events, last accessed on 2nd July 2010).

The name of the Department was changed in 2010 to ‘The Department of Justice and Law Reform’.

The lack of narrative verdict was found to impede the capacity of an inquest in England and Wales to be an appropriate vehicle fulfilling the requirements of Article 2 in cases of deaths in custody, see: Regina v Secretary of State for the Home Department (Respondent) ex parte Amin (FC) (Appellant), [2003] UKHL 51, at para. 64.


See: Ramseyer v Mahon [2005] IESC 82, where the Court decided in favour of the Appellant regarding the need for disclosure of witness statements by the Coroner.

For reports into deaths in custody published by the Prisoner Ombudsman for Northern Ireland see: http://www.niprisonerombudsman.gov.uk/publications.html (last accessed on 2nd July 2010).
5. ‘NOBODY’S PRETENDING THAT IT’S IDEAL’: CONFLICT, WOMEN AND IMPRISONMENT IN NORTHERN IRELAND

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Based on primary qualitative research with women prisoners in Northern Ireland (conducted for the Northern Ireland Human Rights Commission by the author with Professor Phil Scraton*) this article documents the serious and persistent breaches of international rights standards experienced by incarcerated women and the continued impact of the violent political Conflict in the North on women’s penal regimes.

Feminist authors have commented on the gendered nature of the state’s punishment of politically motivated women in Armagh prison during the years of Conflict and have also discussed the ways in which women prisoners used their bodies as weapons of resistance. It is argued here that the failure of the authorities to effectively tackle the historical and current breaches of women prisoners’ rights as part of the process of transition to a more peaceful society, has allowed the continuation of control and punishment-oriented regimes for ‘ordinary’ women prisoners.

The article explores the state’s failure to reform the women’s prison system in Northern Ireland in the face of successive critical reports from regional, national and international inspection and ‘watchdog’ bodies which have recommended the establishment of a new ‘rights-based’ women’s prison unit alongside the development of a gender-specific strategy and policies. The article concludes by assessing the current opportunities for change and analysis of the lessons from the previous failures to address women’s imprisonment as part of the transition process.

*Woman prisoner in Ash House (cited in Scraton and Moore 2007:66)

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Northern Ireland (or the ‘North’) is a society emerging from years of violent political conflict although sectarianism, political division, poverty and violence persist. Over the course of the ‘Troubles’ more than 3,700 people have been killed, over 40,000 injured and thousands made homeless, bereaved and traumatised (McGrattan 2010). Most of the dead were killed by republican or loyalist paramilitary violence and 11% by state forces but there have been continued allegations of collaboration between the state and loyalist non-state paramilitaries (Fitzduff and O’Hagan 2009). Fitzduff and O’Hagan (2009) conclude that in the context of the small population of Northern Ireland, one and a half million, ‘it has been estimated that the number of people closely associated to those who were killed or injured is about half the population.’

Penal regimes in the North were shaped by and impacted upon the political conflict. Kieran McEvoy (1998: 40) has commented on the North’s historically ‘unique’ prison system with its high rates of imprisonment for ‘politically motivated’ offences, and where three quarters of prisoners were serving sentences of more than four years and more than one fifth were serving indeterminate or life sentences. The state used a succession of strategies aimed at containing, criminalising, breaking or managing politically motivated prisoners, all of which were collectively resisted by the prisoners themselves using a range of techniques including escape, refusal to cooperate with the regime, ‘blanket’, ‘no wash’ and ‘dirt’ protests, hunger strikes leading in 1981 to the deaths of ten men, electoral campaigns including the election to the United Kingdom parliament of republican hunger-striking prisoner, Bobby Sands, and violence both inside and outside the prisons. Republican (anti-partition) and loyalist (pro-Union) prisoners resisted criminalisation however, republican prisoners were more consistent and strenuous in their opposition, loyalist prisoners being conflicted regarding the authority of the prison system.

The North’s prison system was shaped by societal division, the majority of prison guards being from protestant, unionist community backgrounds. Twenty nine prison officers were killed during the conflict and many more had their homes fire-bombed or had to flee following threats from paramilitary organisations. An estimated 50
officers took their own lives (Ryder 2000: 192). The conflict and the way in which political imprisonment was shaped during this period, had a profound impact on prisoners, their families and communities and on staff working within the prison system.

Republican women in Armagh Jail, like their male comrades, organised themselves along military lines electing ‘commanding officers’ who represented the women in negotiations with prison officials and managed discipline on the wing, for example inspecting wings and cells to ensure that they were clean (Corcoran 2007). The republican women played an important role in the collective struggle against criminalisation, participating in the no-wash and dirt protest and hunger strikes, locked in their cells 23 hours a day and smearing cell walls with faeces and menstrual blood.

The stench was unbearable. Everything was dirty, as we weren’t allowed to get washed. Even when you took your period you had nothing clean to change into. When you asked for sanitary towels they just threw them into the cells, and because of the strain some women were taking their periods when they shouldn’t have. I was taking mine every two weeks, but I never got enough sanitary towels. They were rationed, like everything else… Before they boarded up the windows we could see houses in the distance, the sky and other parts of the jail. Then suddenly we couldn’t see anything at all except shit. (Rose, former republican prisoner, in Fairweather et al, 1984: 221/222)

The frequent and violent strip searching of republican women in Armagh drew the opprobrium of the international human rights community.

Despite my medical condition [having recently given birth] I was strip searched. Once naked I attempted to cover my breasts with my arms as I was embarrassed with my breasts leaking with milk. I was ordered to remove my arms to facilitate the warders’ inspection of my naked body. (Jacqueline Moore, 1984, cited in Stop the Searches, undated: 10)
The policy of strip searching was rolled out beyond Armagh, and Northern Ireland to Great Britain where in Brixton Prison two Irish republican women, Martina Anderson and Ella O’Dwyer, were strip-searched 400 times each between July 1st 1985 and 30 September 1986 (Stop the Strip Searches Campaign, undated: 14). For O’Dwyer, strip searches constituted a ‘form of psychological rape’:

I had to stand naked while they checked my clothes. Prison officers rub my hair and ears and like an animal I have to lift my feet so they can inspect them too. The awful dread is that I will be touched so I am stiffened to resist. They have told me that they can lift my breasts forcibly if they decide to and even probe my body folds.

Following the closure of Armagh in 1986 all female prisoners were moved to Mourne House, the women’s prison in the newly built high-security Maghaberry prison complex. Male prisoners were moved to Maghaberry in 1987 and in 1988 both complexes were re-designated as a single prison. The women’s unit, Mourne House, held ‘politically’ motivated and ‘ordinary’ prisoners and could accommodate 59 women over four wings. Official discourse suggested that Maghaberry would be a modern, ‘state of the art’ prison, based on integrated, ‘normal’ regimes. However, on 2 March 1992 a mass strip search of female republican prisoners was conducted which suggested that this was no ‘ordinary’ regime. The strip search began at 10.30 a.m. and did not finish until 9pm broken only by lunch and dinner breaks for staff (Aretxaga 2001: 10). Male and female officers dressed in riot dress with visors and shields, making it difficult to tell their gender, entered cells, some accompanied by dogs. Women physically resisted, some barricading cell doors trying in vain to try to keep officers out. Aretxaga’s account includes testimony from women based on hand-written narratives and interviews:

I saw a stream of screws in full riot gear entering the front gate of the jail and advance towards our wing. They were all dressed in navy-blue, boiler suit type of outfits with helmets and carried shields and batons, I don’t know if they were all females as it was difficult to see their faces. I felt bewildered and frightened. (Anne Marie in Aretxaga 2001: 9)
Some women compared the experience as equivalent to sexual assault and even to rape:

All day long these screams of anguish came from the cells and I had to sit and listen to what the women were going through and helpless to do anything about it. The male screws stood laughing and taunting the women and were in the wing while these women were being raped. It was nerve-wracking waiting and knowing that they would eventually get to me. (Karen in Aretxaga 2001: 13)

Aretxaga (2001: 11) cites a woman prisoner recounting how one male officer said ‘we are going to fuck you all’. She describes how despite the degree of resistance displayed to the forced search, the over-whelming feelings were of fear, degradation and humiliation: a feeling of being ‘treated like shit’ in one woman’s words (Carol in Aretxaga 2001: 13). Two years later women still found discussing the episode painful and continued nightmares and trouble sleeping were common.

The harsh and gendered punishment of Róisin McAliskey, a young pregnant woman arrested in 1996 but never formally charged, in connection with an IRA mortar attack on a British Army base in Germany, again provoked international concern and criticism of the United Kingdom state. Róisin maintained her innocence throughout her ordeal. Categorised as a ‘special’ high-security prisoner, Róisin was initially held in a dirty cell in a male high security prison, and throughout her imprisonment was subjected to frequent strip searching, high levels of surveillance including the constant presence of two prison guards and routinely denied access to appropriate medical treatment, exercise, association with other prisoners or regular visits from family. At a demonstration outside Holloway women’s prison, where Róisin was being held in 1997, her mother Bernadette McAliskey (formerly Devlin, a well known civil rights activist and former Member of Parliament) informed the crowd that due to a reduction in her security status to ‘high security’, Róisin had been informed that she would be permitted to sew. The irony was not lost on Bernadette who commented ‘That’s what everyone wants to hear on International Women’s Day, that she might be allowed to
sew’ (cited in An Phoblacht 13 March 1997). Róisin gave birth in a London psychiatric hospital in 1997, fearing that her baby would be taken from her by the state. In an open letter placed on the internet, she described her oppressive treatment and the stigmatization and isolation she faced as a result of political and media demonization:

It’s the closed and controlled [prison] environment that leads to closed and biased minds. Out of nearly 30 women with children in prison, only two would sit in a room with me. But when I’m treated like such a danger that I’m put in a high security male prison, why wouldn’t they be fearful and object to having to associate with what is presented as a threat to the little they have for themselves... if you are an Irish prisoner in England, they segregate you - build a prison within their prison. With the men, they house them in S.S.U.- Special Secure Unit! And as they haven’t got a S.S.U. for females, I get a human equivalent, with two "shadow" officers accompanying at all times, human bookends, giving me my own prison within a prison. (Róisin McAliskey cited in Sullivan 1999)

Despite women’s role in prison campaigns, as Mary Corcoran (2006: xvii) observes the ‘gendered organization of punishment’ in prison has been neglected in most accounts of political imprisonment in the north of Ireland and ‘although one in twenty prisoners detained during the ‘Troubles’ in Northern Ireland was a woman, the nature of the regimes in which they were confined has barely been addressed in the academic literature.’ Aileen Blaney (2008: 394) argues that the marginalisation of women prisoners in the media and in political culture reflects the ‘anxiety shared by the media, mainstream historical discourse and Irish republicanism provoked by the abjection of the female body.’ Feminist authors have identified the gendered violence and punishment meted out to women, especially Republican women, by the British State over the course of the conflict, and correspondingly the use of gendered resistance (Aretxaga 2001; Corcoran 2006; O’Keefe 2006). In Theresa O’Keefe’s (2006: 536) words:

In the Northern Irish conflict, British state forces used menstruation as a weapon of war against republican women. More significantly, menstruation
became a weapon of resistance when women political prisoners reclaimed the ability to menstruate and used it against their captors.

Prisoner release was a key demand made by both republican and loyalist representatives in the lead up to the 1994 paramilitary ceasefires. In what McEvoy (1998: 55) calls ‘one of the most controversial aspects of the peace process’ the Good Friday/Belfast Agreement (1998) included provision for the early release of those paramilitary prisoners whose organisations were on ceasefire. Human rights and civil liberties issues relating to policing and justice were core to the conflict in the North, and were addressed within the context of the Agreement. The Patten Commission (1999) conducted an inquiry into policing and made recommendations for a ‘new beginning’ for the police service including change of name, uniform and symbols and affirmative-action in recruitment to increase the representation of Catholic officers within the organisation. New ‘watchdog’ accountability bodies were established including an Inspectorate for the whole criminal justice system, Ombudsmen for Policing and Prisons, and Human Rights, Equality and Children’s Commissions. The Agreement also established a review of the criminal justice system, led by civil servants but also involving independent experts. The Criminal Justice Review reported in 2000 making recommendations on, among other topics, prosecution, sentencing, the courts, diversionary strategies, restorative justice, youth justice and prisons. The issue of women’s imprisonment was brought to the Review’s attention by consultees. At the time an average of 20 women were imprisoned in the Mourne House women’s unit. The Review noted the difficulties in detaining a small number of women within a larger, male institution, recommended that some facilities could be shared with the men, hoped that the situation for girls as young as 15 years who were held in the adult prison would be resolved by changes in the youth justice process, and proposed that the issue of women’s imprisonment should be kept ‘under review’ (para 12.18).

The failure of the Criminal Justice Review to make appropriate recommendations for the transformation of women’s imprisonment meant that the abuses experienced by women starting in Armagh and continuing in Maghaberry were allowed to go unchecked. Our research, discussed below documented the experiences of women
imprisoned for ‘ordinary’ that is ‘non-terrorist’ offences, and of the very small number of women imprisoned for alleged ‘terrorist’ or ‘politically motivated’ offences in the years following the Agreement.

FROM MAGHABERRY TO HYDEBANK WOOD: WOMEN IN PRISONS WITHIN PRISONS

The 1998 Good Friday/Belfast Agreement initiated the early release of most political prisoners yet the Mourne House women’s unit in Maghaberry Prison continued to be managed and staffed as a high security unit holding low security women prisoners, many of whom were fine defaulters. The research fieldwork which forms the basis for this article began in 2004, conducted with Professor Phil Scraton on behalf of the Northern Ireland Human Rights Commission. The research followed women on their journey from Mourne House, through its closure and the transfer later that year of all women prisoners to Ash House, a newly created women’s unit in Hydebank Wood, a ‘Young Offender Centre’ for boys and young men. The research was initiated by the Human Rights Commission in response to concerns raised by the publication of a highly critical inspection report (HMCIP 2003) which highlighted the use of ‘isolation’ or ‘punishment’ cells for self-harming and suicidal women, including girls as young as 15 years. Inspectors (2003: 01) noted the ‘potential dangers’ inherent ‘where the needs of a small group of women … become marginalised’. The Commission was also alerted to the extent of problems for women prisoners by the death soon after the inspection of 19 year-old Annie Kelly, found hanging in an isolation cell. Annie had experienced the ‘revolving door’ of imprisonment since her first period of incarceration in the adult women’s unit at the age of 14. Following the publication of the inspection report, Human Rights Commissioners visited Mourne House and alarmed at the environment there initiated a research-based investigation focusing on the ‘right to life and (European Convention on Human Rights Article 2) and the right to freedom from torture and inhuman and degrading treatment (EHCHR Article 3).

Research fieldwork at Mourne House began early in 2004. On the second day of fieldwork a woman prisoner, Roseanne Irvine, took her own life through hanging,
having just moved back to her ‘normal’ cell after being held in distressing circumstances in the punishment block. She suffered persistent mental health and alcohol addictions problems, self-harmed and feared she would lose access to her daughter. Later at the inquest into her death at Belfast coroners’ court the jury stated that ‘the prison system failed Roseanne’.

It became evident early in the research that not only had the Northern Ireland Prison Service (NIPS) failed to deliver on the Inspectorate’s recommendations but on the contrary the regime had deteriorated even further. Observations and Interviews with women, guards, professionals and volunteers working in the prison, revealed a regime in which women were routinely locked in their cells 17 hours a day and regularly locked throughout the day and night. The purpose-built healthcare centre in the women’s unit was no longer operational, the workshops and kitchens had closed and education classes were infrequent despite high demand. The only available outdoor activity was gardening, restricted to sentenced women. There was little or no support for women during the reception strip search and they were transferred to cells without information or guidance. There was no structured induction programme, no formal sentence management and no appropriate resettlement programmes. The regime, even for those women assessed as ‘enhanced’, consisted mainly of ‘doing nothing’ with 75 per cent of their sentence spent alone in their cells confinement with limited access to constructive activities. Neither management nor staff regarded women prisoners as a threat to personal safety, yet they were not permitted to attend education classes, a short distance from their cells unless escorted by prison officers, a legacy of the high-security regime established to deal with politically motivated prisoners during the Conflict.

Family contact was made difficult by limited access to expensive telephones and inadequacies in the visits system. Women were restricted to brief periods of unlock during which they made brief telephone calls to their children. While the Inspectorate had considered the relationships between guards and prisoners to be satisfactory this assessment was not borne out by the research. A small minority of staff were committed to engaging with prisoners and in the development of a constructive, caring regime but the predominant attitude was ‘disinterest’ with some officers
actually disrespectful and abusive. Women described the lack of engagement with those guards who spent their time ‘playing cards all day’ or ‘sleeping off a hangover’:

The majority simply don’t care. They do their job as a means to an end. There’s a minority who drive home the fact that you are prisoners, you’re the scum of the earth, you’re not deemed fit to mix with society (long-termer).

There were inappropriately high levels of staffing, not reviewed since the unit held significant numbers of high-risk ‘paramilitary’ or ‘politically motivated’ prisoners. The Prison Officers Association strenuously resisted any attempts to reduce numbers or alter conditions of employment. The majority of guards were men and often the night-shift was entirely male, making it difficult to protect the safety or dignity of girls and women. Guards had developed what they described as their ‘jail-craft in the environment of Conflict, when engagement between guards and prisoners was not discouraged as endangering security and placing officers at risk of ‘manipulation’ by prisoners who saw it as their duty to try to escape or subvert the authority of the prison. For guards who had lost friends through paramilitary violence, or who had feared for their own safety or that of their family it was a difficult cultural shift to view prisoners as other than the ‘enemy’. Women prisoners paid the price of the failure to shift prison culture to that of a ‘peace-time’ service.

Children and young prisoners were accommodated on a ‘young offender’ landing which did not differ in any meaningful respect from the ordinary adult landing. Self-harming girls were held in isolation in punishment cells, with no access to counselling or therapeutic intervention. The women’s health care centre had been closed, and health care for women prisoners was provided in the male prison hospital. ‘Care’ plans for those labelled ‘suicide risks’ recommended ‘optional personal contact’ between officers and prisoners, yet this did not happen. Despite the extent of depression and trauma there was minimal counselling or therapeutic provision. Women rejected clinical diagnoses which denied the serious mental health problems they felt were evident in some prisoners (sometimes themselves). The situation was particularly bleak for those classified ‘personality disordered’ not recognised as a mental health condition in the North’s mental health legislation. Denied appropriate
medical or therapeutic services in the community, those diagnosed as ‘personality disordered’ rotated between community and custody their condition deteriorating with time. The punishment block, or ‘special supervision unit’, was the default option for accommodating distressed and self harming women and girls locked in isolation for 23 hours a day in bare cells. The use of the strip cell with no mattress, no pillow, a heavy duty blanket, a potty for a toilet and no in-cell access to a sink was degrading and inhumane. It was exacerbated by the heavy canvas gowns that women and girls, deemed ‘at risk’, were forced to wear. They were forbidden underwear even during menstruation.

Although most politically motivated prisoners had been released following the Good Friday/Belfast Agreement (1998) the prison continued to hold the smaller, but growing, numbers of prisoners associated with paramilitary organisations not on ceasefire and there were just two republican women in the Mourne House unit during fieldwork. Politically motivated men had been granted separation from ‘ordinary’ prisoners and from each other following the Steele review (2003) into ‘prisoner safety’. Political women, however, were refused separation and accommodated on the normal landings. Republican women resisted what they saw as the criminalising impact of association with ‘ordinary’ prisoners, and during fieldwork one of the women embarked on a hunger strike in support of the demand for separation. Her campaign was successful and separation was granted, the women being moved to a separate landing. This was achieved by moving children and young women on to the adult landing in clear breach of Article 37 of the Convention on the Rights of the Child which requires the separation of detained children from adults.

Northern Ireland Prison Service management held prison officers and their representatives responsible for the problems in Mourne House and the failure to implement the Inspectorate’s recommendations, while the Prison Officers Association pointed to an abdication of managerial responsibility. The Human Rights Commission concluded that

It is a matter of profound concern that the researchers experienced the operation of a regime that neglected even the identified needs of women and
girl prisoners, that lacked creative or constructive programmes to assist their personal or social development, that compromised their physical and mental health and failed to meet the minimum expectations of a ‘duty of care’ (Scraton and Moore 2005: 169).

The Commission recommended the prioritisation and provision of alternatives to custody, development of gender-specific strategy, policy and programmes, and establishment of a ‘distinct, gender specific identity’ for the women’s custody unit. Given the violations of human rights evidenced by the research and noting the failure by the Prison Service and the prison governor to implement the Inspectorate’s recommendations and the grave consequences for women and girl children prisoners since to inspection, the Northern Ireland Human Rights Commission recommended an independent public inquiry into the deterioration in the regime and conditions in which women and girl children were incarcerated, including the circumstances of the deaths in custody of Annie Kelly and of Roseanne Irvine (Scraton and Moore 2005). The Commission’s recommendations were ignored.

The Mourne House unit was closed in June 2004 and women prisoners were transferred to Ash House, a free-standing unit within Hydebank Wood, a purpose-built, medium security prison for male young offenders. The unit held all categories of women prisoners in 56 cells, none of which had in-cell sanitation, although this was later installed. Although highly critical of the regime at Mourne House, the Human Rights Commission opposed imprisoning women prisoners of all ages within a male young offenders’ institution. Within months of the transfer the Inspectorates conducted an unannounced inspection (HMCIP/CJINI 2005) which while noting some improvement in staff-prisoner relations raised serious concerns about the safety of ‘vulnerable’ and ‘damaged’ women and girls. Disciplinary measures, ‘such as cellular confinement and demotion under the incentives scheme, were used to punish self-harming behaviour’. Without appropriate training and ‘anxious, by any means available, to prevent another self-inflicted death’, staff and managers administered ‘very severe’ punishments, ‘including for children’. Inspectors found that there was ‘not enough for the women to do’ (ibid: 6) and boredom was ‘likely to compound feelings of depression and anxiety’. Women prisoners ‘had lost open access to the
fresh air and grounds, and had no in-cell sanitation ... pregnant women ... were forced to use potties if they needed urgent access to a toilet' (ibid). There was 'no Northern Ireland Prison service strategy, policies or procedures to deal with the specific needs of women and girls; and no separate, properly trained, management of the women’s prison' (ibid). The ‘underlying and fundamental issues’ identified by the previous inspection and by the Mourne House research had not been addressed.

Also in 2004 Alvaro Gil-Robles, Commissioner for Human Rights for the Council of Europe, visited Hydebank Wood. Whatever advances had been made in staff-prisoner relations, he concluded there was ‘no possibility for the women to receive appropriate treatment, indeed, the conditions could only be considered likely to aggravate their fragile condition still further’ (Gil-Robles 2005: para 126). He identified two specific problems: lack of appropriate psychological care and the precarious mental ill-health condition of some women prisoners. Further, the Committee on the Prevention of Torture (CAT) described ‘unacceptable conditions’ for women in Hydebank Wood including: ‘a lack of gender-sensitive facilities, policies, guarding and medical aid, with male guards alleged to constitute 80% of guarding staff and incidents of inappropriate threats and incidents affecting female detainees’ (CAT 2004).

Initially barred from conducting follow-up research, the Commission eventually granted access and fieldwork was carried out between 2004 and 2006. Only a small number of the women imprisoned in Hydebank Wood had been sentenced for serious offences. During the years of fieldwork, over 40% of women committed to prison were fine defaulters, some of which were related to non-payment of television licenses. A high proportion of women were on remand and most sentenced women were serving short sentences. The research revealed again the problems inherent in detaining women in a prison within a prison. Women prisoners arrived at the institution inside small locked cubicles within a white van which was often shared with male prisoners. Women reported their experiences of verbal abuse during these journeys:

The drive to Hydebank is a nightmare. I noticed they had loaded three men onto the prison van … what I had to listen to from those male prisoners was
disgusting… They were saying things like, ‘I’ll give you one’ and ‘I’ll lick your cunt’. I was terrified.

They shouted ‘Smelly pussy’; ‘Suck my cock’; ‘What do you do for relief?’ When we got to court I said to the court guy, ‘That was disgraceful’. They say they don’t know who it was so they didn’t know who to charge. Any strength I had for the court was gone at that stage. You’re dreading the bus journey as much as court.

On arrival and in the reception area women were strip searched by female guards causing significant distress to all women interviewed:

I had to strip and have a shower. I was embarrassed. It’s the same when you go to court. You have to strip and turn round for them and that’s embarrassing… You feel so degraded.’

When you’re on your menstrual cycle you still have to strip. It’s very degrading. You have to show them the pants and pad with the blood on it. It’s disgusting, you’re embarrassed. Their attitude is indifferent. It’s their job but it’s not a nice thing to do.

It’s all power, we have the power to do this and we will do it if we feel like it. I think that’s what it’s all about – to show their power.

Women were not provided with information on the regime or what to expect and were escorted directly from reception to lock-up:

The cell door was closed and that was it. I sat down and looked around the filthy cell and broke down in tears. I felt so lonely and devastated, I didn’t know when I could ring my family or any routine of the prison. It wasn’t until I got out [later] when I met the other women then they told me everything I needed to know.
When I came in I was locked down. I just sat on the bed and looked out of the window. I felt suffocated.

As at Mourne House, the Ash House regime was dominated by long periods of lock-up, at best women were locked up for 16 hours a day but this was often extended to 23 hour lock up due to ‘staff shortages’ and industrial relations breakdowns. When unlocked there was little activity provided for women to occupy their time. On the ‘vulnerables’ landing where those considered most ‘at risk’ were accommodated, women passed any time out of their cells sitting, mostly in silence at a table, on hard chairs and smoking. Occasionally they watched television or had intermittent, brief conversations with guards who sat at desks on the landings reading newspapers. There was no structured programme of therapeutic activity. On the committals landing women in prison for a few days for fine default sat aimlessly, in the company of others awaiting trial. The prevailing atmosphere was that of boredom and time wasted:

The worst thing in here is the monotony, there’s very little for us to do. Education is rarely available to us and at that it’s very basic. It’s hard to cope especially when you were used to a busy life, for it to become the opposite and you end up doing nothing all day long.

You’re just being fed, lying down, locked up and that’s it. I did self-assertiveness and anger management at the women’s drop-in. There should be more opportunities here.

There was agreement that the quality of daily experiences was influenced significantly by which guards were on duty.

I’ve been in jail for all my life, and this is the only time they’ve treated me like dirt … they treat me like a child, like I’m a wee child.

Some, very little [few] staff will come and ask how you are. 95 per cent won’t.
Some of them are absolutely brilliant. You couldn’t ask for better staff. Some of them are good as gold. But a lot of them tend to bring personal problems into work. Favouritism is probably the worst problem in this prison.

Well there’s some staff just look at you, really treat you like a prisoner… Some of them would just look down their noses at you as if you’re a bit of dirt.

Women feared being ‘zeroed’ by guards for minor breaches of rules, which as little information was available they had often not even been aware existed:

    It’s always their word against yours and they’re always right. Whenever one officer is on I know I’ll get marked down. They don’t even have to tell you why they mark you down.

    You’re told that if you don’t do this or that you’re going to be zeroed. That’s not treating you like an adult, it’s like you’re a child.

    Every time I’m in here they find something to charge me with. If you don’t say please you get your head bit off. Yesterday I swore and was locked immediately.

A senior manager confirmed the women’s perceptions that some staff were more committed than others:

    You get good and bad [staff]. I can’t change the outlook of the staff and you do need an outlook change of staff and you get that through their managers. Here it’s not about training but there’s no turnover, no change. So I would look at about 50 per cent of the staff moving … They’re turnkeys some of them and we don’t always give encouragement to good staff.

Part of the stated rationale for moving women from Maghaberry to Hydebank Wood was that the latter was a lower-security environment which would allow more freedom of movement. However, the shared nature of the site, with boys and young
men, meant that women’s movements were strictly ‘choreographed’ to avoid contact with the boys and surveillance and security were tight with women forbidden to move without being escorted by guards:

The whole point of this place was that it would be lower security with a see through fence rather than a wall, that we’d be able to have more outdoor freedom in a nice environment. The reverse is true. We have less access to the grounds. We can see the environment but we can’t experience it.

I’d love to walk around the grounds even if it was only half-an-hour or an hour.

We can’t go down to the yard or over to the doctor. We need an escort here all the time except when we’re on the landing. The SPs [boys on ‘special privileges’] can walk about but the girls can’t.

A professional working in Hydebank Wood concluded ‘women in prison within a prison will never function fully.’

The healthcare centre in Hydebank Wood was shared by boys, young men and women and it was recognised that this offered a restricted and isolating regime. In comparison with Mourne House, there was increased access to psychiatric and psychological services in Hydebank Wood but these remained limited. The diversity of the prison population and the number of those considered vulnerable created difficulties in providing adequate services. Healthcare professionals considered that a discrete women’s facility with fully trained, designated staff on duty day and night should be basic provision. In the absence of a therapeutic regime, the response to women’s distress and self-harm was often lock-up in the punishment or isolation block, for ‘their own safety’.

They punished me for cutting myself. I’m still hearing the voices and I’m not on the right medication. When I’m unlocked I’m doing nothing at all, just sitting here smoking. The nurse comes and gives me tablets, but I’m not getting the right medical help in here. The doctor says he can’t help me. I
really need someone to talk to. I get no counselling whatsoever. When I was on 23-hour lock-up the staff didn’t even bother to talk to me. I was just stuck in the cell with a camera. Being in the cell with a camera there’s no privacy or nothing. Your dignity’s taken away from you. They just said, ‘It’s your own fault you’re behind the door.

There are girls down the Block who shouldn’t be there. They should be in hospital, they’re mentally ill. The officers aren’t trained for people who are mentally ill. We had a girl in a few weeks back. We were out of cigarettes and the girls were getting agitated. The girl was cracking up. She started kicking the door. The next thing the ‘Ninjas’ come up in riot gear. They had shields, the lot. She had her mattress against the flap and when they opened the door they bounced on her. Put handcuffs on. Shouting keep still it won’t hurt. They ripped her tongue bar straight out of her mouth. I was sitting on the bed with my hands over my ears … She squealed in pain that much it was unbearable. The atmosphere was awful. We were all shouting ‘Get off her!’ They just shout back ‘Fuck off or you’ll go down the Block’.

Fear of being placed in isolation made women reluctant to reveal their distress:

They put me in the observation cell. I’d gone through a great loss. I was just out [of the cell] for the shower, no interaction, nobody asking to speak with me. I’m shit scared of going back to the hospital. There’s nothing. So I say I’m fine. There’s no therapeutic help, nothing.

The serious criticisms raised by the Mourne House research and official inspections persisted. There was no strategy for women and girls in prison and no gender-appropriate policies or provision for healthcare, work, recreation, education, staffing or resettlement. Managers and guards, recruited during the Conflict in Northern Ireland, had neither the experience nor training to respond to the complex needs of a small but diverse number of women prisoners. Poor facilities for outdoor exercise or constructive activities, alongside long periods of isolated lock-up, created boredom and exacerbated depression. There was no therapeutic mental healthcare for women
diagnosed as personality or behaviour disordered and the default response to self-harm and suicide was isolation in a punishment cell. Strip-searches were a constant reminder of the discretionary power held over women prisoners. Expensive telephones and inadequate visits undermined the quality of prisoners’ family lives. The failure to establish carefully considered sentence plans to address the needs of individual women demonstrated a regime based on containment and punishment at the expense of care and rehabilitation. The Commission recommended the development of a discrete women’s prison unit, with a distinct gender-specific identity supported by a discrete management structure, staffed by a minimum of 80 per cent female staff. It also recommended an end to strip searching except where risk assessment demonstrated the necessity to protect the women or others from serious harm, the ending of extended periods of lock-up and cellular confinement and a review of the operation of the healthcare centre to ensure the delivery of a gender-specific, therapeutic, constructive and inter-action-based programme for vulnerable prisoners. A core recommendation was the development of alternatives to prison and enactment of legislation to ensure that custody for women was a ‘last resort’.

In February 2010, the Independent Monitoring Board (IMB)), a body of volunteers with statutory powers to visit prisons and report on conditions, published its report for 2008-2009. The IMB recorded a 63 per cent increase in the use of cellular confinement as a punishment and no move towards establishing a therapeutic regime or strategy. Prisoners were ‘frequently confined to cells due to unscheduled lock-downs’, a ‘restricted regime’ imposed. There had been ‘no manifestations of the [promised] culture change’ among staff and only ‘marginal improvement in the level of staff engagement with prisoners’ (ibid: 5). No progress had been made towards establishing ‘transparency to the internal investigation of inmate allegations of assault or harassment by prison officers’ (IMB 2010: 4). No progress had been made towards the construction of a women’s prison and advances towards gender specific policies were minimal. Previously noted ‘serious deficiencies in healthcare practices’, and ‘in the provision of education and vocational training’, had not been resolved. A necessary ‘therapeutic and rehabilitative’ including ‘proactive and positive engagement with prisoners had been sacrificed to ‘strong emphasis on security and
control’ (ibid: 6). ‘Fundamental issues’ were neglected leaving the prison well below ‘an acceptable standard’.

A thematic inspection by the Criminal Justice Inspection (Northern Ireland) (CJINI 2010) on the links between mental health and criminal justice, concluded that the negative impact of the Conflict on prison service culture persistd, ‘For historical reasons, prison officers tend to maintain a psychological distance from their prisoners and not to engage too closely’ (para 4.39). The Inspectorate welcomed the development of a governmental strategy for ‘women offenders’ and of gender-specific standards for staff working with women prisoners. It reiterated its recommendation for a ‘new type of facility’ to accommodate women in custody with ‘less emphasis on security’ and a more ‘therapeutic’ environment for ‘vulnerable’ women (para 4.45).

CONCLUSION

McEvoy (1998) documented the centrality of the ‘prisons issue’ in transitional societies. He advocated for the development of an early release mechanism for politically motivated prisoners, as a building block in the political process leading to a more peaceful society. While policing in Northern Ireland underwent significant change as a result of the Good Friday/Belfast Agreement, the Criminal Justice Review (2000) failed to make appropriate recommendations for the transformation of the penal system, leaving male and female prisoners incarcerated in institutions whose ethos was shaped by years of conflict and violent hostility between guards and prisoners, operating cultures of secrecy and devoid of meaningful accountability or oversight. It was assumed, wrongly, that once the political prisoners were released prisons would return to ‘normal’. Despite a reduction in levels of violence in the North, those non-state paramilitaries not on ceasefire continued to operate and their members continued to enter prison, either remanded or sentenced by the courts. In the interests of prisoner safety, the Steele Review (2003) recommended that loyalist and republican prisoners be accommodated separately from each other and from ‘ordinary’ prisoners but although separated in their own house units, these prisoners are still held within the Maghaberry complex the authorities responding with increased security measures. Only five months after his appointment, the Governor of
Maghaberry resigned in December 2009 his personal details having allegedly been found in the cell of a republican prisoner (BBC News 7 December 2009).

Official inspections, other statutory and non-statutory reports and the Human Rights Commission research discussed in this article, have all identified the persistent impact of the conflict on each of the North’s prisons. Official denial of the problem no longer seems feasible and in briefing the newly appointed Justice Committee of the local parliament the Director General of the Northern Ireland Prison Service acknowledged that ‘perhaps for historical reasons – as external studies have pointed out, we are an insular, unionised organisation with a poor infrastructure.’ The problems in the service included a workforce mostly comprising Protestant men, now mainly aged in their late 40’s who had served during the Conflict and were ‘very much from a security background’ and with no new recruitment of main grade guards for more than 16 years. The Director General informed the Committee that an ‘options’ appraisal was being carried out for a ‘woman’s facility’ and that the organisation hoped to become a model of best practice. Dispiritingly an elected representative on the Justice Committee noted that the shortest paragraph in the briefing document was that on the treatment of women prisoners and wondered whether this reflected male domination within the service (NI Assembly 13 May 2010).

The devolution of policing and justice in Northern Ireland was agreed through the Agreement at Hillsborough Castle (2010 ‘The Hillsborough Agreement). This provided for a review of the prison system including consideration of ‘a women’s prison, which is fit for purpose and meets international obligations and practice.’ In response to this, the Minister for Justice announced in 2010 a review of the prison system, headed by Dame Anne Owers, former Chief Inspector of Prisons for England and Wales.

The United Nations Office on Drugs and Crime (2008) notes that although research is ‘unanimous in underlining the particularly detrimental effects of prison on women’ their ‘special needs are rarely taken into consideration during imprisonment’:

The fact that the proportion of male prisoners has always been vastly larger than that of women in the prison system has resulted in a general disregard to the gender-specific needs of women, as well as a denial of many services and opportunities, accessible to male prisoners. (UNODC 2008: 4)
The marginalisation and ‘denial of services and opportunities’ for women prisoners in Northern Ireland has been severe and compounded by the gendered punishment meted out to women politically motivated prisoners, and also prevalent in the treatment of ‘ordinary’ women prisoners. Unlike political women, ‘ordinary’ prisoners were not collectively organised to resist, and although individual acts of resistance and agency were shown these were met with harsh punishment, particularly through the use of isolation cells. Although the opportunity to address the needs of women was missed at the time of the 1998 Agreement, the establishment of a review of the prison system in 2010 offers a further chance to tackle the issues. Recent research and official and independent inquiries should help to inform the review. In 2007 Baroness Jean Corston was appointed by Government to lead an inquiry into the treatment of women ‘with particular vulnerabilities’ within the criminal justice system in England and Wales. While Corston (2007: i) did not agree that women should never be held in custody, she was ‘dismayed’ at the ‘disproportionate’ and ‘inappropriate’ use of imprisonment for women, noting how many women were subject to short sentences for non-violent crimes, with devastating consequences for their families and children and concluding that the ‘nature of women’s custody’ needs to be ‘radically rethought’. A ‘different’ and ‘distinct’ approach needs to be adopted for women as ‘Equal treatment of men and women does not result in equal outcomes’ (ibid: 3). Corston recommended the adoption by the state of a ‘less punitive’ message regarding women’s offending, appointment of a Commission into women who offend or are at risk of offending, development of a network of community centres for women, reduction of custodial remand and reservation of custodial sentences for only those women who have committed serious and violent offences and who pose a danger to the public. Corston (2007: 5) proposed that government should announce a strategy to ‘replace existing women’s prisons with suitable, geographically dispersed, small, multi-functional custodial centres within 10 years.’ Government’s response to Corston appeared on the face of it to be positive, however.

The Fawcett Commision (2009: 7) inquiry into women and the criminal justice system in the United Kingdom found ‘institutional sexism remains deeply embedded in practices and attitudes towards women in the criminal justice system’ The Commission identified similar problems to Corston, the over-use of custodial remand
and short custodial sentences for non-violent offences, the imprisonment of women with mental health problems, the incidence of self-harm and suicide in prison, difficulties in maintaining family links, shortage of appropriate community alternatives. Fawcett recommended the development of a ‘gender-responsive’ criminal justice system which is ‘responsive’ to the needs of women and their families. Such a system would include a requirement on the probation service to explain why non-custodial options were not being recommended, development of alternatives to remand, training for sentencers on the ‘differential impact’ of custody on women, development of a ‘woman only’ network of community-based centres and more effective resettlement support for those leaving custody.

The opportunity exists through the devolution of policing and justice, to learn the lessons from research by developing decarcerative strategies to reduce women’s imprisonment. The argument for abolitionism remains to be won politically, but agreement is possible in the short term that there are many groups of women who should not be imprisoned, for example fine defaulters, women with serious mental illness, women on remand, women imprisoned for short sentences in relation to non-serious and non-violent offences. If a discrete women’s prison unit is to be built, then its capacity should be capped at a low number to avoid numbers rising over time. To comply with international human rights standards it must be a separate facility for women, staffed by women, and with gender-specific standards and policies and effective welfare, health, education and training, and resettlement services. To truly be transformative however, we should look beyond reform of the prison and the creation of ‘better prisons’ to ‘radically shift the debate’ away from acceptance of the prison as natural and towards the possibility of ‘dismantling the relationships’ of imprisonment. The relatively small number of women prisoners in the North of Ireland has been posed as a particular challenge for the prison service. Instead the small number and the strength of the non-governmental sector offer ideal conditions for the development of a ‘continuum of alternatives’ to imprisonment (Davis 2003).

Rather than punishing women for who are experiencing problems of poverty, addictions and mental health, independent services should be resourced within communities to support women in line with their economic and social rights. Changes within the criminal justice system, important though these are, cannot bring about real
justice while inequalities and injustice exist in other social aspects and ‘to be truly effective, transitional institutions have to be connected to wider programmes of social change’ (Stanley 2009: 133). As Stanley (ibid: 146) comments in relation to Timor-Leste ‘legacies of violence have intertwined with social conditions of poverty, unemployment, poor housing, limited education, and ill-health. There is little point in developing a ‘best practice’ women’s prison unit, unless we address the material circumstances which lead women into imprisonment.

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7. HEALTH AND WELL BEING OF IRISH PRISONERS: THE COMPLEXITY OF HEALTH PROMOTION IN IRISH PRISONS

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The prison population experiences significant health inequality and social exclusion (Department of Health 2002). Once incarcerated prisoners are at increased risk of mental illness and have higher exposure to communicable diseases (WHO 2008). Prisoners generally have poorer health because imprisonment negatively impacts upon the health of the individual (WHO 2008). However, the prison setting offers a unique opportunity to implement targeted health promotion initiatives with a population many of whom may have had very limited experience of accessing health services prior to incarceration. The World Health Organisation recognises the need for health promotion in prisons as is evidenced in the Health in Prisons Project the aim of which is to support member states in improving health and health care in prisons, and to facilitate the links between prison health and public health systems at both national and international levels. In practice however, implementation of the HIPP is complex. This paper examines the challenges in promoting health in prisons globally and in Irish prisons specifically, given that the prison setting is omitted from the Irish National Health Promotion Strategy. Based on a qualitative research design that incorporated semi-structured interviews with a purposive sample of twelve leading figures in prison policy in Ireland this paper discusses the need for health promotion interventions in Irish prisons. The paper also discusses the influence of organisational culture on attitudes of prison staff to engaging in health promotion with prisoners and explores the problems posed by lack of national policy and funding for health promotion initiatives in the prison setting.

INTRODUCTION

Prisons are generally unhealthy places and it is widely accepted that imprisonment impacts negatively on the health of the individual (WHO, 2007). Those who become incarcerated for any length of time tend to originate from the lowest socioeconomic groupings and have complex and diverse health needs (DeViggianni 2007; WHO 2009). The majority of prisoners will have experienced adverse health determinants such as poor educational attainment, illiteracy, substandard housing and high unemployment. The prison environment is complex and those incarcerated are disempowered by a system whose primary function is to maintain security and punish offenders. As a result, prisoners maintain minimal control over their own health needs and are subject to deteriorating health over the period of their incarceration. The greatest threats to prisoner health, both in Ireland and across Europe, emanate from
illicit drug use, communicable diseases and mental ill health (WHO 2009; WHO 2010).

The prison environment is a high-risk environment for the transmission of communicable diseases, namely HIV, Hepatitis C, Tuberculosis and a range of STI’s (WHO, 2007) mainly due to structural conditions within prison systems such as overcrowding, lack of sanitation and limited access to healthcare services (WHO, 2009). From a public health perspective, communicable diseases tend to spread more rapidly among groups and communities that experience high levels of socioeconomic disadvantage, many of whom may subsequently enter the prison system (Northern Dimension Partnership in Public Health and Social Wellbeing (NDPHS), 2008). As a result, prisoners become more susceptible to communicable diseases because they have no control over their environment or the other individuals they interact with (WHO, 2009). Communicable diseases such as HIV and Hepatitis C are more prevalent in prison systems due to certain lifestyle factors which prisoners may choose to engage in such as the injection of drugs without sterile equipment, sharing of syringes, unsafe tattoo equipment and engaging in unsafe sexual practices (WHO, 2009). Currently, Hepatitis B, C and HIV are on the increase among the prisoner population in Ireland, with this attributed to practices related to substance misuse (Dept. of Justice, Equality & Law Reform, 2000; Long et al, 2005; WHO, 2005).

Prison health is unquestionably linked to public health and the spread of communicable diseases within the prison environment has consequences for the health of the general population also. Current recidivism rates in Ireland indicate that just fewer than fifty per cent of released prisons will be serving a new prison sentence within four years of release (O’Donnell et al, 2008), thus indicating that prisoner health is inextricably linked to public health. Prisoners are one of the most
marginalised and vulnerable groups within our society, and potentially imprisonment provides the opportunity for targeted health protection and health promotion measures that can be of benefit not only to those incarcerated, but their families and communities also.

Prisoners are at increased risk of mental ill health, with prisons at risk of becoming asylums for the mentally ill (WHO, 2008), whose needs could be met more appropriately in non-custodial settings. In certain instances, the presence of mental illness is the catalyst for an individual becoming involved with the criminal justice system. However, detachment from family and friends coupled with the isolation and other structural determinants experienced in prison leads prison itself to be the catalyst for the development of mental ill health among those incarcerated. Prisons in Europe house large numbers of prisoners with mental illness; while internationally at least one million prisoners suffer from a significant mental disorder, with significantly more suffering from depression and anxiety (WHO, 2008). Those incarcerated in prisons are also at increased risk for mental health disorders and suicidal ideation at a rate disproportionately higher than in the general community (Casey, 2007; Frottier et al, 2007; Lines et al, 2005; WHO 2009). For example, in Ireland currently twenty seven percent of sentenced men and sixty percent of sentenced women are suffering from some form of mental illness (Kennedy et al, 2005). While recent initiatives have succeeded in diverting mentally ill individuals away from the criminal justice system to non-custodial alternatives (Gantly, 2010), sentenced prisoners in Ireland are still at risk of mental ill health while incarcerated.
The prison environment is one that deprives those residing there of their personal freedom, with maintaining security standards at the core of prison operations. It disempowers the individual in terms of making the most basic of choices and compromises the health and wellbeing of those it incarcerates. These factors would indicate that the core health promotion principles as outlined in the Ottawa Charter (WHO, 1986) cannot be achieved within the prison setting. Ironically, the prison setting is one of the places where true equity in health could potentially be achieved. Prison medical services could conceivably provide for both an equal and equitable healthcare system within the prisons; however it appears to be the overall prison regime that would not provide the individuals under its care with the opportunity to manage their own health effectively. While prisons may experience difficulties in implementing effective health promotion interventions for prisoners, the prison environment provides a unique opportunity to access those who have existed on the margins of society and provide insights into health education, health promotion and disease prevention (WHO, 2007).

With the increase in the prisoner population in Ireland (IPRT, 2010), there is clearly a pressing need for targeted health education and promotion programmes within the Irish prison system. While a whole-prison approach to promoting health is desirable, health inequalities in the prison setting can only be addressed through a multidisciplinary and multisectoral approach, with coordination of service provision between the Irish Prison Service, the Health Service Executive and the Department of Health and Children. The demands of primary healthcare provision within the Irish prison system have led to the creation of a reactive healthcare service, with little opportunity to engage in proactive measures such as health education and promotion.
The prevalence of and focus on security measures within Irish prisons acts as a barrier for those wishing to seek medical care, as prisoners are reluctant to access health services if they have to do so through prison security staff rather than healthcare staff (HSE, 2010). Prison healthcare providers have also reported being professionally isolated and marginalised within the prison system, a factor that has been compounded by the peripheral role of the HSE with regards healthcare provision in Irish prisons (HSE, 2010). There is some ambiguity in relation to the role of the Department of Health and Children in relation to healthcare in Irish prisons, given that prisons (setting and population) were omitted from the National Health Promotion Strategy 2000-2005. The failure of the IPS, HSE and Department of Health and Children to implement an adequate healthcare system in Irish prisons that provides a service equivalent to that of the general community has, in effect, tasked healthcare providers in Irish prisons with implementing a strategy that was not in any way tailored to meet the needs of arguably one of the most vulnerable and marginalised population groups in Irish society. The aim of this research was to explore the challenges and opportunities faced by prison authorities in implementing a health promotion strategy that makes no reference to prisons or prisoners as a targeted group for health promotion action.

METHODOLOGY

Design and Sample

A qualitative research design was decided upon in order to examine the lived experience of experts in the field of prisoner health and well being, in particular to make sense in terms of the meanings that people themselves ascribe to that which is under investigation (Denzin & Lincoln, 1998, p. 3). Interviews that were semi
structured were conducted with key personnel both within the Irish Prison Service and those who work to advocate on behalf of prisoners in relation to health and health promotion in prisons. The researchers employed an approach that paid attention to the unique nature of prison reality. The researchers wanted to portray as accurately as possible the challenges and opportunities for health promotion in prisons. The researchers also wanted to gain a deep understanding of the organisational culture of the prison and its influence on health in a way that was sensitive to the prison system unique value system. It was deemed important to respect the values of the organisation. The researchers were careful to illuminate personal and human experience; and to reflect the reality for the interviewees as accurately as possible.

Purposive sampling was used in order to access participants who have in-depth knowledge about particular issues (Cohen et al, 2007). It is not intended to generalise from this research, however the findings illuminate some of the issues surrounding health promotion in prisons. In total fourteen interviews were conducted. The research participants included: the Director of the Irish Penal Reform Trust, the Deputy Director of the International Harm Reduction Association, the governor of a large Irish prison, three practitioners involved in healthcare provision within prison settings, three head teachers experienced in prison education, two chaplains working with prison settings, two prison welfare officers and one member of the Welfare and Probation Service.

Analytic strategy

Data analysis was carried out using thematic content analysis (Hsieh & Shannon, 2005). The benefit of using this method of data analysis was that it allowed
‘researchers to interpret social reality in a subjective but scientific manner’ (Zhang, 2006, p. 1). When organising the data, thematic networks were used to organise the responses of the participants (Attride-Stirling, 2001). Thematic analysis unearths themes that exist at different levels within the text, and thematic networks then facilitate the structuring of those themes. The data were classified into three thematic categories or networks; basic themes, organising themes and global themes. A basic theme was the most basic level of data, usually a statement of belief around a specific topic, an organising theme was used to organise the basic themes into clusters while a global theme gave the larger perspective contributing by organising the themes into the final argument (Attride-Stirling, 2001). Given the focused nature of the study and the national profiles of some participants quotations are not attributed to their owners in order to safeguard anonymity, thus they are generally presented.

The study received ethical approval from the Research Ethics Committee of the Department of Educational and Professional Studies, a subcommittee of the University of Limerick Research Ethics Committee (ULREC). It was not sought from Irish Prison Service, as their own guidelines state that such approval must only be sought when proposed research involves the participation of the prisoner population.

**RESULTS**

Influences upon the health of prisoners are clearly diverse and were believed to more extreme than the general population:
So many people who wind up in prisons come from, you know, living situations or other situations where their determinants of health are very poor. So as a result, people in prisons tend to have more extreme and more difficult and more complex, multi-faceted healthcare needs.

Mental health of prisoners was a key concern:

In many countries people with mental health problems seem to fall through a lot of the cracks in the social safety net and end up being warehoused in prisons; that’s a pretty common feature of what I’ve seen from talking to people in other countries or visiting other prisons.

I think there’s a lot of ignorance around mental health, and I think even for fellows to be made aware of mental health issues, because very often, prisoners who are portraying with slight oddities or differences are very often picked on.

Research participants asserted that individuals suffering from a mental illness should be dealt with in the community in a more therapeutic setting, rather than serving a custodial sentence in an environment that they believe actively exacerbates mental illness. It was perceived that confinement facilitates a level of depression and anxiety in prisoners that they may never have otherwise suffered.

‘It’s the mental side that’s the most dangerous side and I think that the deprivation that comes from being cut off from social circles, friends, neighbours, their peers and their relationships, particular relationships with their partners and their children and I think that causes a huge amount of stress.’

The prison environment was seen to exacerbate health problems for prisoners:
In many parts of the world, including Ireland, there are issues of environmental health caused by poor prison conditions. The effects of overcrowding; the lack of space or lack of adequate sanitation, lack of proper diet. All those things contribute to health problems in otherwise healthy people, and can certainly make pre-existing health conditions either worse or more difficult to treat.

While these illnesses often originate in the community, they are perceived to be aggravated by incarceration. Participants pointed to the belief that individuals often enter prison with limited prior access to health care in the community; some may even lack basic health literacy to allow them to access the care they need. But the prison was also perceived as an environment that can provide people with an opportunity to access the care they need;

Predominantly the people we get into prison are people who have pretty tough lives in terms of maybe diet, in terms of care, generally, and healthy living. And many of them would have neglected themselves and been neglected medically, emotionally, psychologically maybe throughout their lives...

A lot of those prisoners have no GP on the outside, haven’t seen a dentist for years…and when they come in here they’ve access to a GP 24 hours a day, they see a psychologist...

It was believed that prison staff may over-estimate the amount of knowledge that prisoners have in relation to health issues:

...I think we overestimate the knowledge that we think people have, and it never shocks me that you actually have to go back to the very fundamentals for a lot of the fellows...a lot of them have been early school leavers, have had very poor school attendance...

The need for realistic perspectives on the promotion of health was cited as important:
And then for some fellows, how do you maintain a good, healthy outlook on life when your life is chaotic? Is it important when you’re living from hand to mouth?

Participants were unanimous in their assertion that living conditions within the prison setting are not conducive to the maintenance of good health:

‘...there are issues of environmental health caused by poor prison conditions. You know the effects of overcrowding; the lack of space or lack of adequate sanitation, lack of proper diet...’

Substance misuse and mental health issues were seen as posing a significant threat to the health and well-being of prisoners. Current harm reduction measures employed by the Irish Prison Service were identified but it was clear that participants feel more is needed. While the use of drugs, both prescription and illegal, was of concern to all of those interviewed, lack of education in relation to the dangers of misusing both prescription and illicit drugs was cited as a key issue.

But it’s fairly clear that there’s a disproportionate drug problem in the prison system, so I wouldn’t say that it’s a reflection of what goes on in broader society.

But even the drug round, you know they get medication and they’re being counselled about the drugs that they’re getting, and you’re up there dispensing the drugs and they’re doing everything to try and conceal them and to take them away and give them to somebody else.

The perceived increased use and availability of heroin was also cause for concern, but it was noted that heroin users in the prisons appear to be moving away from injecting drug use.
...we have noticed in the last twelve months or two years a huge change in culture; they are still using heroin but they are not injecting it, they are obviously inhaling it or they’re smoking it or whatever way they’re doing it.

The benefits of methadone maintenance programmes were highlighted by the interviewees; however, it was noted that methadone is not suitable for all substance abusers so in many cases those who are addicted to substances other than opiates find their treatment options limited.

‘Methadone should be only an interim solution to stabilise a person in the short term, but in the longer term, it doesn’t deal with the addiction, as such, because the person still has an addiction - he or she has now developed a dependency on a substitute drug.’

Concern was expressed for the health status of individuals upon release, especially if they are returning to an unstable environment.

‘Families can say they’re very supportive but then it’s back to, “Ah sure, you can have one drink - one drink won’t kill you.”’ Therefore returning to communities with few supports can often lead the individual to return to a cycle of crime and risky health behaviour.

Lack of coherent national policy specific to the health of prisoners was identified: This clearly shows a lack of joined-up approach between the health services and the Prison Service, and whereas there is the stated objective of the Prison Service, it’s difficult to see if there’s much substance to that policy statement.

The focus of the Prison Service seems to be on capital projects, and the view has been expressed that with the building of new prisons, the provision of services would become much easier. But the issue of providing healthcare services is essentially a human resources question rather than a bricks and mortar problem, and in that
regard, the building of new prisons won’t necessarily make more doctors and nurses or psychologists or psychiatrists available.

Well, certainly there is a need for specific initiatives aimed at prisoners. In neighbouring jurisdictions, there has been a development of full-time, specialist, inter-disciplinary prison health services which are underneath the health service umbrella - so they come from the health side of government - but they’re focused for prisons, and that certainly would seem to be a better way to structure a prison health service than is currently the case.

The issue of priorities was cited as significant:

*I suppose funding is obvious, and the other thing would be the whole attitude stuff; I mean there is still an old belief out there that prisoners don’t deserve it and why prioritise them at all? I believe, myself, that ultimately it’s more about the attitude than it is about the funding, because when they need funding for other things they can get it; for instance, security - they don’t seem to have any problems getting funding for it. So, it’s about prioritising, and prioritising is done on the basis of what you regard as most important. And I suppose, from my perspective, anything around the welfare of the prisoner in terms of the prisoner’s own benefit would never be a priority and never was.*

The need for a health promotion strategy for prisons emerged as a key theme:

*I think it is appropriate because ultimately the prison population in Ireland is a relatively small group. There are certain groups that within a health promotion strategy targeted at prisoners, there may be subsets within that that may need*
particular focused services. Obviously women prisoners have particular health needs, and I would also say there are two other groups currently in the prison system - children and immigrants.

You know, they (prisons) have a whole microcosm of people with a huge amount of problems, and very often their lifestyle is one of the huge factors that is impacting on their health, you know?

I think that prisoners probably have specific needs as a group at risk and I think that certainly the least you would expect is that they would be part of the main strategy. I think that if you’re going to draw up a policy for anybody...sometimes policies are drawn up by...people who write policy but they don’t consider the people using that policy.

The need for comprehensive health promotion was identified:

Whereas health is much more than correcting illness, it’s also about promoting good lifestyle, good habits, maintaining good mental health and having strategies to deal with stress so I would say that it would be a narrow understanding of health promotion just to leave it with the medical people.

Health as a human right of prisoners was discussed:

And I think, sometimes it’s not fully appreciated that the duty to provide adequate healthcare services in prisons is a legal obligation set out in international law. So, I think there is a real chance that there could be more legal cases taken in the coming years about the failure to provide proper healthcare, and I think that should hopefully make the issue more urgent for government.
I believe that the Prison Service should be able to deliver the same quality of basic medical care and health promotion as well as -- and maybe even ahead of it because they have a very confined number of people, they have control, in a sense, over the people that you wouldn’t have over them on the outside. So, I think it would be relatively easy for them to implement the strategy if it was resourced, but it’s about resources.

It’s almost like it’s the wrong way...a happy-go-lucky type of an effort at care. If you’re lucky...you might be lucky and you might not. That’s not good enough when you’re dealing with mental health.

Prisons are a normal part of society. They lose certain rights when they come to prison...but what I will say is that a prisoner should have all the rights that an ordinary citizen should have. And that certainly should cover health as well.

**DISCUSSION**

The findings highlight the diverse range of health issues affecting prisoners, most notably substance misuse, communicable diseases mental and emotional well being. These health issues have been highlighted by the World Health Organisation (2007), Casey (2007) and Kennedy et al (2005). Such a broad scope of health concerns requires a greater diversification of response that not only addresses the medical needs of the prisoner, but also reflects the broader social impacts that adversely affect the health of the individual. The traditional ‘medical model’ of health has been relied upon within prison healthcare to the detriment of a focus on the broader determinants of health. Tones and Green (2004) point to the medical model as reductionist and
patriarchal, placing the sole responsibility for health with the individual. However, prisoners often originate from disadvantaged backgrounds where determinants of health such as educational status and living conditions adversely impact upon their ability to gain access to and remain in formal education to the same level as the general community. It is widely accepted that poor educational attainment can adversely impact on the health status of the individual with regards the capacity to maintain a healthy lifestyle and access relevant healthcare services. Capacity building and empowerment are key principles within health promotion (WHO, 1986); however health literacy and the capacity to engage positively with healthcare services cannot be achieved without addressing the broader determinants of health experienced by prisoners.

Mental health and well-being of prisoners was a concern for all research participants. The findings of this study indicate that the root causes of ill-health within the confines of prison are diverse and their impact most greatly felt in the area of prisoner mental health and well-being. Root causes such as anxiety, stress and anguish over family and the continuation of life on the outside have a significant impact on the mental health and well-being of prisoners. The harsh environment and deprivation of freedom in prison often leads individuals to develop some form of mental illness, with this type of distress often leading to self-harm and even suicide Kennedy et al (2005). There are extremely high levels of mental illness in the prison system as opposed to the general community, with the recorded suicide rate indicating that prisoners are at a higher risk of suicide than the general population (Casey 2007). Certainly, prison does offer the opportunity to engage with the personal determinants that impact an individual’s health; however just how much is achieved in a context of micro-
environmental factors such as over-crowding and poor living standards is questionable given that they have a significant impact the health of those in prison (WHO, 2003; Lines et al, 2005; de Vigiani, 2007). The broader political climate also impacts upon health in prison, with the findings of this study illustrating the perception of key figures in the prison system in Ireland that funding is not available for health initiatives, but capital funding and funding for increased security measures is more readily so where necessary. This is incongruent with the statement from the Department of Justice, Equality and Law Reform (2000), that funding be made available for a dedicated health promotion professional in each institution, with training for all staff in health education and promotion, such as recommendation has not come to fruition.

Substance misuse, particularly the availability of heroin and the adoption of methadone maintenance by the Irish Prison Service as a harm reduction measure, was a cause of concern. The benefits of substitution treatment in stabilizing illicit drug users and addressing the chaotic nature of addiction lifestyles has been highlighted by the WHO (2010). However, for any drug treatment to be effective it needs to be accompanied by broader health measures that deal with both the underlying causes of substance misuse and the physical and emotional consequences of addiction. A specific national prison drugs strategy was introduced by the IPS in 2006, the guiding principle of which is to stop the flow of drugs into prisons (IPS, 2006). This strategy also highlights the need to provide relevant supports to prisoners to maintain a drug-free lifestyle, including the provision of health promotion and education programmes and information. However, it is difficult to see where and how these health education and promotion programmes will be implemented within Irish prisons considering
prison nurses have recently reported an inability to promote health effectively in prisons due to the pressures and time constraints experienced in primary healthcare provision in Irish prisons (HSE, 2009). The inclusion of health promotion as part of a drugs strategy rather than in its own right might be more indicative of the current governmental funding policies, in which ‘the war against drugs’ is more substantially funded via two governmental departments, (health and justice), than health promotion which is the poor relation.

According to the Irish Prison Service (2009), the aim of healthcare in prison is to provide those who reside there with the same standards of care as exists in the community, with priority given to health promotion through the positive intervention of all prison staff. This certainly reads as contradictory with the findings of this research with most respondents highlighting that in certain areas of health, most notably mental health and substance misuse, the services provided to prisoners are far below those available in the community. The philosophical values that underpin the provision of healthcare within the prison system are based on the dignity of the prisoner and also the necessity of the involvement of prisoners in managing their own health status (IPS, 2009). While this appears to reflect the values of empowerment and participation that are key within health promotion, the reality as voiced by research participants is that within the current system prisoners are rarely involved in decisions about their own health, either because they lack the capacity to do so, or they have been disempowered by a system more concerned with the maintenance of security that affecting any positive change in the lives of those it incarcerates. It seems an incomprehensible misuse of resources that the Health Service Executive, the Department of Health and Children and the Irish Prison Service have failed thus far to
agree on how best to provide an equivalent healthcare service within the prison setting. This is in stark contrast to our nearest neighbours, England, Wales and Scotland, who through a partnership approach between health and justice, health promotion and education have become healthcare priorities within their prison systems (HEBS, 2002; Siva, 2010). Prisons are one of the only settings where true health equity can potentially be achieved, regardless of the health determinants that an individual may have experience of. While equity underpins health promotion practice, it is philosophically in contrast to the nature of the prison system which chooses to incarcerate individuals for a specified period of time without providing the individuals under its care with the adequate rehabilitative resources needed to re-enter the community and reach their potential in a non-custodial setting.

The failure of the current national health promotion strategy to include prisons as setting or prisoners as a target population group for health promotion interventions is worrisome. The potential of the prison setting to provide a high standard of health promotion and education within its confines have been widely discussed (O’Mahony, 2000; WHO, 2007; Department of Justice, Equality & Law Reform, 2000) and has been reflected here by research participants, who agree that prisons are not primarily concerned with the health of prisoners and security will always be a priority. However, the aims and philosophical underpinnings of prison healthcare are not vastly different from the aims and objectives of the National Health Promotion Strategy. Prison healthcare providers should have the capacity to implement the current strategy even though it does not mention prisons directly. Strong focus on addressing structural determinants and organisational culture within prison settings would be a significant initial step in ascertaining the reasons why effective health education and promotion
interventions cannot be implemented in a formalised and consistent manner throughout the Irish Prison Service.

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The idea that education can imbue the learner with the knowledge, skills, values and dispositions necessary for active citizenship has come to permeate European educational discourse. This article examines the relevance of that discourse for correctional education and considers what it may have to offer the prisoner? The article suggests that because citizenship is itself a learning process that imputes a developmental and transformative impact, it has much to offer the prison learner. Accordingly, it posits the view that we should not only think of learning as a key dimension of citizenship but citizenship as a key dimension of learning. Similarly, correctional educators should consider 'civic competency' to be just one more literacy prisoners need to master in the hope of lessening their marginalisation following release. The article goes onto to suggest that because citizenship education develops critical rationality and similar higher order thinking skills it is the perfect tool with which to forge the possibilities afforded by transformative learning. It concludes by claiming that transformative learning is the ideal paradigm within which to embed correctional education in Ireland. It is ideal because such an ideology and approach would be focused less on enabling prisoners know their place in society and more on enabling them re-conceptualise their place in society.

Key words: Citizenship Education, Active Citizenship, Correctional Education, Prison Education, Transformative Learning.

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**Learning for Liberation, Teaching for Transformation:**
**Can correctional education prepare prisoners for active citizenship?**

What is the purpose of correctional education? This apparently straightforward question tends to elicit a variety of seemingly disparate responses. Generally, they range from the esoteric view that correctional education lessens the damage caused by imprisonment (Costelloe & Warner, 2008; Behan, 2007; Warner,
2005), to the more prosaic suggestion that its function is to up-skill and ready prisoners for employment after release (Schuller, 2009; Dawe, 2007; Harper & Chitty., eds. 2005). Of course, it is tempting to conclude that its purpose lies somewhere along that continuum but in this article I am proposing that perhaps it is something else entirely. The essence of my argument is that correctional education should be seen as an end in itself and not just a means to an end. That is not to say that I do not agree with the other viewpoints. I believe that prisons are inherently damaging and regardless of the quality of regime or facilities, the vast majority of people leave prison more damaged than when they entered. Furthermore, I believe that correctional education can lessen that damage considerably. Similarly, I agree that employment is a key factor in reducing recidivism and attempts to improve prisoners' employability are necessary and worthwhile.

However, I believe also that as with many of society’s ills, for far too long education has been touted as some sort of panacea for tackling crime and criminality. Therefore, I contend that we must be weary of asking too much of education and expecting too much from education. After all, people do not commit crimes simply because they have failed at education, or have been failed by education. And merely filling the education deficit while in prison will rarely prevent further crime. None the less, I contend in this article that correctional education can have the most profound impact in bringing prisoners back into society. By this I am not just referring to reintegration or resettlement but rather the accepted belief that education, and in particular, lifelong and lifewide learning, has a significant role to play in bringing the disenfranchised, the marginalized, and the disaffected 'back into society'
Undoubtedly prisoners are among society's most excluded; if only because the act of imprisonment itself physically, socially and psychologically removes them from society. Social exclusion results in dis-empowerment, limited life chances and a diminished quality of life. In the case of prisoners, such difficulties are compounded further by sustained negative portrayals of their lives, values and communities. Thus it is hardly surprising that so many manifest feelings of alienation, marginalisation and disaffection. Feelings which would appear to be rooted in, and emanate from, a sense of inequality, mistrust and marginalisation. For many prisoners, incarceration is viewed as the final manifestation of their deeply held feelings of social exclusion and marginalisation. In addition, it sends them the message that they are not worthy citizens and have little to contribute to society. This in turn feeds their perception that they are excluded systematically from both society and its accepted values, and is for many the final proof of that exclusion. However, if we buy into the view that education can combat the exclusion of society's most marginalised and disenfranchised citizens, then we must also buy into the view that correctional education can bring prisoners back into society.

But correctional education can only achieve that aim if the education provided guarantees that prisoners come to find societal values meaningful and relevant to them. Without this, they will never become active citizens and indeed why should they? Therefore the type of education provided is the key to the solution. If prisoners are not made to feel a part of society, if they are not encouraged to be active citizens, if
they fail to see any benefits accruing from active citizenship, then they will continue to reject society and its values. Quite simply, I contend that correctional education can help counter such rejection by preparing the prisoner for active citizenship. It can do so not simply by nurturing and exemplifying the knowledge, values, skills and ideological frameworks necessary for good citizenship; but because citizenship is itself a learning process that imputes a developmental and transformative impact on the learner (Delanty, 2003). The remainder of this article explores the idea that correctional education that is embedded in the ideals and practices of transformative learning and which is in turn focused on preparing the prisoner for active citizenship is the most realistic, appropriate and meaningful to the lives of prisoners before and after release.

Before that however and in order to set the context, it might be useful to step back and have a brief look at the bigger picture. In so doing, we can discover that in recent years notions of citizenship, inclusion and democracy have become inextricably linked to developments in educational policy and practice right across Europe. A major discursive shift in European education debate has placed a new emphasis on the democratic and civic outcomes of the education process and have introduced the concept of 'social and civic competence' (Hoskins, 2008). This has led to the prioritisation of education for citizenship and the teaching of democracy as mechanisms for the promotion and support of active citizenship (Council of Europe, 2010; 2009; 2008; European Commission, 2008; 2005; 2005b). This has translated into practice to such a degree that citizenship education now plays an unprecedented role as a core component in school curricula. The driving force behind this is the desire for increased European cooperation and unity. The rationale being that
education can foster the principles of civic responsibility, communal interdependence, diversity, and concepts of freedom and human rights; principles considered to be the bedrock for European social cohesion.

This shift in discourse has meant that the term active citizenship has become embedded in education policy and practice, and indeed the public psyche. Most recently, the *Strategic Framework for European Cooperation in Education and Training* set out four long-term strategic objectives for Member States, one of which is "promoting equity, social cohesion and active citizenship" (European Commission, 2009). Perhaps of all the current EU initiatives, the European Qualifications Framework best reflects this new emphasis, identifying as it does eight key competences 'which all individuals need for personal fulfilment and development, active citizenship, social inclusion and employment'. Unsurprisingly, 'social and civic competency' is identified as one of the eight key competencies all European citizens should have acquired by the end of compulsory schooling and which they will need to update and maintain throughout life (European Commission, 2008).

But how relevant is this rhetoric to the practice and philosophy of correctional education? How can concepts such as the citizen learner, or education for democratic citizenship, bear meaning for the lives and aspirations of prisoners? And just how effective can 'social and civic competency' be in preparing prisoners for life after release, particularly in light of my earlier comments regarding exclusion and marginalisation? I guess the simple answer suggest that if the aim of the new educational discourse is to foster an informed and engaged citizenry and an aim of correctional education is to foster law abiding citizens, then it would seem to be a
match made in heaven as both aims are different sides of the same coin. This particular coin being the currency of choice as research indicates that high levels of social participation and connectedness can contribute to the well being of society as well as to the resilience of individuals and communities (NESC Report, 2009; Aabs & Veldhus, 2006; Edwards, 2004; Putnam, 2000). But how can this work in practice, how can correctional education transform so-called 'bad citizens' into so-called 'good citizens', how can it transform disgruntled and marginalised citizens into informed and critically engaged citizens?

Perhaps the first step lies in transforming prison schools. Prisons by their very nature are the antithesis of democracy. According to Wright & Gehring (2008), prison culture is alienating, bureaucratic, status oriented, disciplinary, and brutal in its capacity to strip a prisoner’s sense of self, hope and meaning. Imprisonment does little to promote a sense of empathy, agency and autonomy, each of which are prerequisites for democratic action. Therefore, it would seem that there is a role for correctional education in providing a counter-balance by creating spaces where prisoners can develop political efficacy and social capital by observing, imitating and practising the skills and competencies necessary for active citizenship. If prison schools become democratic forums that encourage dialogue, equalise power relations, and provide conditions where prisoners learn about democracy by practising democracy, then the knowledge, skills and habits necessary for good citizenship can be taught and practiced within that context. In short, by become democratic forums, prison schools can allow prisoners develop a repertoire of civic dispositions and competencies. The importance of which cannot be overstated if we agree with Aabs
and Veldhuis (2006, p.21) that 'competencies are preconditions of behaviour, which result from learning'.

This is why I contend that the first step is to ensure that prison schools become micropractices of democracy and exemplars of engaged citizenship. Another step would be to extend this beyond the education arena and into other areas and aspects of prison life with the ultimate aim being the transfer into community life following release. In this way, the skills and capacity for active citizenship developed in the education setting would be transplanted and honed in the wider prison environment before being applied and harvested in the community after release. This is why simply placing civic and citizenship classes at the core of the prison curriculum is not enough. And of course, simply promoting and providing a citizenship forum is not enough either. To make citizenship education more meaningful and educative, to ensure it is a learning process rather than just a learning practice, correctional education must be grounded in an ideology that is focused less on enabling prisoners know their place in society and more on enabling them re-conceptualise their place in society.

To enable such thoughtful abstraction and application, to ensure that any such re-conceptualisation is both real and lasting, it is necessary for citizenship education to move beyond skills acquisition, into meaning making, and ultimately application and transfer. This is possible because the learning of citizenship is a developmental phenomenon in itself requiring as it does the development of higher order creative and critical thinking skills within which certain competencies, values, dispositions, knowledges and understandings are embedded. Or as Kymlicka (2002, p.293) asserts,
'citizenship education is not just a matter of learning the basic facts about the institutions and procedures of political life; it also involves acquiring a range of dispositions, virtues and loyalties that are immediately bound up with the practice of democratic citizenship'. In other words, we should not only think of learning as a key dimension of citizenship but also citizenship as a key dimension of learning.

To explain further, it might be useful to draw an analogy with the varying perceptions educationalists have of the role and significance of literacy learning, in particular, the distinction between functional and critical literacy. Advocates of functional literacy consider literacy to be a cогitative skill; the ability to read and write. It is a skill that can be taught just like learning to drive and nothing more. Critical literacy on the other hand is viewed as intellectual transformation. It is more than the simple acquisition of a skill, instead, through the process of learning that skill, the learner’s cognitive and intellectual development is enhanced and transformed. Proponents would suggest that 'reading is understanding the world, writing is reshaping it' (http://www.wordtrack.com.au/lit/crit.html). In this way, literacy is seen as an empowering tool used to reshape the world in which we live. I believe that citizenship learning operates in much the same manner and is of similarly fundamental importance. Thus it may be useful for correctional educators to think in terms of 'citizenship literacy' and consider civic competency to be just one more literacy that their learners need to master.

This type of educational ideology and approach is grounded in the wider paradigm of transformative learning\(^\text{x}\) (Mezirow, 2000; 1997; 1991). And while it is beyond the scope of this article to delve in any great depth into that particular theory
of education, I raise it here because essentially the crux of my argument is that the Irish model of correctional education should be embedded in the ideals and practices of transformative learning. Correctional education in Ireland must have a particular goal, a particular content and a particular style, each of which should be grounded in transformative learning. Quite simply, I contend that its relevance for correctional education is because, as the name suggests, transformative learning can lead to profound change in an individual, change which comes about through a major paradigm shift, the process of perspective transformation. Perspective transformation entails three significant dimensions; psychological, convictional and behavioural (Clark, 1993; Mezirow, 1991) which lead to and mirror three incremental changes in the learner; changes in understanding of the self, changes in world view, and changes in behaviour. Thus we can recognise the possibility for self-transformation and the potential for correctional education to bring about significant and lasting change in a prisoner's conscientisation, ideology and direction. Essentially, it can do so because it instils the capacity to transform perceptions of self and others, and it is these perceptions that determine conduct and behaviour. If transformative learning is a realistic paradigm through which correctional education can be filtered, if it is the workshop within which perspective transformations are forged, then citizenship education should be to the forefront of correctional educator's arsenal.

Citizenship education should be the weapon of choice because it is a learning process that develops critical thinking ability, metacognition, and the capacity for reasoned, reasonable and reflective thinking, without which transformative learning cannot operate. The development of critical reflexivity and similar higher order thinking skills being crucial to the success of transformative learning. Critical
reflection, fostered by and through citizenship education, forces the learner to challenge the validity of their preconceptions and presuppositions and it is this which can lead to perspective transformation. Through engaging in reflective practice, the prisoner becomes armed with the knowledge and understanding to become more open-minded and adaptive, and equipped to reject previously held misconceptions and unquestioned value systems. Arising from the critical reflection, conscientization and perspective transformation inherent in transformative learning, any significant changes the prisoner makes in their perceptions, attitudes, and worldview will not only be more measured and thoughtful but subsequently more likely to be lasting.

Therefore, as a consequence of transformative learning and through the medium of citizenship education, prisoners can gain the skills and develop the capacity to reveal how presuppositions are socially constructed, but most importantly, how they can be dismantled. Without this ability and these skills, the prisoner will struggle to become a morally and civically responsible individual who recognises that they are an integral part of a much wider social fabric. The time spent in prison will be a wasted opportunity and will merely serve to prove to the prisoner that they are not and may never be a valued member of society. They will continue to think of active citizenship as being of little relevance to them, they will fail to recognise that society's successes are theirs also just as they will fail to understand that society's problems are also their responsibility. They will struggle to consider in any depth the moral and civic dimensions involved and will fail to acknowledge that with rights comes responsibilities.
However as we have seen citizenship education can give prisoners the space, the skills and the disposition to reconsider their place in the grand scheme of things. Because it can create democratic spaces in which prisoners can review their place in society and their role as citizens, it can afford prisoners the capacity, desire and possibility to work against any such inevitabilities. Quite simply, citizenship education can enable prisoners develop the skills and capacity to re-evaluate their lives and reshape them. What better purpose then for correctional education?

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