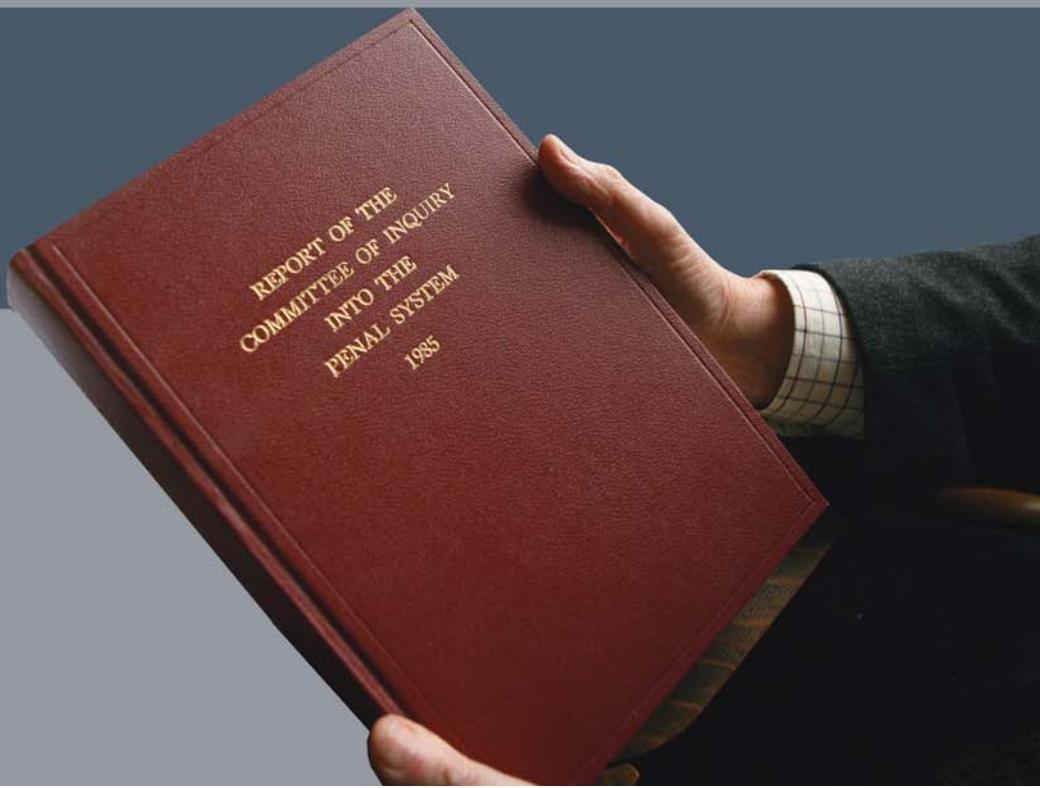


A white statue of Lady Justice, the personification of the Roman goddess Iustitia, is shown from the waist up. She has her eyes blindfolded and is holding a pair of scales of justice in her right hand. The scales are balanced. The background is a solid dark grey.

The Whitaker Committee Report 20 Years On *Lessons Learned or Lessons Forgotten?*

August 2007

A close-up photograph of a person's hand holding a red, textured book cover. The cover has gold lettering that reads: 'REPORT OF THE COMMITTEE OF INQUIRY INTO THE PENAL SYSTEM 1985'. The person is wearing a dark suit jacket and a light-colored checkered shirt cuff is visible.

REPORT OF THE
COMMITTEE OF INQUIRY
INTO THE
PENAL SYSTEM
1985

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REPORT OF THE
COMMITTEE OF INQUIRY
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1985



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*Joint Preface by the
Irish Penal Reform Trust
and the
Katharine Howard Foundation*

It is with great pleasure that the Katharine Howard Foundation (KHF) and the Irish Penal Reform Trust (IPRT) bring you *The Whitaker Committee Report 20 Years On – Lessons Learned or Lessons Forgotten?*

This publication reviews the findings of the 1985 Whitaker Committee Report in the light of present-day debates on criminal justice and prisons in Ireland. In doing so, we hope it will encourage thoughtful reflection and critical debate in an area of public policy-making that too often suffers from a lack of either.

This publication brings together the contributions of a diverse and distinguished list of commentators drawn from many sections of Irish society, including politics, academia, law, human rights, the community/voluntary sector and the prison service. We hope that their thoughts will stimulate reflection and debate on the future of prison policy in Ireland.

KHF is pleased to have been associated with this review as it gives us a mechanism by which thoughtful consideration on penal reform can be encouraged, a social issue of concern to the Foundation for a number of years.

KHF's focus is primarily on prevention and early intervention in relation to children and families that are disadvantaged and marginalised.

Through this work it is obvious to KHF that the recidivism in Irish prisons will not be tackled without a radical shift of resources and a prioritising of support for a preventative approach to tackling social exclusion and poverty. The Foundation welcomes the growing interest in learning about and applying policies that offer alternatives to prison and hopes that this report will assist in the endeavour of many organisations to promote new and different approaches to tackling crime and punishment.

For the IPRT, this publication offers another opportunity to promote informed public debate on prison and criminal justice issues; one that privileges evidence-based policy-making over the media din that all too often is allowed to drown out sensible discussion on criminal justice policy.

This publication would not have been possible without the encouragement received from Dr Ken Whitaker, to whom we are

very grateful. Having Ken's support for this project helped to open many doors, and was a gentle encouragement to the contributors. KHF and the IPRT would like to sincerely thank Ken and all the contributors for making time in their busy lives to be part of this work. We would also like to thank Noelle Spring at KHF and Rick Lines at IPRT for driving this project through to completion, Mark Joyce for his design work and Derek Speirs for his lovely photographs.

This project required modest funding which KHF was happy to contribute for the most part. However, a generous contribution was also received from the St Stephen's Green Trust, to whom we are very grateful for their belief in and support of this project.

Claire Hamilton

*Chairperson
Irish Penal Reform Trust*

David Kingston

*Chairperson
Katharine Howard Foundation*

*Foreword by
Dr T. K. Whitaker*



It is over twenty years since, to my surprise, I was asked by Garret FitzGerald as Taoiseach, to chair a Committee of Inquiry into the Penal System.

The Committee saw in imprisonment little beyond temporary – and very expensive – protection of the public, with virtually no rehabilitative or educational value. Far too many people were – and still are – imprisoned for short periods of time for minor offences not involving violence, such as debt, resulting in overcrowding and unwarranted expense.

For such crimes, we recommended other penalties, particularly well-designed and purposeful community

service. We recommended a limit on prison places as a spur to the introduction of more relevant and less costly forms of legal redress and punishment.

Not much has changed in the years since, apart from some overdue improvements in prison conditions.

In addition to chairing the Committee of Inquiry, I have also had the experience – for a four-year term – of chairing a parole board which interviewed 100 murderers.

What I have gained from all this is a greater appreciation of the difficulties of dealing humanely and effectively with those at odds with civil society. It is disappointing, in

this context, that the Dóchas Centre for women prisoners faces closure and removal to a less convenient location.

It seems that it is not just the penal system, but the whole social system, that needs attention, directed towards minimising the alienation from moral and constructive living of so many who, missing out on good parenting and schooling, fall victim to drug abuse and gravitate to crime as a route to peer acclaim and easy money.

The contributions to this volume derive from deep study and prolonged experience and deserve serious and early consideration.

Executive Summary
by Rick Lines



Rick Lines

Executive Director, Irish Penal Reform Trust

When it was published in 1985, the Report of the Committee of Inquiry into the Penal System represented the most detailed and thoughtful analysis of Irish prisons to date. Chaired by Dr T. K. Whitaker, the Committee was tasked with investigating all areas of the penal system, including staffing and management, policy and legislation and prison regimes, facilities and conditions. The Whitaker Report's enlightened recommendations – now more than twenty years old – remain important for decision-makers today.

The Committee's conclusions challenged – and indeed continue to challenge – the cosy consensus among the press and politicians about the nature of prison, and its role in the criminal justice system. As such, the Report brought welcome relief from the sensationalism that too often drives criminal justice policy and legislation in Ireland.

The Committee examined the typical rationales for incarceration, finding there to be little evidence to justify them. Whitaker and his colleagues concluded it was “difficult to find convincing proof that imprisonment operates as a major or universal deterrent” to crime, and found incarceration a poor crime prevention strategy, noting that any such effect is “a

temporary one since it lapses on the prisoner's release”. While supporting the concept of rehabilitative programmes, the Committee concluded that “imprisonment cannot be justified merely on the grounds that it can be used to reform and rehabilitate”.

While prison was found to offer little in terms of positive outcomes, Whitaker and his colleagues did conclude that incarceration was “an expensive sanction”. Noting an annual cost of £29,000 to incarcerate one person, the Committee concluded that “if imprisonment punishes, and often harms, the prisoner and his family, it punishes the taxpayer also”.

This balancing of the benefits versus the costs of incarceration led the Committee to conclude that prison “should only be employed as a last resort. The principle should be that sentences of imprisonment are imposed only if the offence is such that no other form of penalty is appropriate”. Instead of ever-growing prison populations, the Committee advised the expansion of non-custodial forms of punishment, reparation and restitution to victims and other forms of community sanctions.

Unfortunately, much of the Committee's analysis fell upon

deaf ears, both in the Government of the day and certainly of those subsequently. At a time when Ireland was experiencing unprecedented levels of crime, the Whitaker Committee – mindful of the costs and limitations of incarceration as a response – recommended capping the number of prison places at 1,500. Today, Ireland has over 3,000 prisoners, and if current Government plans to build two new super-prisons at Thornton Hall, Co Dublin and in Co Cork come to fruition, we will have a prison population nearly three times that judged a sensible maximum by the Whitaker Committee. This in a context where, according to the Prison Service's own figures for 2005, 85% of total committals were for non-violent offences, 78% of all committals were for sentences of one year or less and the annual cost of a single prison place exceeded €90,000.

While the Government and elements of the media continue to insist that this race to incarcerate reflects public demand, recent public opinion research commissioned by the Irish Penal Reform Trust exposes the fallacy of this position. The poll, conducted in January 2007 by TNS/MRBI, clearly shows that the majority of voters would prefer to see non-violent offenders dealt with through

programmes and sanctions other than incarceration. This reveals broad public support for the Whitaker Committee's central recommendation to expand the use of alternatives to custody as a way to decrease unnecessary reliance on expensive prison places. The findings of this poll, included as an appendix to this volume, clearly illustrate that the public has a much more sophisticated and nuanced understanding of crime and punishment than it is often given credit for, and recognises the limitations of prison as a response.

We will see whether the political parties have the courage to follow the lead of their constituents in this regard.

Writing in this volume, Fr Peter McVerry, one of the members of the Whitaker Committee, explains the context of prison policy-making, both in 1985 and today. According to Fr McVerry, "The Whitaker Committee began their work believing, naively, that prisons were about prisoners. They finished their report disillusioned, but wiser. It became clear, even as they were discussing future prison policy, that prisons were about manipulating, for electoral reasons, the public's legitimate desire for security".

In considering the impact of the Committee's work in light of current developments, Fr McVerry concludes that, "Since the publication of the Whitaker Report, no lessons have been forgotten – because none were learned. Prison policy continues, then as now, to be a tool in the Government's re-election programme. Then, as now, prison policy is morally bankrupt".

Dr Paul O'Mahony, noted criminologist from Trinity College Dublin, also looks at the historical context of the Whitaker Committee, and the legacy of its findings. Like Fr McVerry, Dr O'Mahony concludes that the findings of the Report have done little to influence the approach of politicians to issues of crime and punishment. "It is only when we examine the central tenet of the Report – that prison should be used as a last resort and that alternative sanctions should be developed – that we can see what little effect the Whitaker Report has actually had on the philosophy driving the penal system."

Dr O'Mahony notes that since the publication of the Whitaker Report, "the prison population has swollen massively, at a time when crime is largely stable and certainly not significantly worse than it was at the time of the Report...despite the warnings and

exhortations of the Committee, prison in Ireland is still being used to an extraordinary extent against petty property offenders, fine defaulters and others, who would be much more constructively dealt with by alternative sanctions".

Sean Cassin OFM, Chairperson of the Drug Policy Action Group, considers the relevance of the Whitaker Committee's recommendations within a newly affluent Irish society. "When the Committee undertook its work, Ireland was in the throws of an unprecedented crime wave," says Fr Cassin. "Despite this context, and the inevitable public, political and media demand for quick-fix solutions, the Committee recognised the failure of increased incarceration as a sensible or effective crime reduction or prevention strategy...Over the past twenty years, however, successive Governments have not only ignored this wisdom, they have turned it on its head."

Several of the contributors focus their comments on the issue of incarcerated women. One of the issues overlooked in the public debate on the future of Irish prisons, and the proposed Thornton Hall complex, is the impact this development will have on the incarceration of women. The decision will mean the

closure of the Dóchas Centre for Women, a newly built prison with a progressive regime in central Dublin. In its place will be a much larger prison for women located well outside the city. This will result in a significant increase in the number of women in prison in Ireland, and a prison regime that will be nothing like that recommended by the Whitaker Committee.

Setting the context of women's imprisonment in Ireland, Ivana Bacik, Reid Professor of Criminal Law at Trinity College Dublin, notes that "all the studies indicate that women incarcerated in Irish prisons constitute a highly vulnerable population...Few are detained for crimes of violence; most are a danger only to themselves. Many require psychiatric treatment and medical intervention, particularly around their drug addiction. Most are incarcerated for very short periods of time, and an increasing number are non-Irish nationals". Professor Bacik concludes that for the vast majority of incarcerated women, "The need for their imprisonment is highly questionable". Yet "twenty years on, the main recommendation of the Whitaker Committee in respect of women prisoners – that a suitable open centre be provided – remains unfulfilled and highly relevant".

Senator Mary Henry addresses the issue of health care and other social service provision for women in prison, noting the improvements that have been made since the Whitaker Report, but highlighting areas where continued reform is necessary. Like the other contributors on this issue, Senator Henry questions the closure of the Dóchas Centre, and fears what the regime of a new women's prison will be. She asks whether any new prison "could be shaped more in the manner suggested by Whitaker's Committee: more an open prison with a small closed institution".

Joan Burton TD also addresses her comments to the issue of women in prison. She expresses her "fear that once the Thornton women's super-prison is built, there will be a rush to fill it" and notes that "It is baffling why the destruction of Dóchas has elicited so little interest from today's women's organisations". She concludes by issuing a "challenge [to] today's feminists, lobbyists, women journalists and politicians to shout 'Stop' to the destruction of Dóchas before it is too late".

Martin Ferris TD writes from his experience as a political prisoner at the time the Whitaker Committee was preparing its Report. Reminding us that people in prison are uniquely vulnerable

to human rights abuses, he cautions that defending the rights of prisoners, preventing their abuse and improving prison conditions must not be entrusted to the State alone. "The improvements that came, in my view, owed far more to the campaign waged by the prisoners, their families and supporters, than to any inherent good will on the part of the authorities...If any lesson has been learned from the Whitaker Report and the reform, or lack thereof, that followed, it is this...the only way genuine and necessary reform will actually occur within our penal system is for an independent accountability process to be introduced."

In recent years, the job of providing such independent oversight has been the role of Mr Justice Dermot Kinlen, Inspector of Prisons. He comments on the legacy of the Whitaker Report in several of his Annual Reports, some of which have been extracted for his submission. "As I have unfortunately discovered," says Justice Kinlen, "Ministerial and Departmental obsession with power, control and secrecy has changed little in the intervening twenty years, nor has the disdain for independent criticism or oversight of the workings of the Department of Justice and the Prison Service. For this reason, far too many of the problems identified in the [Whitaker

Report] have not been addressed, and continue to thrive”.

Justice Kinlen is critical of the overuse of prison for short sentences. “The cost to the taxpayer is enormous and will continue to rise with no great results. Locking up high numbers of petty criminals and non-violent offenders for short terms not only drives prison overcrowding, it diverts resources better spent on addressing the problems posed by serious and violent offenders.” He cautions that, “if Ireland follows the pattern of England and the United States, as seems likely at present, we will compound this failure by building more and bigger prisons, with more and more staff and layers of bureaucracy”.

Dr Mairéad Seymour, of the Department of Social Sciences at Dublin Institute of Technology, addresses the ongoing failure of successive Governments to develop effective alternatives to custody. According to Dr Seymour, “The issue of prison accommodation was viewed by the Whitaker Committee, not through the narrow lens of pure expansionism but rather through the broader lens of alternatives to custody and reform of the criminal law. It is an exemplary lesson clearly ignored if not forgotten by the better part of the political mass particularly over the last decade. What remains is

an expensive prison estate...that continues to expand without a corresponding political commitment to develop and support an effective system of alternatives to custody and reintegration strategies to minimise prison re-entry”.

This theme is picked up by Helen Haughton of the Alternatives to Violence Project, who comments on the significant developments that have been made in the area of restorative justice programmes in the years since the Whitaker Report. She notes that the recommendation to expand such non-custodial options has not been followed, and as a result Ireland has failed to benefit from the opportunity to drastically reduce our reliance on prison. She also questions the continued lack of counselling and other interventions for prisoners, as well as supports for their families.

Gay Mitchell MEP also focuses his comments on the importance of rehabilitation programmes within prisons. “The Whitaker Committee points out that the best way to achieve rehabilitation is through the personal development of prisoners,” he notes. “Since this Report was published in 1985, the Irish prison system has to some extent changed, but an area which still remains under-resourced is that of prisoner education.”

Gay Mitchell emphasises the need for an holistic approach, rather than one that is punitive. “If we address the causes of crime, if we give people an opportunity to rehabilitate while in prison, if we require prisoners to address their own role in society and to make a contribution...we will have a better chance of changing prisoners’ views of themselves and most importantly their role in society.”

The issue of prison rehabilitation is one of several addressed by John Lonergan, Governor of Mountjoy Prison. Governor Lonergan identifies the provision of alcohol and drug treatment services and the need for thorough aftercare and support as two of the biggest challenges facing the prison system more than twenty years after Whitaker. While progress has been made in some areas, particularly in living conditions, medical services and the appointment of the Prison Inspector, other areas have seen less improvement. According to Governor Lonergan, “it is still mostly poor people who end up in prison. The vast majority have all the negative consequences of social exclusion, such as high levels of mental illness, drug addiction, poor education, high unemployment and inadequate social skills”.

The appointment of the Prison Inspector is also one of the Whitaker reforms highlighted by John Clinton, General Secretary of the Prison Officers' Association. He notes that a number of structural and administrative reforms recommended by the Whitaker Committee have been put in place, although in many cases these actions came years after originally recommended. Despite these improvements, Mr Clinton identifies a number of areas of continued under-development. "Services and facilities to prisoners are regularly restricted due to budgetary constraints," he says, identifying specific concern with "the constant problem of dealing with mentally ill prisoners. The operation of open centres, staff training and levels of services to prisoners, in particular juvenile offenders, still require greater attention".

A detailed commentary on the issue of mental health in prisons is provided by Dr Harry Kennedy, Clinical Director of the Central Mental Hospital in Dublin. According to Dr Kennedy, "The prevalence of...mental illness in Irish remand prisons is about twice the international average, an average which is itself unacceptable...This probably reflects the rejection by community mental health services of those who do not fit

the pattern for care in the community...The result is a service that by default discriminates against young men with severe mental illnesses". Dr Kennedy highlights that a "partial solution found in other jurisdictions is to provide 'court clinics' or court diversion schemes" for people with mental health problems who come into conflict with the law. However, "The difficult question about court diversion schemes," says Dr Kennedy, "is 'diverted to where?'".

Youth justice was another issue examined in the Whitaker Report, and Dr Ursula Kilkelly, Senior Law Lecturer at University College Cork, addresses her comments to this issue. "While the legislative landscape can be said to have changed utterly since 1985 – principally with the adoption of the Children Act 2001," says Dr Kilkelly, "many of the problems faced by young offenders and those who work with them unfortunately remain the same". She examines the progress of youth justice legislation over the past twenty years, noting that improvement has been made in many areas, although some of these positive legislative reforms have yet to be implemented in practice.

Despite the improvements identified by Dr Kilkelly, she is

cautious in her overall assessment, noting that "It is arguable that the approach towards young people has become more, and not less, punitive as Whitaker advised in 1985...Despite Whitaker's recommendation and the evidence that formal intervention, including that of a punitive nature, in the lives of young people should be avoided where possible, further means of interfering in the lives of young people have been introduced".

Pat Carey TD also addresses much of his commentary to the issue of youth justice. While he expresses concern at the continued use of St Patrick's Institution for young offenders, more than twenty years after its closure was called for by the Whitaker Committee, Deputy Carey notes that progress has occurred on several other fronts, including the passage of the Children Act 2001 and the creation of the Office of the Minister for Children. According to Deputy Carey, "Ideally, we will keep as many young people as possible out of the criminal justice system by providing alternative interventions at an early stage, and those who do end up in the system will be given a second chance to turn their lives around and make a positive contribution to society".

The issue of the effects of prison on children and young people is addressed from a different angle by Frances Byrne, Chief Executive of OPEN, the national network of lone parent groups in the Republic of Ireland.

“Imprisonment, or indeed other forms of institutionalisation, as a route to lone parenthood is a dimension of the diversity of one-parent families which receives little attention,” says Ms Byrne. “The notion that one-parent families can be ‘formed’ in this way is something that has not been the focus of either research or public discourse.”

Ms Byrne notes that “Research has shown that the vast majority...of male prisoners in Mountjoy...are fathers – yet few of us seem to consider their families. From the perspective of children and young people, being reared in a one-parent family means that they are three and a half times more likely to live in poverty than anyone else”. She concludes, “One thing seems obvious, if we continue to fail to tackle the albeit multifaceted issue of child poverty, it will follow as night follows day that imprisonment will become a reality for more and more of our families and communities with the ensuing negative outcomes for our society”.

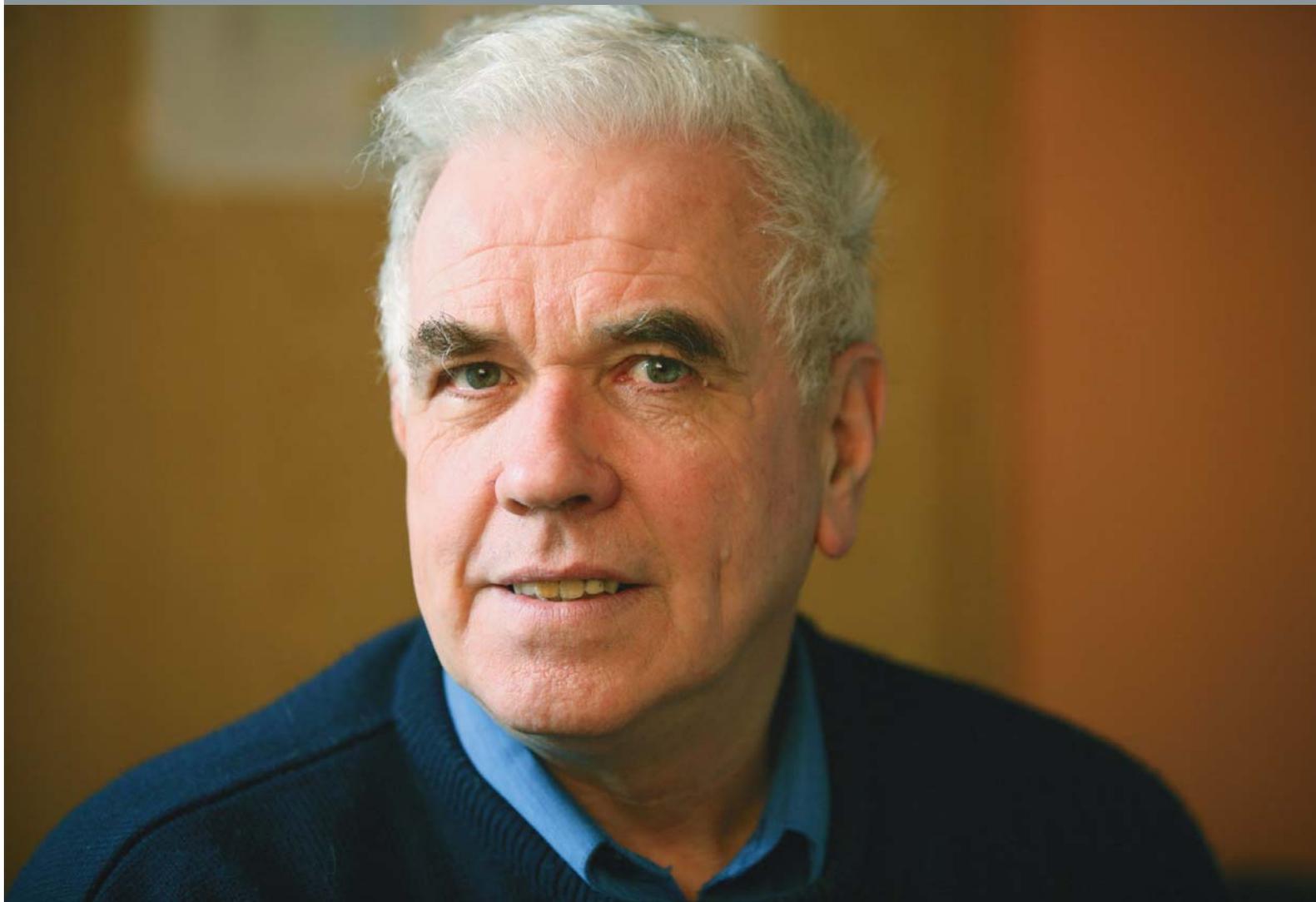
Building on the issues raised by Frances Byrne, the final voice in this volume is that of Fr Ciaran Enright of the National Prison Chaplains. According to Fr Enright, “My experience of prisons is that they are harsh places of detention and in no way conducive to the change of life that many need and want. Neither are they places of rehabilitation or preparation for reintegration into society”. He notes that, “Irish prisons have become more and more like warehouses for the poor and the vulnerable, offering little or no hope to many of those imprisoned there, or indeed to the wider community that may be under the illusion that imprisonment will effect real change”.

Fr Enright concludes “that the current prison system is dysfunctional and in need of radical change. Unfortunately, the only change in the air is further expansion of this already failing system”. He calls upon political leaders to explore restorative justice and other non-custodial options that have proved successful in other jurisdictions. “It is only when we honestly recognise the limitations and inadequacies of the prison system that we will begin to address the needs of offenders and of society in the area of justice.”

Together, these voices illustrate the degree to which successive Irish Governments have not only failed to learn from the wisdom of the Whitaker Report, but indeed have continued to entrench and exacerbate the problems its recommendations were designed to alleviate. Before the current Government rushes headfirst into a massive, expensive and ill-thought-out prison-building plan, it would do well to reflect on the Whitaker findings, and focus on creating a regime that meets Irish needs, rather than one competing with the US and UK in the endless race to incarcerate.

As suggested by Senator Mary Henry, “Even after twenty years good advice could be taken”.

“It became clear...that prisons were about manipulating, for electoral reasons, the public’s legitimate desire for security.”



Fr Peter McVerry

The Whitaker Committee began their work believing, naively, that prisons were about prisoners. They finished their Report disillusioned, but wiser. It became clear, even as they were discussing future prison policy, that prisons were about manipulating, for electoral reasons, the public's legitimate desire for security.

Even as the Whitaker Committee was recommending that imprisonment should only be used, as a last resort, for serious offences against the person and major property offences where life has been endangered or substantial damage caused, and that prison numbers should be limited by fewer committals, shorter sentences and shorter periods in custody, the Government was busy increasing the numbers in prison, building a new prison at Fort Mitchell and abolishing the one prisoner per cell regime. Even as the Whitaker Committee was criticising the shortcomings in the educational and training facilities for prisoners, some of these facilities were being discontinued to provide more accommodation for more prisoners.

In 1985, crime rates were rising, particularly car theft and

burglary, and there was an election on the horizon. More people in prison, serving longer sentences, was the political requirement of the time, regardless of the consequences for prisoners, or even for society.

If anything has changed, it has gotten worse. More prisons have been built and yet another "super-prison" is at the planning stage. The Whitaker Committee noted that if the upward trend in prisoner numbers continued, "an appalling situation would arise – some 4,000 prisoners [would need] to be accommodated...the Committee considers it obvious that for social as well as financial reasons, no such situation should be allowed to arise". That "appalling situation" will shortly arise when the new prison complex at Thornton Hall is completed.

The educational and training facilities have disimproved. As the Inspector of Prisons has noted, in the 1980s there were 18 workshops in St Patrick's Institution for young offenders. Now there are none. Although 80% of young prisoners are at, or below, the second level of literacy, the one-to-one literacy programme in St Patrick's Institution was discontinued in

order to save money. The only open prison for juveniles, Shanganagh Castle, was closed as the site was financially lucrative to the State. The prison that offered the best training and rehabilitative facilities for young prisoners, Fort Mitchell, (opened, ironically, during the Whitaker Committee's life) was closed in order to defeat the Prison Officers' Association, who refused to cooperate with attempts to reduce their overtime.

Although the number of sex offenders has increased dramatically to around three hundred, only twelve therapy programme places are available.

Although the majority of people now being committed to prison have a drug addiction, no drug counselling is provided by the Prison Service and some prisons have no drug-free space in which non-drug-using prisoners can serve their sentence without risk of becoming addicted.

Now, as then, children are being sent to adult prisons in clear contravention of the UN Convention on the Rights of the Child, to which Ireland is a state party. The regime in St Patrick's Institution, where children and young people spend their days in

mindless, meaninglessness walking around a yard, when they are not alone in their cell, is also in clear contravention of the UN Convention on the Rights of the Child. But who in the Prison Service cares? St Patrick's Institution is now, even more than in 1985, nothing but a "warehouse" for young people, many of whom were already broken by their childhood experiences. In this harsh and punitive system, they are further broken down. It is a demoralising, destructive and dehumanising experience, with no redeeming features, characterised by idleness and boredom, for young people, who are full of energy, at a critical time in their development.

But who cares?

Since the publication of the Whitaker Report, no lessons have been forgotten – because none were learned. Prison policy continues, then as now, to be a tool in the Government's re-election programme. Then, as now, prison policy is morally bankrupt.

In fairness, it must be said that the then Minister for Justice, Michael Noonan, set up the Whitaker Committee in good

faith, desiring to improve the conditions for prisoners and to bring penal policy into the 20th century. However, he quickly discovered that enlightened thinking in the Justice Department is a guarantee of political extinction. Although in 1984, the hope in the Department of Justice was that the Whitaker Committee would bring about a more enlightened penal policy, by 1985, when the Committee produced its Report, their hope was that it would soon be forgotten. Indeed, shortly after the Report was published, it was unavailable and no further reprints were planned.

Governments know that most voters are not aware of what goes on behind prison walls. They know further that most voters don't care. A commitment to a rehabilitative prison regime is a difficult issue for any Minister for Justice. The public doesn't care what happens to prisoners and most don't want their tax money spent on improving the lives of prisoners. Money spent on rehabilitation shows few visible results (as you cannot see someone not committing a crime) and the investment needed to really make a difference is very substantial.

But this was the vision that the Whitaker Committee had for a renewed Prison Service. It is a vision that makes sense. It is a vision that believes that communities are made safer – the legitimate demand of the public – not when we lock up more people for longer, but when those we imprison are released as better people, with more skills, more opportunities open to them and more hope that their future can be different from their past. That vision was probably more in evidence in 1985 than today.

“*It is only when we examine the central tenet of the Report – that prison should be used as a last resort and that alternative sanctions should be developed – that we can see what little effect the Whitaker Report has actually had on the philosophy driving the penal system.*”



Dr Paul O'Mahony
Trinity College Dublin

The Whitaker Report was by no means the only important critique of the Irish penal system of its period. In fact, the commissioning of the Whitaker Report can be seen as the Government's rather defensive response to a plethora of reports by church groups, trade unions and other lobby groups, most notably the so-called MacBride Commission, which had in the previous decade with excoriating force exposed and condemned the parlous state of the long-neglected Irish prison system. However, the Whitaker Report, because of its privileged access to the prisons and the Department of Justice and because it took pains to base its findings on reliable data and sound principles, deservedly went on to assume a dominant role in the Irish debate on penal policy and to become a benchmark against which progress could be measured.

In 1994, as part of 'The Management of Offenders' document, the then Minister for Justice even saw fit to provide a report card on the progress towards meeting the recommendations of the Whitaker Committee. This report

card, like many self-evaluations, bordered on the delusory, giving the impression that the majority of the Whitaker recommendations had been implemented, when in fact the most important of them were still totally ignored.

The Whitaker Committee was unequivocal and enlightened in its views that the Irish prison system should be based on respect for human rights and that it should not "inflict hardship or punishment beyond that inevitably consequential on the deprivation of liberty". The Committee also stressed that much of the criminality punished by imprisonment was related to deprivation, personal adversity and social exclusion and that the system should strive proactively for the personal development and rehabilitation of offenders. The human rights of prisoners were to include the right to communication with family and legal advisors, to social contact with other prisoners and to recreation, occupation and reasonable privacy.

The Report noted, among other dire shortcomings of the system: some appalling conditions of

imprisonment with grossly overcrowded, unsanitary accommodation and facilities; widespread idleness; the overuse of imprisonment for non-violent property crime and fine-defaulters; the undue influence of the Prison Officers' Association, evidenced by the extraordinary Irish combination of one of the highest officer to prisoner ratios in the world with a massive prison officer overtime bill and a surprisingly long daily lock-up time for prisoners; and a disproportionate and counterproductive use of imprisonment for young offenders. The Report observed that, "The possible rehabilitative effects of education, training, welfare and guidance are offset by the triple depressant of overcrowding, idleness and squalor which dominates most Irish prisons".

Some of the more notable recommendations were that an independent prisons board and an inspectorate of prisons should be established; that alternative sanctions to custody should be greatly expanded; that medical services be substantially improved; that St Patrick's Institution for juvenile offenders

and the women's prison should be closed and replaced with suitable modern accommodation; and that building and refurbishment be undertaken to ensure the elimination of overcrowding and unsanitary and oppressive conditions and indeed that "basic living conditions in prisons correspond broadly to those available to persons with an average disposable income".

Arguably, however, the Report's key finding was that prison is of "limited protective, deterrent or corrective value". Its central recommendation was to ensure that imprisonment is used only as a last resort and that alternative non-custodial, community-based sanctions should be greatly expanded. In line with this view, but highly controversially at a time when there was considerable public alarm about crime, it recommended the reduction of the size of the prison population and that it should be capped at the reduced level, which it was suggested should be 1,500.

Some considerable progress has been made over the last decade on some of the reform agenda laid out by the Whitaker Report. There is now an independent

management structure and an inspection system. Medical services are much better, though still inadequate, especially in the treatment of psychiatric illness and substance misuse. A number of modern prisons have been built and several more are in the pipeline. This will eventually deliver a more acceptable level of accommodation, but certainly not "average living conditions", to the vast majority of the prison population. An excellent new women's prison has replaced the Dickensian dungeon which used to house female prisoners in Dublin. However, even at this straightforward material and bureaucratic level, there is little cause for congratulations.

Management by an independent board seems indistinguishable from what went before. Ministerial fiat still appears to be the order of the day as instanced in the precipitate closure of Shanganagh Castle, the only open centre for juvenile offenders. The Inspector for Prisons has by his own account been treated shabbily and starved of the necessary resources for his work. His hard-hitting reports have been marginalised and sometimes treated with open scorn. What is

more, the provision of statistics and data on the prison system has actually deteriorated in recent years, seriously hampering proper analysis, evaluation and planning and undermining any small progress that might have been made in the area of transparency and accountability.

Scandalously, St Patrick's is still operational and generations of young offenders have passed through its Victorian netherworld since the Report condemned it. A fine new women's prison has been built, but bizarrely it is to be demolished to add commercial value to the adjoining Mountjoy Prison site. Most inappropriately, a possibly inferior replacement is to be built at the huge prison complex at Thornton Hall, a remote site that will deepen the isolation and ostracisation of all its prisoners and strand them away from families, communities and normal social life. Apart from this, the provision of in-cell sanitation and other improvements has proceeded at an unconscionably slow pace and many appalling, unhygienic and overcrowded conditions still persist.

However, it is only when we examine the central tenet of the Report – that prison should be used as a last resort and that alternative sanctions should be developed – that we can see what little effect the Whitaker Report has actually had on the philosophy driving the penal system. Alternative sanctions are still under-utilised and under-resourced. In fact, the prison population has swollen massively, at a time when crime is largely stable and certainly not significantly worse than it was at the time of the Report. Irish society has clearly become more punitive and even more indifferent to what the penal system does to offenders in its name.

Of course, the Whitaker Committee could not anticipate the hugely detrimental effects of the drugs gang culture on Irish society and on the prison system, nor the effects on public attitudes of the child abuse scandals. Both these crises have contributed to increasingly hardline attitudes. However, the fact remains that despite the warnings and exhortations of the Committee, prison in Ireland is still being used to an extraordinary extent

against petty property offenders, fine defaulters and others, who would be much more constructively dealt with by alternative sanctions.

The CONNECT programme was a short-lived project that promised genuine and effective implementation of the kind of personal development interventions that the Committee considered necessary. However, this programme was unfortunately sacrificed by the then Justice Minister Michael McDowell in his battle with the Prison Officers' Association over overtime. While the Minister claimed some progress in cutting overtime, the essential issue of getting value for money from the huge expenditure on staff in terms of a constructive rehabilitation-oriented regime was totally ignored.

Finally, a comment on what I believe was a mistake of the Whitaker Committee – their lack of support for open prisons. In fact, they questioned the effectiveness of open prisons and criticised them on economic grounds, suggesting they were particularly expensive. In my view they were wrong on both counts

and should on the contrary have supported the expansion of the open prison sector.

Unfortunately, their negative views have contributed to the failure to develop the sector and to the closure of the open centre for juveniles and the threat of closure of the adult open prisons.

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, *54% of respondents do not believe that increasing the number of people in prison will reduce crime. Only 5% of those surveyed identified building additional prison places as their preferred measure for tackling crime.*

“The Committee recognised the failure of increased incarceration as a sensible or effective crime reduction or prevention strategy, and instead recommended capping the prison population at 1,500 places. Over the past twenty years, however, successive Governments have not only ignored this wisdom, they have turned it on its head.”



Sean Cassin OFM
Chairperson, Drug Policy Action Group

When it was published in 1985, the Whitaker Committee Report was a great incursion into the dark recesses of Irish prisons, shining a torch into those crevices of sixteen-hour lock ups, strip searches, crammed cells and children in prison.

When the Committee undertook its work, Ireland was in the throws of an unprecedented crime wave. Despite this context, and the inevitable public, political and media demand for quick-fix solutions, the Committee recognised the failure of increased incarceration as a sensible or effective crime reduction or prevention strategy, and instead recommended capping the prison population at 1,500 places. Over the past twenty years, however, successive Governments have not only ignored this wisdom, they have turned it on its head.

In 1983, at the time the Whitaker Report was commissioned, Ireland had about 1,450 people in prison. By mid-1985, the year the Committee's Report was published, it was nearing 2,000. At present the population is approximately 3,200. Ireland today has more than double the prison spaces recommended by

Whitaker, and if former Justice Minister Michael McDowell's super-prison plans come to pass, adding another 800 to 1,000 spaces, Ireland will boast a prisoner population triple that identified as the maximum necessary in the Committee's Report.

In terms of disadvantage, Whitaker quotes the Costello Report that "the problem of juvenile delinquency...is, in the main, the product of disadvantage stemming from a number of causes...including poverty, unemployment, poor educational attainment and broken families". This germ of truth has relevance today, and it is indeed worrying to see that the 2005 Prison Service Annual Report records over 800 15–21 year olds committed to prison.

Despite its important insights, Whitaker did not succeed similarly in shining a torch into the recesses of the Irish psyche that still insists on more and bigger prisons to lock up more and more people. I want to offer three motives in our psyche that might explain this seemingly endless thirst for bigger and bigger prisons.

Shame theory

What is it in our post-Celtic-Tiger experience of the good times that has us calling for longer sentences, punishment approaches and a need to lock people away? Could it be that we are unable to bear the sight of those who are really footing the bill for this success? Those that have had no, or low, access to decent housing, jobs, health care and education. Those who we need to dismiss as self-willed, self-defeatist or just plain idle and lazy.

In reality these were neglected people for successive generations. Having lived in the inner city of Dublin for the last twenty years, I've witnessed first hand the abandonment of generations of families as factories moved out or abroad, flats turned into low-maintenance ghettos and spirits were crushed under the persistent cycles of subsistence living. Black markets and petty crime became mechanisms for survival for many of these communities, and indeed the early drug trade along the river by Dunnes Stores was seen as just another black market commodity that came in 'on the tide' of poverty.

Equally the cycles of being in and out of prison became written into

the cultures of these people. Men would do their time and women would cope with the family. Children embraced the culture of crime and prison as mechanisms of status and belonging. Countless young people with problem drug use would repeat to me that they “could do their time with the best of them”. The Celtic Tiger hasn’t really changed much for many of these families. They have been left behind.

Is it possible that behind the high walls of our prisons we think we hide some of the shame of our success at the expense of these people, our people?

Shunning of weakness theory

This is really a survival of the fittest mentality. It can be seen in the Irish psyche through the way that people vote for politicians. This is a powerful symbol of how a society transfers its values and beliefs onto a group to act on its behalf. This reveals an unconscious disregard in the Irish psyche for the weak in society. The mess of the health services with overwhelmed casualty units along with that of the justice system that has responsibility for overcrowding prisons, can be traced back to for whom and how we voted.

These crises tell us as much about the values held by the electors as they do about the competence of the Government Ministers elected by the people. The fact that St Patrick’s Institution still has over forty children (under 18s) locked up for long periods of the day, with a cement exercise yard, is more of an indictment of Irish society than it is of the Prison Service. As is the almost unchallenged Government plan to invest in 1,000 additional prison places – at an annual cost of over €70,000 each – while hospitals and community mental health and drug services struggle to cope with the demands placed upon them.

Could it be that we nurse a terrible disregard, even avoidance, of both the sick and the vulnerable among us? Is there in the crisis in these two services an unconscious or thinly veiled indifference in our society for the sick and dying as we march onward and upward into ever greener pastures? We do have to own that we elect and appoint these Ministers to manage the services, so are we getting what we asked for?

Scapegoat theory

The third glimpse I get into our psyche is that of the scapegoat.

The scapegoat is bred out of the fear that exists in a society towards its most uncontrollable, threatening and destructive elements.

In ancient cultures every society used a symbol to take all the most evil aspects of its passions and behaviours, whispered them to the symbol, and then destroyed the symbol. The Jews used a goat to take on these negative drives and then banished it up the mountains, hence scapegoat. Could we be scapegoating our own worst passions, acted out by these prisoners that undoubtedly caused murder, mayhem, sex offences?

The compulsion to banish them would then be overwhelming. Then you can see why Irish society needs to destroy them by sentencing them to repeated cycles of banishment. If so, the difficulty is that they come back all the more inflamed by their banishment, and all the more skilled in their destructive passions. I suspect that the current increase in gun crime has more to do with our breeding of a hybrid criminal pedigree. Over the generations families experiencing disadvantage and subsistence-level survival have been brutalised by cycles of

imprisonment. It is this brutalisation that begets a disregard for life. A disregard for the value of the victim's life which emanates directly from a disregard for the criminal's own life. These are learned behaviours and our prisons are the universities of crime.

Summary

The time is apt now for a new Whitaker that looks into the dark areas of the Irish psyche and examines our motives for locking away the more disadvantaged in our society. Can we ask in this report for a look at the cost of our success and wealth to these traditionally disadvantaged people? Let's see if it reveals some hidden secrets that we really would rather lock away.

Finally let's have a Whitaker that spells out the alternatives to our compulsion to imprison our more marginalised citizens. This new Whitaker could take its springboard from the last Report when it spoke of the roots of crime being in disadvantage and inequity in society.

“Given this catalogue of the major causes of criminality it is evident that concern for social progress and equity, and pursuit of economic development necessary

to sustain it, must be the constant preoccupation of a just and enlightened society. A society which neglects this basic responsibility hardly deserves sympathy for being frightened by the growth of criminality or pardon for becoming vengeful towards offenders. It is only the society which uses its resources effectively to promote equitable progress that can hope to break through the vicious circle of disadvantage, alienation and criminality.”

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, *81% of people surveyed believe that offenders with a drug problem should be placed in drug recovery programmes instead of serving a prison sentence.*

“All the studies indicate that women incarcerated in Irish prisons constitute a highly vulnerable population. The need for their imprisonment is highly questionable.”



Ivana Bacik
Reid Professor of Criminal Law
Trinity College Dublin

Relatively little research has been done on the subject of women and crime in Ireland.¹ There is little contemporary research on women in Irish prisons, although two major studies of male prisoners in Mountjoy Prison were conducted in the 1990s,² and some publications provide historical accounts of women's imprisonment.³

The notable lack of research may be partly explained, although not justified, by the small numbers of women engaged in crime; only around 10–13% of those convicted of serious offences in any given year. In 2005, from an overall total of 6,176 convictions for "Headline offences" recorded, women accounted for 807 (13%).⁴ Women's convictions are overwhelmingly for crimes against property. In total, 683 of the convictions against women in 2005 were for theft offences, making up 85% of all women convicted that year.

Even smaller numbers of women go to prison. In 2004, the most recent year for which statistics are available, only 8.5% of those committed to prison were female (906 out of 10,657).⁵ A lower figure again emerges from the

incarceration rate – the number of women in prison on any given day as a percentage of those incarcerated overall. In 2004, an average of 3,199 persons was in prison daily. The same year, a daily average of 97 women was imprisoned, exactly 3% of the overall number.

These figures indicate that, even when convicted, women are less likely to go to prison than men. They also indicate that most women are being imprisoned for very short sentences.

The numbers involved have changed very little over the past two decades. Thus, when the Whitaker Committee reported in 1985, it was significant that its terms of reference included evaluation of "the adequacy in capacity and range of the existing accommodation for prisoners, particularly for female prisoners and juvenile detainees".⁶

The Committee carried out this evaluation, and concluded that replacing the "existing sub-standard accommodation" was "a matter of priority", recommending that "Most women offenders could be accommodated in a suitable open

centre (e.g. Scoil Ard Mhuire, Lusk) and for the remainder one small closed institution would suffice (e.g. a separate unit on the Wheatfield site)...[there is also] an urgent need for a small, secure, self-contained detention unit, with its own regime, to provide for female juveniles".⁷

The Committee further recommended that "special attention should be given to the needs of women prisoners so that they will have optimum facilities for education, training, work, recreation and health care, with access, if desired, to women doctors".⁸

More than twenty years later, we have not learned enough from the enlightened recommendations of the Whitaker Committee. Certainly, the physical conditions of imprisonment for women have improved since 1985. When the Committee reported, women were incarcerated in the basement of a wing at St Patrick's Institution for young offenders – described as "probably the worst accommodation available within the prison system".⁹ Following the Committee's Report, and an increase in the numbers of women given custodial sentences,

a new women's prison was opened in 1999. Named the Dóchas (hope) Centre, it provides seventy places for women prisoners and is located beside Mountjoy Prison.¹⁰

Dóchas is designed so that small numbers of women can live together in "houses", to encourage greater autonomy. Greatly improved physical facilities are provided compared to those previously available, including a theatre, gymnasium, crèche and sports grounds.

Before it opened, the Irish Penal Reform Trust was however critical of the decision to build one large prison in Dublin, rather than a series of small units around the country to facilitate greater family contact.¹¹ The Trust also noted an excessive emphasis on security in the new prison, and called for semi-open conditions to be provided instead. Despite these justified criticisms, and although it does not conform to the recommendations of the Whitaker Committee for an open centre, there can be no doubt that the conditions at Dóchas are better than in any closed prison for men in Ireland.

An internal study conducted in May 2000 by PACE, the prisoners' support group, was the first to be carried out in the newly built Centre. The study found that despite the improved conditions within the prison, no basic support services existed for the women upon release.¹² The study found that 72 women were held in the prison on 1 May 2000, most serving sentences of between one and two years. Of the total number, 38 were drug addicts (53%), and 23 classified themselves as homeless – almost one-third (32%). Very sadly, all eleven inmates due for release said that they wished to stay in the new jail rather than face homelessness upon release.

More recently, research conducted by Christina Quinlan emphasised similarly the vulnerabilities of women prisoners.¹³ Quinlan found that the women detained in Dóchas were mostly young, unemployed, inner-city Dublin women with addiction problems, sentenced to short spells in custody for mostly very trivial offences. She noted also that a significant group of non-Irish-national women are imprisoned on a longer-term basis for serious drugs offences.

In its review of facilities at Dóchas, the European Committee for the Prevention of Torture (CPT) noted in 2003 that "Material conditions of detention at the Dóchas Centre were very good. However, at the time of the visit, the establishment was operating above its capacity; as a result, some women were being accommodated in the infirmary".¹⁴ The CPT asked that measures be taken to ensure that all prisoners at Dóchas be provided with appropriate accommodation. In response, the Government accepted the need to provide additional spaces, particularly for remand prisoners, but sought to justify its failure to act by reference to financial constraints.¹⁵

Apart from the issue of overcrowding, there is no doubt that the physical conditions in which women are incarcerated have improved greatly. But it appears from the limited research available that little has changed otherwise for women prisoners since the Whitaker Committee reported. This is borne out by comparisons with the few studies conducted among women prisoners prior to the opening of Dóchas. Carmody and McEvoy's

1996 research among 100 women prisoners found that the majority had committed theft and drug-related offences, and three-quarters had been in prison previously.¹⁶ They were mostly from poor social backgrounds in Dublin's inner city, and had an average of two to three children each. Fifty-six of them were chronic drug users; 49 had a history of psychiatric treatment; many had self-mutilated in the past; and 34 had attempted suicide.

In her sociological analysis focusing upon women prisoners prior to 1999, McCann James¹⁷ made similar findings, concluding that "Women's criminality in Ireland is of a particularly trivial nature; it is and it has long been associated with addiction, historically addiction to alcohol and, more recently, also to drugs".¹⁸

Both before and after Dóchas opened, therefore, all the studies indicate that women incarcerated in Irish prisons constitute a highly vulnerable population. The need for their imprisonment is highly questionable. Few are detained for crimes of violence; most are a danger only to themselves. Many

require psychiatric treatment and medical intervention, particularly around their drug addiction. Most are incarcerated for very short periods of time, and an increasing number are non-Irish nationals.

In conclusion, twenty years on, the main recommendation of the Whitaker Committee in respect of women prisoners – that a suitable open centre be provided – remains unfulfilled and highly relevant. In addition, the problem of overcrowding should be addressed, and a system of support services established for women prisoners upon release. But the bigger question as to whether most of the women we incarcerate should be in prison at all must also be addressed as a matter of urgency.

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, *the public's preferred options for dealing with non-violent offenders are drug treatment for offenders with drug problems (41%), community service (39%) and mental health treatment for offenders with mental health problems (34%).*

“*A new women’s prison...built and opened in 1999...is one of the few recommendations from the Whitaker Committee that has come to pass...What a pity the Dóchas Centre will have to go.*”



Senator Mary Henry, MD

Perhaps it was because two successive Ministers for Justice were women, Máire Geoghegan-Quinn and Nora Owen, or maybe it was just because the conditions in the women's prison at Mountjoy were so appalling, but a new women's prison was built and opened in 1999. This is one of the few recommendations from the Whitaker Committee that has come to pass.

Conditions in the old women's prison in Mountjoy were amongst the most dreadful one could envisage: dark and noisy, with an area near the laundry where many women congregated that would have been suitable for Hogarth to sketch. The worst thing about it was the noise: prisoners constantly shouting and screaming, iron doors slamming and keys rattling. I believe the amount of self-harm prisoners did to themselves was considerable. How they and the prison officers endured the place for so many years, I do not know.

I first became involved in the women's prison when Nuala Fennell was made Minister for Women's Affairs. She was shocked by conditions there and one thing she felt might help,

which was recommended by the Whitaker Committee, was the appointment of a woman doctor to the prison. She enlisted my help in finding someone, and it was to the great good luck of all in Mountjoy that I thought of Catherine Hayes, a general practitioner in the area. As well as being an excellent doctor, Catherine has a most cheerful disposition and worked with the women prisoners for fourteen years.

Fast forward to the present. Travelling up Dublin's North Circular Road from east to west, opposite the Mater Hospital and in front of the old Mountjoy Prison, one sees a smart red brick building. This is the new women's prison, the Dóchas Centre, *dóchas* meaning hope in Irish.

The Whitaker Committee did not actually recommend such a place. To quote from recommendation 2.23, "Most women offenders could be accommodated in an open centre. For the remainder, a closed institution needs to be provided. A secure probation hostel would enable the courts to dispose of juvenile offenders otherwise than by sending them to prison".

The Dóchas Centre is well designed, the girls and women living in "houses" named after trees: Beech, Elm and so forth. The amount of time they have out of their rooms is considerable and varies from house to house, depending on behaviour to some extent.

While some cooking can be done in the houses, they also have communal meals that are of a very high standard, with some of the women helping with the cooking and serving. I particularly like to try the vegetarian options. The chef frequently swaps recipes with the Paradiso Restaurant in Cork, which is said to be the best vegetarian restaurant in Europe. There is access to washing and ironing facilities so that each can care for their own clothes.

To quote Whitaker again, "Apart from replacing the existing substandard accommodation as a matter of priority, special attention should be given to the needs of women prisoners so that they will have optimum facilities for education, training, work, recreation and health care, with access, if desired, to women doctors".

That last wish is fulfilled. A woman GP is still in place in Dóchas, with whom the prisoners seem to have a great relationship.

Certainly education and training facilities are available, and the staff appear very encouraging to their pupils and keen to get them involved in projects. I am helping with one of them.

Within the Dóchas Centre, the costumes for the chorus in last autumn's Opera Ireland production of *La Bohème* were made. Every year in Mountjoy a play or operetta is produced and the men who work in the carpentry shop make the sets. An additional project last year was the production of sets for *La Bohème*, the designs for which had been made in Maiano, a high security prison in Spoleto, Umbria in Italy. So, the costumes made in the Dóchas Centre, with the help of those who normally help in the Mountjoy production, were seen on the stage of the Gaiety Theatre in November 2006.

While Dóchas is not "open", it is certainly not unwelcoming. As Whitaker had suggested, there are "appropriate facilities for the

care of any children born in prison", and the visiting centre seems to be full of families and friends at all times.

And then there are the big celebratory days like the Christmas dinner. All staff and detainees are asked, as well as hangers on like myself. The President has been a guest of honour. We sit at round tables of ten, a crowd of about two hundred, and the food, a three-course lunch, is magnificent.

After lunch there is a Nativity play. Usually the Blessed Virgin is pretty sparky and there are interesting variations on the traditional themes, like the donkey wearing antlers! Carol singing follows and some of the girls and staff really have enchanting voices. Sometimes detainees who, because of my medical background, I describe as having been "discharged", come back for the party.

In summer there is a barbecue. It is very like everyone's barbecue – we pray for fine weather, or at least not too much rain, the food is delicious, the music very loud, the dancing, well, like dancing, and a good time is had by all.

So many women who have been in Dóchas have said to me that it is so hard not to fall back into the old lifestyle when they leave and go back into the same circumstances in which they lived before imprisonment. This, I think, is our challenge now. To encourage society to give more space and help to those who want to change.

What a pity the Dóchas Centre will have to go when we all go to that splendid complex in Thornton Hall. But perhaps the facility out there could be shaped more in the manner suggested by Whitaker's Committee: more an open prison with a small closed institution. Even after twenty years good advice could be taken.

*“It is baffling why the destruction of
Dóchas has elicited so little interest
from today’s women’s organisations.”*



Joan Burton TD
Labour Party

When I first heard former Justice Minister Michael McDowell's proposal for the closure of the whole of the Mountjoy complex, my thoughts immediately went to Dóchas, the women's prison. Was the Justice Minister really proposing to close down one of the most progressive moves in Irish prison development? The closure of Dóchas, and the hope it represented, is a black moment for women prisoners and the many Irish women – from prison reformers to politicians to journalists – who campaigned and lobbied for it to be built.

I was Minister of State in the Department of Justice, together with Nora Owen who was Minister for Justice, when the go ahead was finally given in 1996 for a new women's facility in the Mountjoy complex. It was named Dóchas, the Irish word for hope. It was meant to mark the hope that women prisoners would not just be punished, but would get serious opportunities for education and rehabilitation while at the same time maintaining contact with their families, particularly their young children.

In Ireland, the popular memory of women and prison is of women transported for minor crimes up

to the mid-19th century. The history of women's imprisonment in Ireland dates from 1858, when a women's prison was constructed within Mountjoy prison. Prior to that, female convicts were transported to other countries such as Australia or America to live in exile.

In the early 20th century, single mothers were effectively criminalised and consigned to Magdalene Laundries and similar institutions. Huge numbers of women were effectively imprisoned in this way at that time.

In the 1970s, during the 1973 to 1977 Fine Gael/Labour Government, a number of social welfare reforms that particularly benefited women were undertaken. Former Labour Leader, Frank Cluskey, introduced an allowance for single mothers or, as it was then called, the "unmarried mothers allowance". Almost overnight, women who received some social welfare income support could keep their children, and the bulk of the laundries and the institutions lost their supply of captives. Those women who were imprisoned in the formal prison system were for the most part there for offences related to

shoplifting, prostitution and from time to time murder and other violent crimes.

At the time of the Whitaker Report, there was an average of 37 women in prison each day in Ireland compared with 1,557 men. The Committee of Inquiry reported at the time that "women in custody were mainly young and victims of an array of personal problems which cried out for attention. Sadly, very little was being done to help them".

The Report noted that the prison system at that time did not have a suitable building or unit for a closed women's prison, and recommended a separation unit in Mountjoy that would replace the existing closed women's prisons in Mountjoy and Limerick. It also recommended that a suitable site for an open centre be sought and developed.

The Report recommended that adequate health care, facilities for any child born in prison, full back-up psychiatric care, programmes for drug/alcohol abusers, a full welfare service programme, a counselling service and work and education programmes should be provided for women prisoners.

Approval was granted in 1996 for a new women's facility in the Mountjoy complex and the Dóchas Centre was completed in April 1999. It is recognised as a good model for women prisoners with the emphasis on maintaining family contact, particularly where women prisoners have children and babies.

There are seven individual houses and a dedicated health care unit. Each house has approximately twelve single-occupancy bedrooms with ensuite facilities and contains domestic-style cooking, laundry and recreational facilities. All prisoners have access to educational, work training and recreational facilities as well as a wide range of medical and psychiatric facilities. Prisoners are allowed one visit per day, but additional visits may be granted at the Governor's discretion. Mothers are granted as much flexibility as possible regarding visits with their children.

One of the scandals of the proposal for a super-prison at Thornton Hall is that everything that has been achieved in the Dóchas Centre is to be put on the scrap heap. The construction cost of the facility was approximately €13 million, while the total cost

in the decade since 1996 of maintaining and improving the Centre was approximately €1.5 million. Many women Deputies and Senators down the years supported the campaign for Dóchas, millions were spent on it, but now this positive modern penal development is to be scrapped.

One of the great advantages of Dóchas is that it is accessible from where the families of most women prisoners live. Once the Thornton prison is completed, prisoners' families and children will have to travel by a prison bus as there is no public transport to Thornton. I feel that this prison bus will be one of the most negative elements of Thornton, allowing easy identification of the families of prisoners, and giving rise during the hour-plus trek from the city centre to bullying and blackmail opportunities on behalf of criminal elements.

Many women who end up in prison do so because of poverty, lack of opportunity and complete chaos in their personal and family life often brought on by drug and alcohol problems. Many of these women could be dealt with through community justice penalties and restorative justice. We should aim to keep the

number of women in prison as limited as possible to those who are a threat to public safety, to that of their children and families and to themselves.

I fear that once the Thornton women's super-prison is built, there will be a rush to fill it. It will be remote from town, most people will never see it or be aware of it. It will help us as a society to forget about women in prison. It will, in my view, probably mean far more women going to prison for longer periods. Thornton is to be a Public Private Partnership. The Government has committed that for the foreseeable future Thornton will be run by the Prison Service. However, its structure and design will make it an easy candidate for privatisation should a future Government choose to pursue that option.

It is baffling why the destruction of Dóchas has elicited so little interest from today's women's organisations. It is a monument to their enlightened predecessors and the women's movement. I challenge today's feminists, lobbyists, women journalists and politicians to shout 'Stop' to the destruction of Dóchas before it is too late.

“The only way genuine and necessary reform will actually occur within our penal system is for an independent accountability process to be introduced.”



Martin Ferris TD
Sinn Féin

In May 1984, at the Irish Prison Officers' Association AGM, Denis Kavanagh, a Portlaoise Prison delegate, sparked controversy by publicly declaring that in Portlaoise Prison he had "personally witnessed prisoners being beaten, brutality was there for anyone to see".¹ Kavanagh's statement sparked headlines such as "Prison officers tell of Portlaoise Beatings",² "Officers to press for inquiry into allegations of prison brutality"³ and "Warders say prison attacks not investigated".⁴

While statements highlighting abusive practices had been issued for many years previously on behalf of political prisoners in Portlaoise, no real investigation had ever taken place. However, with Kavanagh's public admission of the mistreatment of prisoners coinciding with the announcement some four months earlier of an inquiry into the Irish penal system, there was fresh hope for those most affected by the penal system's shortfalls that genuine reform would be introduced.

Unfortunately, such hope was to be extinguished some fourteen months later with the publication

of the Whitaker Report in July 1985. While many positive recommendations were made, few were eventually acted upon. However, I believe that most criticism should be attached to that which was omitted from the Report rather than to what was contained within it.

As a political prisoner in Portlaoise Prison at the time the Report was published, one who had direct experience of the aforementioned regime and who contributed to a lengthy submission to the inquiry, this writer believes that the Committee failed in their requirement "to examine all aspects of the regimes observed in the institutions and facilities available to prisoners and detainees",⁵ summarised in Chapter Two under the title "The shortcomings in the facilities and services for prisoners".

While it is accepted that imprisonment formally constitutes the law's most severe penalty with its desired consequence being the restriction of liberty, how far that liberty should be restricted was a matter for discussion for the Whitaker Committee who, in their Report,

declared "nothing should be done to inflict hardship or punishment beyond that inevitably consequential on the deprivation of liberty involved in imprisonment".⁶ As welcome as such a declaration was and is, the reality, as outlined in 1952 by Prison Commissioner Sir Lionel Fox, remains "while a sentence of imprisonment does not, of itself, impose on an offender any loss of civil rights, his position as a prisoner may disable him from exercising them".⁷

Given that it is acknowledged that precisely because prisoners must suffer the loss of certain rights, they become particularly vulnerable to further loss,⁸ the Report was most flawed in its attempt to define the "fundamental human rights" of a prisoner that should not be "interfered with or encroached upon except to the extent inevitably associated with the loss of liberty". For example, the Report did recognise that prisoners had a right to communicate with their immediate family, their legal advisors and the courts, or to reasonable privacy, recreation, occupation and social contact with other prisoners.

However, it appears that despite the controversy caused by Kavanagh's claims, and the receipt of a lengthy submission from mistreated prisoners, the Committee did not see fit to make any reference to prisoners' fundamental right to protection from torture, inhuman or degrading treatment, which is enshrined in various international legal instruments and held by the Irish courts to be an unenumerated right under Article 40 of the Irish Constitution.

Following publication of the Report, closed visits with families were replaced with the more humane open visit allowing fathers to hold their children for the first time, in many cases, in ten years. In one instance, a prisoner's first physical contact with his child was after the child was killed in a car crash and he held the dead body. While he was paroled for the funeral, the authorities reneged on an agreement to allow the man to be the person to tell his wife the news when she came out of a coma having been seriously injured in the same crash. There are many other instances of the vindictiveness of the regime at that time.

The improvements that came, in my view, owed far more to the campaign waged by the prisoners, their families and supporters, than to any inherent good will on the part of the authorities.

Even after the regime was liberalised, the suspension of visits continued to be used as a means of punishment, as did excessive periods in solitary confinement despite the Report stating that such confinement should be strictly controlled and monitored.⁹ Recreational periods were increased and educational programmes, which facilitated the personal development of prisoners, were eventually developed, again due to prolonged pressure from the prisoners themselves.

Violent and abusive treatment at the hands of staff continued. Strip searching, which the Committee believed should be avoided as much as possible, continued to be used frequently and the procedure continued to be used as a punitive rather than a security measure. It is submitted that such practices were eventually reformed, along with the introduction of other initiatives outlined in the Report, only after the appointment some

years later of a new Governor whose ethos appeared to be based on humanity rather than repression.

It must be noted that elements which were not in the direct control of this new prison management, such as regular reviews of long and indeterminate sentences, the refurbishment and extension of centres and increasing the standard of remission, are some of the major recommendations of the Report whose implementation was most delayed or has yet to occur. While parole became easier to obtain around 1990, it is still subject to political control and at present is being used punitively against the republican prisoners in Castlereagh.

While three chapters of the Report were dedicated to accommodation conditions, in Portlaoise, political prisoners continued, and indeed continue, to be housed in E wing, a portion of the prison that was cold and damp with the wind blowing through cells and which had been condemned as unsuitable for human habitation.

Such delays and inaction in those areas would indicate the lack of

political will to genuinely act upon the recommendations of Whitaker, and perhaps it was those same political considerations which prevented the Report from even mentioning the allegations of brutal practices in some institutions, let alone commenting on them.

If any lesson has been learned from the Whitaker Report and the reform, or lack thereof, that followed, it is this. Considering the above and also the retrogressive attitude adopted by the current administration governing our criminal justice agencies, the only way genuine and necessary reform will actually occur within our penal system is for an independent accountability process to be introduced. The requirement for extra space or improved facilities should not be dependent on an individual Minister's approval of funding, nor should the restriction of the use of solitary confinement and abolition of brutality depend on the attitude of an individual Governor.

Minimum standards in the treatment of prisoners should not be susceptible to such subjective interpretation. Democratic

accountability has to be achieved and this will only occur if the directors of criminal justice agencies, be they Ministers or be they Governors, are answerable to outside bodies for the running of their departments.

For many, we have reaffirmed our commitment to being a society founded on the recognition of human rights, including the right to life and dignity. It is essential, as outlined by leading legal scholars, that this commitment to valuing an individual's rights "be demonstrated by the State in everything that it does, including the way it treats prisoners".¹⁰

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, *74% of respondents are in favour of using alternatives to prison when dealing with young offenders.*

“As I have unfortunately discovered
as Inspector of Prisons, Ministerial
and Departmental obsession with
power, control and secrecy has
changed little in the intervening
twenty years.”



Mr Justice Dermot Kinlen
Inspector of Prisons

The former British Conservative Party leader, Michael Howard, stated famously when he was Home Secretary that “prisons work”. It seems that many politicians here share this assessment. However, prisons don’t work, a fact emphasised by Dr T. K. Whitaker and his colleagues in their Report in 1985.

The Whitaker Committee was not the first inquiry to reach this conclusion, and propose that society’s efforts to address crime and offending could be better served by moving away from a reliance upon incarceration. In 1980, the MacBride Commission was established to examine the penal system. The Commission, chaired by Seán MacBride, asked a number of important questions still relevant today. These included:

- What should be the objective of our prison system? Retribution? Punishment? Reform? Rehabilitation? Reintegration?
- Is incarceration the most effective form of treatment? Would community service not be more effective and less wasteful?

- Is the vast expenditure on prisons serving any useful purpose, or is it merely perpetuating a system which breeds recidivism?

The MacBride Commission concluded that prisons do not work as a solution to social problems such as crime. Two years later, the Whitaker Committee was established. Like MacBride, Dr Whitaker had an impressive list of Committee members, who engaged in their work in earnest and produced a Report which was made public. Some of the recommendations have been implemented, but many more have not. Indeed, Dr Whitaker has told me that the Committee was badly treated by the then Minister for Justice and officials in his Department, and that a helpful official was actually punished and penalised for his efforts.

As I have unfortunately discovered as Inspector of Prisons, Ministerial and Departmental obsession with power, control and secrecy has changed little in the intervening twenty years, nor has the disdain for independent criticism or oversight of the workings of the

Department of Justice and the Prison Service. For this reason, far too many of the problems identified in the MacBride and Whitaker Reports have not been addressed, and continue to thrive today.

For example, it has been estimated that 70% of the people going into Mountjoy Prison will re-offend. The Prison Governor has stated that he has three generations, one after the other, coming through his gates. This in itself illustrates the failure of prisons to address the root causes of crime and offending. As stated by the MacBride Commission, “the existence of a normally high crime rate amongst the members of a particular group may be due more to a failure in education and learning than to an innate propensity for crime or even behaviour in the group. This failure is often due to social, cultural, and familiarised economic deprivation; such deprivation is ultimately the responsibility of society as a whole”.

Of course, people who have suffered at the hands of criminals want to see them punished. This is reasonable and understandable.

Many who have suffered would like to see the miscreant locked away forever. However, if 70% do not learn from prison and become good citizens, this seems a fatally flawed response and a terrible waste of money. Yet if Ireland follows the pattern of England and the United States, as seems likely at present, we will compound this failure by building more and bigger prisons, with more and more staff and layers of bureaucracy.

This is certainly not a course I would recommend.

One of the most startling features of our penal system is its use of incarceration for short sentences. More than 80% of annual committals are for one year or less, according to the Prison Service's own figures. Such short sentences do not help rehabilitation. The cost to the taxpayer is enormous and will continue to rise with no great results. Locking up high numbers of petty criminals and non-violent offenders for short terms not only drives prison overcrowding, it diverts resources better spent on addressing the problems posed by serious and violent offenders.

Clearly a new path is necessary. But what are the alternatives?

Reducing the number of people in prison would be a good start, particularly those who are over-represented in prisons by virtue of their social vulnerability: the homeless, those addicted to drugs, the mentally ill. Certainly putting people in prison who have either mental illness or a personality disorder is no good to anyone. It doesn't cure them. It will almost certainly make them worse. It puts an impossible burden on Governors and prison staff and indeed on fellow prisoners.

Allowing the Probation Service to be totally independent of the Prison Service is another recommendation. This would provide a greater opportunity for probation workers and the judiciary involved to develop and use alternatives, which have frequently been extremely successful and at a cost far less than that of imprisonment.

While I am not suggesting that the prisons should be abolished, I am suggesting the intake of prisoners can and should be substantially reduced. Indeed, if

prisons are to be used as the last resort, as has been stated by Michael McDowell among others, judges should explain why they have chosen incarceration in each case, rather than a non-custodial alternative or reparation programme.

Ultimately, the Government must decide whether to follow the models of the US and the UK in building new and bigger prisons, or to follow the example of the Nordic countries by reducing incarceration and using real alternatives in lieu of prison. Certainly the US and UK model is no great success story. Nor does it meet the realities of the prison population and crime situation in this country.

We should be tough on causes of crime. Abolishing poverty would be a fantastic step forward, instead of dividing society into the "haves" and the "have nothings".

This piece is based upon extracts from published reports of the Inspector of Prisons and Places of Detention.

“The current over-reliance on custody exists in contrast to an under-developed system of alternatives to custody.”



Dr Mairéad Seymour
Department of Social Sciences
Dublin Institute of Technology

In July 1996, the then Minister for Justice Nora Owen described the Whitaker Report as having made “an invaluable and seminal contribution” to the development of penal policy in the State (Dáil Éireann, 1996). The incongruous nature of the description was most significant, coming as it did on the cusp of a period which was to witness the largest prison expansion programme in the history of the State.

Ireland has a mid-range prison population when compared with other Western countries but the rate of prison entry is high due to, amongst other factors, a heavy reliance on short-term imprisonment. This is borne out by Prison Service statistics indicating that just under three-fifths of committals under sentence in 2005 were for periods of less than six months and approximately four-fifths were for less than one year (Irish Prison Service, 2005).

The use of custody was strongly discouraged by the Whitaker Committee for all but the most serious offenders. Yet, over twenty years later, custody

continues to be used for relatively minor road traffic, public order and property offences.

Furthermore, the sanction of imprisonment for fine default remains despite the Committee’s recommendations to provide alternative mechanisms for enforcement of this order.

The current over-reliance on custody exists in contrast to an under-developed system of alternatives to custody. The Whitaker recommendation to provide a range of non-custodial sanctions based on an assessment of offenders’ needs and offence seriousness has long been forgotten. Judicial and public confidence is unlikely to be garnered or sustained for alternatives to custody without an appropriately targeted and resourced system of sanctions that attempts to rehabilitate offenders while also holding them accountable for their actions. It is of concern therefore that with the exception of the Criminal Justice (Community Service Order) Act 1983, little legislative development regarding community sanctions has occurred since the Probation of

Offenders Act 1907 resulting in the availability of only a limited range of non-custodial sanctions.

A lack of sentencing guidance underpins the existing problems with the use of non-custodial sanctions. From the limited information that is available, it is clear that there are abject discrepancies in the types of sentences given by the courts for similar offences (Court Service, 2005). The extent to which community-based sanctions are available and chosen by judges in their sentencing decisions is unknown due to the dearth of sentencing data. The lack of empirical research on the effectiveness of existing sanctions in Ireland is noteworthy especially in the context of an Irish trend of importing criminal justice practices, from the UK in particular, without fully examining the evidence base underpinning their effectiveness or the cultural divergences between jurisdictions. This is most recently apparent with the introduction of civil orders and electronic monitoring in the Criminal Justice Act 2006.

Efforts to reduce the prison population have been successful in other jurisdictions through a combination of legislative change underpinned by political commitment to reducing imprisonment, sentencing guidance and judicious use of alternatives to custody.

Recognition of the need to provide comprehensive non-custodial treatment and support services for offenders to reduce crime is one facet of the Whitaker Report recommendations which is sometimes acknowledged, but too often, inadequately funded to have any meaningful effect. The result is a society where prisons become holding centres for many of those with a history of homelessness, drug use and mental ill health, creating a situation of multiple committals to prison amongst these most marginalised groups.

On a more positive note, the ethos of the Whitaker Report is reflected in recent legislative developments for the reform of the youth justice system under the Children Act 2001, particularly the expansion in the range of non-custodial sanctions including

restorative justice cautions and conferencing and the emphasis on limiting custody as a measure of last resort. The Act signals a vision for reform of the penal system in the Republic of Ireland, however, the slow pace in enacting all aspects of the Act highlights the difficulties encountered in effecting change. Of most serious consequence is the continuing practice of housing young people (under 18 years) in St Patrick's Institution despite the recommendation to close it with immediate effect over twenty years ago (Committee of Inquiry into the Penal System, 1985).

The Whitaker Committee recommended that a limit be set on what is considered "an acceptable prison population" and that every effort be made to abide by this on the basis that prison spaces will be filled if available. Imprisonment is costly (average of €90,900 per prisoner in 2005) and appears to have limited value as a corrective measure especially in light of the most recent statistics from the Institute of Criminology at UCD suggesting that more than one in

four offenders are returned to prison within twelve months of release (Lally, 2006). The need to replace some of the existing prison estate with more modern and humane facilities is well acknowledged, however, the proposal to expand the prison estate as part of the upgrade is questionable in light of the above findings on the effectiveness of prison in reducing re-offending.

The issue of prison accommodation was viewed by the Whitaker Committee, not through the narrow lens of pure expansionism but rather through the broader lens of alternatives to custody and reform of the criminal law. It is an exemplary lesson clearly ignored if not forgotten by the better part of the political mass particularly over the last decade. What remains is an expensive prison estate, costing over €300 million per annum, that continues to expand without a corresponding political commitment to develop and support an effective system of alternatives to custody and reintegration strategies to minimise prison re-entry.

“*Surely it is time for Ireland to move fully into the 21st century, and develop an approach to incarceration that offers more to prisoners and the community than simply secure custody. Indeed, the Whitaker Report provides valuable direction in this regard.*”



Helen Haughton
Alternatives to Violence Project

When the Whitaker Report was published in 1985, one of its key findings was that imprisonment had “limited productive, deterrent, or corrective value”. Many of the Report’s recommendations grew from this conclusion, seeking to promote progressive ways to address the causes and consequences of offending beyond a mere reliance on incarceration. However, a brief overview of the Report shows that while some recommendations have been acted upon, many have not.

Remission for good behaviour has not been increased from a quarter to a third, as is common in Europe.

Counselling is still not available for many. An uninformed reading of the 2001–2003 Strategy Statement of the Irish Prison Service would leave one with the mistaken impression that all those with drug use or sexual violence issues, for example, receive programmes aimed at

resolving these problems. However, the general public might be appalled to learn that a majority of these prisoners are discharged without receiving any help.

Counselling is also not available for family members who could benefit from it. The children of incarcerated parents are particularly vulnerable, having often been exposed to violent behaviours unsuitable for any eyes, let alone the young.

Research undertaken by Dervla King of the Centre for Social and Education Research indicates that if this area is not addressed, it will only result in additional problems arising in the next generation.

There is little preparation for release or aftercare for prisoners. In other systems I have seen programmes where prisoners produce goods for sale to the public, from toys to furniture, sewn goods to artwork. I have seen restaurants open to the

public run by trainee chefs and waiters/waitresses, hairdressing and beauty salons and workshops to train prisoners in mechanical repairs or upholstery.

Clearly such programmes benefit prisoners, prepare them for release and therefore help reduce recidivism. Yet in Ireland, this potential still remains underdeveloped. In recent times, those programmes that do exist have suffered from the discontinuation of the valuable CONNECT programme, a development that was universally deplored as CONNECT eased prisoners back into the outside world and helped build their confidence and skills.

The scope of community involvement in the prisons could be enhanced for similar benefit. There are a few voluntary groups entering the prisons, such as the Alternatives to Violence Project, St Vincent de Paul Society and the Samaritans. The opening of the Visitors’ Centre at Mountjoy by

the St Vincent de Paul Society and the Quaker community is an example of some of the non-State efforts that have gone into meeting the needs of families of prisoners.

While many Irish prisons have a once-off annual play, in some countries volunteers run ongoing arts programmes, choirs, dance, drama and even orchestras. This shows the degree to which voluntary involvement in Irish prisons could be much expanded.

Overall, if the Whitaker recommendations had been fully implemented, the number of our prisons, and the numbers in our prisons, would be less than we find today. Non-violent offences would be handled in manners other than incarceration. Short sentences would have been eliminated, especially for such small offences as non-payment of fines and television licences.

Since the Whitaker Report, new ideas have entered into the field of

penal affairs aimed at addressing many of these issues. The main development has been the introduction of restorative justice methods and practices, with their emphasis on the reparation of the harm done by offenders.

Restorative justice brings victims as well as offenders into the picture through conferencing, mediation and recognition that both parties have needs that must be met if change is to take place. However, a reading of the aims and objectives of 'The Management of Offenders' plan produced by the Department of Justice in 1994 leads one to cynicism. Its charts omit any mention of the possibilities offered by restorative justice, and neither victims nor families are mentioned.

Restorative justice ideas are spreading rapidly around the world, and will undoubtedly become increasingly important in years to come. The basic philosophy of restoring harmony

within the community fits with the Brehon Laws that obtained in the past in Ireland, and with a culture of humanism in the modern world. It is pleasing to see the Juvenile Liaison Officer Programme learning from these methods, and the Drug Courts emphasising that addressing the context of offending has an essential place in rehabilitation.

Surely it is time for Ireland to move fully into the 21st century, and develop an approach to incarceration that offers more to prisoners and the community than simply secure custody. Indeed, the Whitaker Report provides valuable direction in this regard.

Where there is a will, there is a way.

“I was shocked to learn that the then Minister for Justice did not even know the rate of recidivism, the rate of re-offending, by former prisoners. We are simply recycling prisoners without serious effort to break this process.”



Gay Mitchell MEP
Fine Gael

Garret FitzGerald was the Taoiseach who established the Whitaker Committee on 31 January 1984. After seventeen months of research, travel and analyses, the group of ten experts presented their findings based on the consensus principle. The Report was divided into two sections: the first setting out the Committee's views and recommendations, whilst the second part collated much of the information made available to it. In dealing with the Whitaker Committee's findings, I have decided to focus my attention on one particular segment of what is a vast and all-encompassing report, that relating to the personal development of prisoners.

The Committee noted that, "Imprisonment is a severe personal punishment for the offender. It is of limited protective, deterrent or corrective value". It goes on to say that, "The effect of these principles would, in general terms, be to reserve imprisonment for serious offences against the person and

major property offences". What is clear from these statements is that a prison sentence should be seen as the last resort and that a large amount of emphasis needs to be put on alternative punishments as well as on the early prevention of crime and indeed the eradication of many of the causes of crime. More recently, restorative justice has presented a real possible alternative.

For a justice system to work properly there must be an even balance between punishment and rehabilitation. If someone does wrong and commits a crime, they deserve to be punished in accordance with the law. When a person completes a prison sentence, they should be fit to fully rejoin and contribute to society. This presumes that some rehabilitation takes place.

The Whitaker Committee points out that the best way to achieve rehabilitation is through the personal development of prisoners. Indeed, prisoners should be given the opportunity

to rehabilitate, which should include opportunities for personal development, to learn new skills, to develop their personalities and to recognise their offence.

Since the Report was published in 1985, the Irish prison system has to some extent changed, but an area which still remains under-resourced is that of prisoner education.

Within their Report the Whitaker Committee noted that, "In all prisons, the pressure of prisoner numbers has caused a most regrettable disruption of development programmes". These development programmes remain as important today as they were twenty years ago. It is imperative that all prisoners have access to proper training and courses so that upon being released from prison they are willing and able to again become integrated.

Giving prisoners access to works programmes and other forms of labour is important for both the prison and the prisoner, but these

must not come at the expense of the planned rehabilitation of a prisoner. Such a rehabilitation programme must be grounded in the principle that prisoners have rights and responsibilities: responsibilities to themselves and to the community around them.

When I published the Electoral (Amendment) (Prisoners' Franchise) Bill 2005, I asked the Oireachtas to give prisoners the right to vote. I published the Bill on the basis that it could help in the rehabilitation process of prisoners, persuade them to take more responsibility for their actions and ultimately reduce the long-term crime figures. I welcome the Government's Bill now published which was promised in the Dáil when I sought support for mine.

At the time of publishing the Bill, there were over 3,000 prisoners in the State. It is my belief that removing their right to vote releases them from a sense of responsibility to society. I was shocked to learn that the then Minister of Justice did not even

know the rate of recidivism, the rate of re-offending, by former prisoners. We are simply recycling prisoners without serious effort to break this process. Of course my Bill also addressed practical points such as allowing prisoners to vote in their last constituency of residence as opposed to the constituency which holds the facility within which they are imprisoned.

If we address the causes of crime, if we give people an opportunity to rehabilitate while in prison, if we require prisoners to address their own role in society and to make a contribution by way of fulfilling a civic duty i.e. the duty to vote, we will have a better chance of changing prisoners' views of themselves and most importantly their role in society.

“I believe the Whitaker Report has made a significant contribution to the development of the Irish Prison Service over the past twenty years. But I also feel that the Report never received the level of priority and recognition that it deserved...[It] provided then, as it does today, a sound basis on which to develop a modern prison service.”



John Lonergan
Governor, Mountjoy Prison

It is often forgotten that the main reason for setting up the Committee of Inquiry into the Penal System was a serious industrial relations dispute over staffing levels at Mountjoy Prison in November 1983.

At that particular time, and for a number of years previously, staff–management relations throughout the Irish Prison Service were in a very poor state. The dispute in Mountjoy led to a situation where prison staff were replaced by Gardaí and the Army for two weeks, and settlement proposals included a commitment by then Minister for Justice, Michael Noonan, to seek Government approval for the establishment of an official inquiry into the whole penal system. The Committee issued its Report in 1985 and, while historic, it received little national publicity, generated little public debate and, if my memory is not playing tricks with me, it was never debated in Dáil Éireann.

I always find myself in a bit of a dilemma when I am asked to reflect on the recommendations of the Committee of Inquiry into the Penal System, better known as the Whitaker Report. I am

never quite sure how many of the changes and developments since the Report was published can honestly be attributed to it, and how many are due to changing circumstances and the passing of time. On balance, I believe the Whitaker Report has made a significant contribution to the development of the Irish Prison Service over the past twenty years. But I also feel that the Report never received the level of priority and recognition that it deserved.

The Whitaker Report contained many very progressive, innovative and challenging recommendations. The Committee has left a legacy that should positively inform penal policy for generations. Along with a small group of Prison Governors, I was involved in the presentation of both written and oral submissions to the Committee. It was an honour to be involved. The Report provided then, as it does today, a sound basis on which to develop a modern prison service.

For Prison Governors at that time, by far the most important core recommendation was that the Prison Service should be

separated from the mainstream of the Department of Justice, and that day-to-day administration of the service should be placed by statute in the hands of a Director of the Prison Service, who would be chairman and chief executive of a separate executive agency or board. Twenty years on this has not happened, certainly not as envisaged by Whitaker.

In 1996, eleven years after Whitaker reported, the then Government decided to establish an independent prisons board or agency and appointed an expert group to make recommendations. This group reported in 1997, and recommended the establishment of a Prisons Board and the appointment of a Director General of the Irish Prison Service who would have responsibility to the Board for management of the Prison Service.

An interim Board was established in 1999 along with the appointment of a Director General. This Board still operates on an interim basis, while the Director General continues to function on the basis of delegated powers. The Department of Justice still plays a very central role in the day-to-day

administration of the service. However, a few significant developments have taken place in this area. The Irish Prison Service has moved out of the mainstream of the Department of Justice, and now has its own separate headquarters. This has helped give the service a national identity. Secondly, two Prison Governors head up two directorates at the Prison Service headquarters: regimes and operations. This too is a most important development as it involves two prison practitioners at the very centre of the decision-making process in the service. Believe it or not, this is the first time in the history of the service that practitioners have been involved at this level.

In many ways, the Prison Service of today is a much changed service from what it was in 1983. A number of new modern prisons have been built. Much of Limerick Prison has also been modernised. As a result, over two-thirds of all prisoners have access to modern and civilised living conditions along with purpose-built work training, educational and recreational facilities. Catering has improved dramatically and the diet provided

for prisoners is now well balanced and of high quality.

A full-time Medical Director was appointed many years ago, very much in line with the Whitaker recommendations. In-house services and support for prisoners with mental health problems have improved. A psychological service is now well established and provides a wide range of supports for prisoners. Full-time chaplaincy teams are now almost the norm, and they play a central role in supporting prisoners and their families during periods of incarceration. The Probation Service continues to provide a wide range of services and support. An independent Inspector of Prisons was appointed in 2002, again in line with the Report.

Staff–management relations have also improved, and while there are still many issues of conflict and disagreement, most problems are now resolved without rancour. A new staff attendance system is now well established, and hopefully will provide a more meaningful and predictable pattern of attendance for staff.

On the negative side, some things appear never to change. The Whitaker Committee strongly recommended that only those who needed to be imprisoned should receive this sanction. Unfortunately, little has changed during the past twenty years. Today, there are approximately 3,300 prisoners in custody on a daily basis and of those serving sentences almost 60% are serving sentences of six months or less.

All the personal and social issues associated with the prisoner population over the years continue to exist. For instance, it is still mostly poor people who end up in prison. The vast majority have all the negative consequences of social exclusion, such as high levels of mental illness, drug addiction, poor education, high unemployment and inadequate social skills. In addition, aftercare services and supports are still totally inadequate and poorly resourced.

The end result of all this is that most young people who go to prison are likely to spend most of their twenties and thirties in and out of prison. A key recommendation of the Whitaker Report was that long-term

prisoners should have personal development programmes drawn up in consultation with them. Unfortunately, this has not occurred and obviously it is an essential requirement if this cycle of offending is to be broken.

In my opinion, there are a number of big challenges facing the Prison Service over twenty years after Whitaker.

The drug culture was in its infancy at the time of the Report. During the intervening twenty years it has escalated at a phenomenal rate, and there is an urgent need to tackle the social and economic circumstances in the wider community that contribute directly and indirectly to the drug culture.

Drugs have ruined or seriously undermined every single positive element in the prison system. They present serious security difficulties, huge health care demands and contribute to violence and bullying. The arrival of the gang feuds has brought a new and frightening additional dimension to the whole scene. There are no easy or quick solutions, but the current policy of supply elimination and demand

reduction is the best approach. We also need a huge increase in treatment programmes, resources and services.

The issue of aftercare is another challenge, the most important supports being accommodation, social services and employment/educational opportunities. Many prisoners need hands-on support for at least the first three months following release, and we currently have totally inadequate infrastructure and support services to respond effectively. I acknowledge the excellent work done by programmes like the Linkage Project, but on a national basis we lack many of the key elements required to help people make a positive transition from prison to the community.

Finally, little progress has been made in providing all grades of prison staff with adequate training and development. Of course, induction training for recruit prison officers is well established, but much more is required. The new attendance system provides for approximately fifty hours training per year. This must not become just an aspiration. The job of a

prison officer is a demanding and complex one. The least they deserve is modern training and development opportunities to support them in their work and equip them with the necessary skills.

Overall, the Whitaker Report laid the foundations for a more humane and efficient prison service. It was very relevant twenty years ago, and to its credit continues to be relevant today.

According to a 2007
TNS/MRBI poll commissioned
by the Irish Penal Reform Trust,
*66% of respondents believe
that most people come out of
prison worse than they went
in.*

“*We live in a country which some research indicates is the wealthiest in the world. We have made progress in so many sectors – housing, education, roads – but we have in many ways failed our prison population and those who care for them.*”



John Clinton

General Secretary, Prison Officers' Association

In 1983, the Government set up a Committee of Inquiry into the Penal System. This Committee of Inquiry was chaired by the eminent civil servant and economist, Dr T. K. Whitaker. The Committee interpreted its remit as being that of proposing solutions to the following major problems:

- The growth in crime and the demand for prison accommodation.
- The shortcomings in facilities and services for offenders.
- The inadequacy and unsuitability of much of the present prison accommodation.
- The unsatisfactory relations between the Department of Justice, prison management and staff.
- The escalating costs of providing and maintaining prisons and places of detention.

This vital Committee of Inquiry published its recommendations in 1985. From the perspective of the Prison Officers' Association, there were a number of very important recommendations contained within this Report (commonly referred to as the

Whitaker Report). Some of the most important recommendations were:

- The setting up of an independent Prisons Board as an executive agency to be responsible for the day-to-day administration of the prison system – with powers necessary for that purpose – dedicated by the Minister for Justice.
- That the agency would be headed up by a Director of the Prison Service who would have the Directors of Operations, Regimes, Personnel, Finance and Planning and a Medical Director reporting to him/her.
- The appointment of an independent Inspector of Prisons.
- That Prison Medical Services, under the control of the Medical Director, would provide a level of health care comparable with that in the outside community.
- That open centres should be operated in a more selective manner.
- That there should be greater efforts to maximise the input of prison staff through greater motivational training.

- That there should be improvements in the level of services and facilities to offenders, in particular, juvenile offenders.

In 1989, some four years after publication, the Prison Officers' Association wrote to the four main opposition parties in Dáil Éireann to ascertain their views on the Whitaker Report. At this time, progress and implementation of the Report was slow and little debate or discussion was taking place. The National Executive Council of the Prison Officers' Association was seeking to ascertain the position of the political parties in respect of the Whitaker Report.

The Prison Officers' Association also suggested to the opposition parties that they consider putting forward a motion in the Dáil to introduce a Prisons Board as outlined in the Whitaker Report, as this was one of its central recommendations. The Prison Officers' Association received responses from Pat McCartan TD (Workers Party), Mervin Taylor TD (Labour Party) and Anne Colley TD (Progressive Democrats). All three political parties indicated that, for the

most part, they fully supported the recommendations in the Whitaker Report.

A Director of Prison Medical Services was appointed in 1990. However, it was not until 1997 that the first nurse officers entered the Prison Service, twelve years after the Whitaker recommendation. More recently serious negotiations have taken place in relation to the nursing structure and the introduction of the grades of clinical nurse manager I and clinical nurse manager II. The problem of dealing with mentally ill offenders in the prison system is an ongoing challenge. The Governor of Mountjoy Prison has highlighted this reality in the national media.

Remarkably it was not until 26 April 1999 that the Minister for Justice, Equality and Law Reform established the Prisons Authority Interim Board, one of the central recommendations of the Whitaker Report. This was followed shortly afterwards on 15 July 1999 by the appointment of the first Director General of the Prison Service, Seán Aylward. The first Director General was a senior civil servant with experience in the prisons section of the Department of Justice,

where he previously held the post of principal officer in charge of prisons operations.

Under the Director General sit the Directors of Finance, Human Resources, Medical Services, Operations, and Regimes. Four of these five present Directors have a Civil Service background. The Director of Operations and the Director of Regimes were previously Prison Governors. The Director of Medical Services was serving when the present directorates were established and the Director of Human Resources was appointed from the Court Service in 2001.

On 24 April 2002, the Government appointed the Honourable Mr Justice Dermot Kinlen as Inspector of Prisons and Places of Detention on a five-year contract.

The open centres in place at the time of the Whitaker Report took a retrograde step in 2002 when the decision was taken to close Shanganagh Castle, the only open centre facility for juvenile offenders. Two other open centres at Loughan House and Shelton Abbey barely survived a similar fate.

Staff training has never been a top priority and was viewed as a cost. However, recent infrastructural improvements to the Prison Service Training Centre and the New Recruit Training Programme, which leads to the award of a National Certificate level qualification, are a step in the right direction.

Services and facilities to prisoners are regularly restricted due to budgetary constraints. In Mountjoy, for example, services have periodically had to be curtailed so that the prison could remain within its budget. In St Patrick's Institution, which was recommended for closure in the Whitaker Report, prison staff have proved that where there is a will coupled with adequate resources, there can be positive results.

In October 2001, at the European Conference on Drugs and HIV/AIDS Services in Prisons, Dr Vanessa Fowler spoke of her findings in each of the prisons that she had visited. She singled out St Patrick's Institution as a fine example of multi-disciplinary working with good care and

planning services. In her own words she said that she couldn't praise St Patrick's enough for the good quality training given to the D. Division staff and for the manner in which the staff liaised with the community. There was a good Drug Awareness Policy with good feedback from the inmates she had interviewed. Dr Fowler stated that if you wanted an example of a "Flagship Service" and "Best Practice" then take a look at St Patrick's.

At present, the Prisons Board is still not operating on a statutory basis. There has been a change in the position of the Director General, with Brian Purcell appointed to the post in 2004. This position is still not established on a statutory basis. Mr Purcell was also a senior civil servant prior to his appointment to this position, and was a previous Director of Operations in the Prison Service.

The Inspectorate of Prisons will finally be placed on a statutory basis under the Prisons Bill 2006. While there has been an improvement in the provision of medical services there is still the

constant problem of dealing with mentally ill prisoners. The operation of open centres, staff training and levels of services to prisoners, in particular juvenile offenders, still require greater attention. Some independent bodies, such as the Inspector of Prisons, and comments from Jesuit Priest Fr Peter McVerry have focused once again on the care of juvenile offenders – and contend that problems in this area of care have increased.

Most worryingly, in recent Prison Service Annual Reports we note the reference to bed space rather than cell capacity – and this is distorting the real overcrowding problems in many of our prisons. This overcrowding problem has been compounded by the closure of Fort Mitchell and Curragh Prisons – closures that were vigorously opposed by the Prison Officers' Association.

We live in a country which some research indicates is the wealthiest in the world. We have made progress in so many sectors – housing, education, roads – but we have in many ways failed our prison population and those who

care for them. The Whitaker Report, which over twenty years ago provided us with a blueprint for change and success, has yet to be fully implemented. Well done Dr Whitaker and shame on those who continue to ignore him.

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, *91% of respondents believe that offenders with mental illness should be treated in a mental health facility instead of being sent to prison.*

“The prevalence of such mental illness in Irish remand prisons is about twice the international average, an average which is itself unacceptable...This probably reflects the rejection by community mental health services of those who do not fit the pattern for care in the community.”



Dr Harry Kennedy

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Dr Whitaker is a unique figure in Irish public life, one of the few civil servants identified by historians as having laid the foundations of the modern Irish State as much as any Taoiseach or Chief Justice.

The Report of his Committee of Inquiry into the Penal System can be read as falling between the Reports of the Henchy Committee (1978), the MacBride Committee (1980) and the Dalton Committee (1992). Mr Justice Henchy sat on Whitaker's Committee.

The Henchy Committee had provided a draft Criminal Law (Insanity) Act which was already out of date. It resembled the 1964 Criminal Procedure (Insanity) Act for England and Wales, and ignored the effects of the 1959 Mental Health Act for England and Wales, which had in practice rendered the 1964 Insanity Act obsolete. This was because the 1959 Mental Health Act for England and Wales gave judges at Circuit Court level the power to send defendants to psychiatric hospitals using hospital orders, in which the judge effectively became the lay applicant and two doctors provided certificates, one of whom had to be the admitting psychiatrist.

Chapters 3 and 9 of the Whitaker Report, on society, crime and juvenile offenders, are admirable summaries of the roots of crime. Dalton's (1992) Committee carried this forward in an Irish context, and culminated in a description of how a new suburb would develop which proved sadly accurate. More recently, the inherent vulnerability of the poor has been documented in the criminal justice system (Bacik and O'Connell, 1998) and in forensic mental health services (O'Neill *et al.*, 2005). There are important research developments concerning the vulnerability of Black and minority ethnic prisoners and mentally disordered offenders, but Ireland has as yet only occasionally recognised this growing problem (Duffy *et al.*, 2002).

Whitaker's recommendations regarding juvenile offenders are admirable, including the recommendation that St Patrick's Institution for young offenders – “an outdated, gloomy, depressing environment for any juvenile” – should be closed. It is still in operation and little changed. The women's prison was closed on Whitaker's recommendation and the replacement Dóchas Centre

remains an isolated example of good practice in the Irish Prison Service, though psychiatric morbidity there is still high (Wright *et al.*, 2006).

The most topical observations concerned Shanganagh Castle, then an open prison for selected low-risk prisoners, “However, because of pressure of prisoner numbers, Shanganagh Castle is now predominantly used as an ‘overflow’ for St Patrick's; little screening is done to assess the suitability of candidates for transfer to Shanganagh, and many of those transferred spend a very short time there. In such circumstances, the value of Shanganagh Castle as a rehabilitation institution is minimal”.

This resonates today. Around the world, secure institutions (prisons and forensic mental hospitals) are organised according to a system such that on reception, newly admitted persons are allocated to an appropriate unit from a range of regimes, stratified to cope with their assessed needs and risks (Kinsley, 1998; Kennedy, 2001b). There is also a regular system for reassessment and a pathway

through care or custody which has transparent and achievable goals. Many Irish places of detention today are overwhelmed by the inability to limit numbers, resulting in a chaotic overcrowded mixture of the vulnerable and the violent, with inadequately managed risks of violence and suicide.

Perhaps the least obvious but most important recommendation to have been ignored concerns the recommendation that graduate entrants to the Irish Prison Service should be fast tracked for Governor/management roles. More might have been said concerning the proper training of Governors in criminology, modern penal theory and practice. Had this been followed, perhaps a different culture might have developed, with Governors claiming a degree of professional independence in matters of importance such as capping prisoner numbers to a safe level determined by both accommodation and staffing. Prison Governors should all be as free to speak publicly about the need to improve services for their clients as doctors are under the common contract for medical consultants.

Similarly, the recommendation for a Director of Prison Medical Services, a recommendation which was carried through, may have had more beneficial effects if the post had been located in the Health Service rather than in the Prison Service. It is difficult to avoid the impression that a prison medical service divorced entirely from the Health Service Executive is stigmatised and disadvantaged. Elsewhere, in England and in Australia, all prison medical services are provided as in-reach from mainstream community and forensic medical and mental health services.

Chapters 6 and 10 deal with law reform and mentally disordered offenders. Two recommendations drawn from Henchy's Report remain unfulfilled:

- That wide powers should be given to courts to enable them to refer an accused person suffering from mental disorder for out-patient or community care, or where this is not feasible, to refer or commit the accused to a designated centre.
- That a special unit for the detention of persons classified as psychopaths or sociopaths should be set up.

The first of these is the most obvious need, and its neglect is the most puzzling. We know from recent research what was always obvious. About 3% of those committed to prison are acutely psychotic; about 7.6% of men on remand and 3% of sentenced men are similarly psychotic and probably unfit for imprisonment (Duffy *et al.*, 2006; Linehan *et al.*, 2005; Kennedy *et al.*, 2005). What is most significant here is the accumulation of the most seriously mentally ill in the remand population, more so than in the sentenced population, because they are charged with trivial offences and seldom progress to a custodial sentence.

The prevalence of such mental illness in Irish remand prisons is about twice the international average, an average which is itself unacceptable (Fazel and Danesh, 2002). This probably reflects the rejection by community mental health services of those who do not fit the pattern for care in the community. Care in the community is good for the majority of mentally ill people when it is properly staffed and funded, but its attraction for Government lies in the possibility of cutting the staff numbers and

costs of traditional mental hospital care. The result is a service that by default discriminates against young men with severe mental illnesses (Kennedy, 2001a).

The partial solution found in other jurisdictions is to provide “court clinics” or court diversion schemes (James, 1999). The model for these already exists in Ireland in the form of the Drugs Court. A de facto court diversion scheme is currently operated through the psychiatric in-reach clinics provided by clinicians from the Central Mental Hospital to remand prisons. Section 4(6) of the Criminal Law (Insanity) Act 2006 concerning fitness to stand trial should facilitate this if used creatively.

The difficult question about court diversion schemes in other jurisdictions is “diverted to where?” – appropriate facilities for the reception and treatment of acutely disturbed psychotic young men should exist as part of every local mental health service if they are to be fit for the purpose of treating people with severe mental illness. Northern Ireland has six such psychiatric intensive

care units for a population of 1.5 million. For 4.2 million, we ought to have sixteen, one for every 300,000 or so, with related longer-stay and rehabilitation facilities. These should be seen as integral parts of general adult mental health services, and not specifically ‘forensic’ (Kennedy, 2006).

The second of the recommendations stemming from Henchy, a special unit for psychopaths, is a subtle divergence from the medical hubris of the 1970s. It was then believed that any human problem could and should be medicalised. If a “cure” did not already exist, it was confidently asserted that it soon would. We now hold that it is unethical to offer “treatments” which have not been shown to be efficacious and it would certainly be wrong to compel anyone to have placebo treatments for questionable inventions such as “dangerous severe personality disorder” (Chiswick, 1997; Gunn, 2000; Mullen, 1999). Yet the sadistically violent, paedophiles, members of criminal gangs and violent extremists challenge society and challenge prison regimes.

All prisoners have a reasonable expectation that they should be safe from physical attack and other forms of abuse. The Irish Prison Service, lacking the expertise or resources to provide a modern risk stratification system, has often assumed that the answer lies in spurious medicalisation of both the most predatory and the most vulnerable, whether mentally ill or not. It is time to provide a better organised and more diverse criminal justice system, in which non-custodial intense community supervision is revived for the younger and lower risk, along with voluntary participation in prison therapeutic communities similar to Grendon Underwood for the older, late maturing prisoners, and close supervision units for the most dangerous and persistently violent.

Chapter 10 recognised the prevalence of alcohol and drug problems amongst prisoners. We now know from a variety of sources that by far the most common problem amongst prisoners is alcohol and drug misuse (Allwright *et al.*, 2000; Hannon *et al.*, 2000; Long *et al.*, 2001; Kennedy *et al.*, 2005), accounting for 60% to 70% of

prisoners. These problems are exacerbated by ready access to drugs in prison and by the strength of the culture of drug use amongst prisoners. Much of the suicide rate in prisons can be explained by the collection in prisons of drug users (Gore, 1999). This is probably the one area where the criminal justice system cannot say that it is merely reacting to the problems elsewhere in society. Prisons are probably the engines for the drug culture and the illicit drug economy in the wider community.

Prisoners often tell me that they should have a right to a drug-free environment and freedom from drugs-related coercion in prison. The immediate need is to seize control of the prevailing prison culture through a clear system of separation and rewards for those who are abstinent. In addition to a range of drugs and alcohol education and recovery oriented programmes, the criminal justice system should include substantial remission of sentences or early temporary release subject to close supervision and monitoring.

Modern mental health services are still adapting to the new understanding of stigma and

mental illness (Goffman, 1963) and the harmful effects of impoverished institutions (Goffman, 1961; Wing, 2000). Toxic institutions are well recognised now (Raftery and O'Sullivan, 1999; Liebreich, 2004). Secure, closed institutions are inherently vulnerable to such impoverishment, with institutionalisation not only of residents but of staff, who are subject to numbing of sensibility and acceptance of the unacceptable. Perhaps Dr Whitaker can be tempted back from retirement to write a new report on the broader subject of how to save the fallen institution as the essential first step in the care and custody of those society regards as fallen.

“Plans are afoot to close St Patrick’s Institution and to remove the children detained there to Children Detention Schools. However, the timescale for this process – to the extent that one exists – has been given as “the end of the decade.””



Dr Ursula Kil Kelly

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The Report of the Whitaker Committee made many recommendations that have currency and relevance today in the area of youth justice. While the legislative landscape can be said to have changed utterly since 1985 – principally with the adoption of the Children Act 2001 – many of the problems faced by young offenders and those who work with them unfortunately remain the same.

Many of the sentiments of Whitaker’s recommendations are reflected in the Children Act 2001. For example, development of the Juvenile Liaison Scheme operated by An Garda Síochána was achieved through Part 4 of the 2001 Act, which put an enhanced version of the scheme on a statutory footing.

Part 9 of the Act gave statutory expression to the principle that the detention of children should be a measure of last resort as a sentencing principle, and introduced eight new community sanctions designed to offer alternatives to custody and to ensure individualised sentencing for young people before the Children Court. Whitaker’s recommendation for full use of cautioning procedures and non-punitive responses to unlawful

conduct is also reflected in these measures, and in the new conferencing initiatives set out in the Act, which can be convened in varying contexts and for different purposes by the Health Service Executive, An Garda Síochána and the Probation Service.

This range of measures has real potential to respond in a constructive and individualised manner to low level offending by young people and is fully in line with Whitaker’s recommendations for reducing those involved in crime and the numbers in detention. What is regrettable, however, is that the full implementation of these measures, particularly the community sanctions, is still several years away. Moreover, while other measures have been adopted, such as the establishment of the Education Welfare Board whose function it is to address educational disadvantage, a co-ordinated, properly resourced effort to tackle the causes of young offending and the disadvantaged circumstances of young offenders is outstanding.

The Whitaker Committee recommended that prisoners be recognised as having a right, among other things, to recreation, occupation and social

contact with other prisoners. For young people, progress in this area has been miserable to date. Those over sixteen years continue to be detained in the prison-like environment of St Patrick’s Institution, where the lack of vocational programmes and workshops not only deprives them of the opportunity to learn a meaningful trade while in detention, but also means that they spend an increasing amount of time in the exercise yard giving rise to problems of indiscipline and bullying.

The lack of common areas, including a canteen, means that the boys eat all their meals in their cells and the visiting restrictions necessary to limit the introduction of drugs into the prison mean that social contact with their family, friends and other prisoners is reduced. There is as yet no “personal development programme” for each prisoner as recommended by Whitaker, and the inadequate workspace in St Patrick’s as in other prisons lamented in the Report persists.

Plans are afoot to close St Patrick’s Institution and to remove the children detained there to Children Detention Schools. However, the timescale

for this process – to the extent that one exists – has been given as “the end of the decade”.

It is arguable that the approach towards young people has become more, and not less, punitive as Whitaker advised in 1985. The Committee’s recommendation that consideration be given to decriminalising, or at least ensuring no imprisonment for, minor offences connected with public peace and order has not been implemented. Rather, extensive criminal law has been introduced – notably the Criminal Justice (Public Order) Act 1994 penalising minor public order infractions including being drunk in a public place and refusing to obey the orders of a Garda. The fact that offences of this nature make up a significant number of the charges faced by young people exacerbates the impact of this on young people in particular.

Despite Whitaker’s recommendation and the evidence that formal intervention, including that of a punitive nature, in the lives of young people should be avoided where possible, further means of interfering in the lives of young people have been introduced. Chief among these are the

measures in the Criminal Justice Act 2006 which expand the Diversion Programme to include those under the age of criminal responsibility who commit anti-social behaviour and which make it a criminal offence to breach a Behaviour Order, a civil order made by the Children Court with a view to regulating or stopping the anti-social (rather than criminal) conduct of a young person. Evidence from the UK, where these orders have been in place for several years, suggests that their implementation will move Ireland further away rather than closer to Whitaker’s model.

Indicative of this too is the fact that while the Government has finally decided to raise the age of criminal responsibility to twelve years, it has refused to do so in respect of serious crimes with which children as young as ten years old can be charged.

Other areas where inadequate attention has been focused include Whitaker’s recommendations regarding the establishment of a youth service – a staggering omission in 21st-century Ireland – and the failure to tackle the use of drugs and alcohol by young people in an educational as opposed to a punitive manner. Progress is also

outstanding in relation to researching the causes of crime by young people.

Yet, despite the negative report card regarding the implementation of Whitaker’s recommendations in respect of young people, there have been many important and positive developments in the area of youth justice, particularly in the last few years. The establishment of the Youth Justice Service in 2005 has finally placed emphasis on administrative infrastructure and co-ordination, and its leadership throughout all Government departments has the potential to bring about lasting and effective change in this area. While it is imperative that it be placed on a statutory basis, with sufficient resources and powers, its establishment has enormous potential to set high standards to inform the operation of the system as long as it is based on principles of youth justice. The alleviation of all the other problems identified here and in the Whitaker Report in 1985 can and must flow from this.

“Whitaker...saw the clear links between crime and social disadvantage. He stressed the importance of prevention and alternatives to custody, and that detention should be used only as a last resort.”



Pat Carey TD
Fianna Fáil

Ireland has changed a lot in the two decades since T. K.

Whitaker's Committee of Inquiry into the Penal System published its Report.

It was a highly innovative piece of work in its time, so much so that it is still regularly cited as one of the key documents which set out the blueprint for our penal system. More recent reports, including the Report of the National Crime Forum (1988) and Reports of the Inspector of Prisons, make frequent reference to Whitaker's conclusions and recommendations.

Given the scope of the recommendations and perhaps public opinion at the time which would have favoured custody despite its excessive costs rather than alternative community-based sanctions as a solution to crime problems, successive Governments have given consideration to various recommendations and some have taken time to implement.

Although all of the recommendations have not been implemented, we have made great strides in bringing about social change and improvements in the management of offenders in the intervening years.

Whitaker made the point that crime must be tackled on every front and saw the clear links between crime and social disadvantage. He stressed the importance of prevention and alternatives to custody, and that detention should be used only as a last resort.

The Report stated "It is clearly not by any reform of the criminal justice system, but rather by more wide ranging economic and social policies, that the problem of juvenile crime can best be tackled". It has taken a good deal of time to put this idea into practice. However, large-scale investment in social inclusion measures is now part and parcel of our social and economic policy. We have complemented this with recent criminal justice legislation to deal with troubled children. These measures go a long way towards making Whitaker's vision a reality.

One recommendation of the Whitaker Report that stands out was for the urgent need for the closure of St Patrick's Institution for young offenders. While this has not happened to date, there has been considerable progress in reforming the conditions of prisoners generally to facilitate their rehabilitation, and parallel

changes in the criminal justice system and how it deals with young offenders in particular. Much of this progress has taken place in recent years, and we have now put the right structures in place for a youth justice system which is robust and protects the rights of all persons under the age of eighteen.

The new youth justice system is enshrined in legislation in the Children Act 2001, as amended by the Criminal Justice Act 2006. The key principles of that legislation are much in keeping with Whitaker's recommendations, emphasising prevention, diversion and restoration and seeing detention only as a last resort.

Over the coming years, as the provisions of the legislation are rolled out, we should see better outcomes for the young people who come into contact with the criminal justice system. They should have a better chance of being diverted from crime with the assistance of the various programmes operated by the Health Service Executive, Gardaí, Probation Service and voluntary organisations.

We have recently raised the age of criminal responsibility from seven

to twelve years, and this change together with the range of preventative and diversionary programmes now in place should see fewer children being prosecuted for offences.

When the Minister for Children introduces a number of planned new community sanctions, the judiciary will have a further range of options at their disposal which will include, for example, an order for a young offender to attend a day centre, receive treatment or receive intensive supervision by the Probation Service.

Consideration for victims and their right to a hearing is also provided for in the Children Act 2001, and both the Probation Service and the Gardaí have a number of officers trained to conduct restorative conferences involving the offender, his or her parents, and the victim and his or her representative.

The detention of some young people will always be a feature of the system, but how we care for them will be light years ahead of some of the unfortunate treatment these children were subjected to in the Industrial and Reformatory schools not so long ago. We have thankfully moved away from those ideas and are

working instead with a Children Detention School model which deals with young people in an holistic manner, holding them accountable yet also meeting their education and welfare needs.

Another positive development is that the Government has acknowledged that the system for dealing with offending children in the past was fragmented, and that there is a need for a single agency to co-ordinate the delivery of services across Departments and State agencies. Recently the Government established the Irish Youth Justice Service, with a mandate to develop a youth justice strategy and take responsibility for the detention of all persons under the age of eighteen. The Minister for Children will transfer responsibility for four of the existing Industrial and Reformatory schools from the Department of Education and Science to the new service. The Department of Education and Science will continue to be involved in the provision of education in the new Children Detention Schools.

Young people have a greater voice now than ever before. They have an Ombudsman for Children when they seek redress. Their

views are taken into account by our policy-makers, and the Government has also created an Office of the Minister for Children to champion children's policy at the cabinet table.

Since Whitaker reported over twenty years ago, Ireland has become more prosperous, better educated and I believe more humane in the way we treat offenders. The criminal justice system recognises that all the needs of offenders have to be met if they are to be rehabilitated. Ideally, we will keep as many young people as possible out of the criminal justice system by providing alternative interventions at an early stage, and those who do end up in the system will be given a second chance to turn their lives around and make a positive contribution to society.

The foresight of the recommendations of the Committee's Report is part of T. K. Whitaker's immense contribution to Irish society, and impacts on our way of life today.

“*The notion that one-parent families can be ‘formed’ [by imprisonment] is something that has not been the focus of either research or public discourse.*”



Frances Byrne

Chief Executive of OPEN, the national network of lone parent groups in the Republic of Ireland

In 1985 when the Whitaker Committee on prison reform was undertaking its important work, one in twelve families in the Republic of Ireland was headed by a lone parent. There were some income support payments available to them at that time. While only 258 families were in receipt of a specific allowance for the families of prisoners, some of the 11,530 families (which included 14,324 children) in receipt of the Unmarried Mother's Allowance would have been made up of prisoners' partners and former partners as well.

One-parent families were not a particular focus of the Committee's work, however there was an important recognition in the final Report that services needed to be provided to properly support family visits.

In 2006, about one in six families was a one-parent family: 153,863 in all, of which approximately 2,000 received the Prisoners' Spouse Payment. However, lone parents have a choice about the social welfare support they receive, and of the 90,000 receiving the One-Parent Family Payment, we do not know how many have a partner or spouse in prison, as that data is not collected. Nor have we any idea how many of the 60,000 or so one-parent families who do not

receive income support are affected by parental imprisonment.

Imprisonment, or indeed other forms of institutionalisation, as a route to lone parenthood is a dimension of the diversity of one-parent families which receives little attention. The notion that one-parent families can be "formed" in this way is something that has not been the focus of either research or public discourse.

Most service-providers who participate in OPEN's family diversity sessions will readily describe their understanding of a typical lone parent as a young, unmarried woman with more than one child. A core part of our work is trying to dispel the myth that most lone parents fit this profile: fewer than 3% of all lone parents are teenagers; more than 50% of lone parents are previously married; 15% are fathers; and 60% have just one child.

Research has shown that the vast majority (70%) of male prisoners in Mountjoy, to take just one example, are fathers¹ – yet few of us seem to consider their families. From the perspective of children and young people, being reared in a one-parent family means that they are three and a half times more likely to live in poverty than anyone else. Of the one in ten

children who continue to experience poverty in Ireland today, one in three is from a one-parent family.²

Those left behind to rear children alone speak of the double-stigmatisation of parenting alone and of having a partner in prison. In OPEN's four mental health projects, lone parents report that being a member of a local lone parent self-help group contributes very positively to their experiences of stress and depression.³ However, often those who have an incarcerated partner will hide this fact from their peers, thus compounding their feelings of isolation and stigma. In addition, many parents also conceal the incarceration of the other parent from their children, and the fear of discovery is paralysing.

There are other common fears which prevail: concerns that children will feel stigmatised or be damaged by the loss of the other parent, which can be worsened if s/he serves multiple sentences; if their partner/ex-partner is violent, adults will agonise over the release date and their own and their children's safety; and most of all they fear that their children will end up in trouble, although lone parents whose former partner has never been imprisoned, similarly worry about this.

In thinking about writing this contribution and in particular in the context of increasing family and cultural diversity in our society, a question arises. How would a new Whitaker Committee take account of the needs of one-parent and other family types in 21st-century Ireland?

The overall issues associated with imprisonment are well addressed elsewhere, and the links between prison and poverty are also well documented, although we remain in the dark about the exact numbers of, and the impacts on, one-parent families affected by imprisonment. OPEN hopes that the important work of the national longitudinal study on children will capture both the specific impacts as well as the policy implications of parental imprisonment.

There is no doubt that the implementation of aspects of the Whitaker Report in relation to women's imprisonment means that mothers can now have far better access to their children while incarcerated, although the same cannot be said about fathers, in spite of the tremendous efforts of voluntary bodies who assist visiting families. Governor John Lonergan of Mountjoy Prison has noted repeatedly that the parenting status of male prisoners

tends to be treated as irrelevant by the prison authorities.⁴

Major societal issues, some new and some historical, also arise. The levels of violence which seep into and out of some of our communities, violence which we know continues behind closed doors in all areas whether disadvantaged or affluent, present us with a significant challenge. Levels of suicide and attempted suicide continue to rise apace. The roar of the Celtic Tiger is but a whisper to some 10% of our children. In this somewhat bleak context it has never been more urgent that we hold onto a central tenet of the Whitaker Committee: "a reduction in the numbers being committed".⁵

The various restorative justice programmes have an important role to play, and their significance in reducing generations of families experiencing institutionalisation is as yet unappreciated. Education and training programmes which support prisoners and those affected by the prison–poverty causal link are also invaluable. In this regard, OPEN's contribution will be the introduction to the Republic of Ireland of a remarkable programme initiated in the United States by a prominent child psychologist: "Strengthening Families, Strengthening Communities".

This programme for parents from any family type is designed to address the confluence of poverty, teenage suicide and violence in our communities and it is strongly focused on addressing these issues in a positive, multicultural context.

OPEN would suggest that the situation of children and young people from all families and in other settings would focus the minds of an updated Whitaker Report. It is obscene in a rich society that our most voiceless citizens continue to suffer deprivation at remarkable levels. The debate about public services needs to be influenced even in terms of the language used so that what are currently described as drains on the public purse become valued in an alternative analysis; one which describes itself in terms of our joint investment in our children, our communities and our shared future.

One thing seems obvious, if we continue to fail to tackle the albeit multifaceted issue of child poverty, it will follow as night follows day that imprisonment will become a reality for more and more of our families and communities with the ensuing negative outcomes for our society.

“It is clear that the current prison system is dysfunctional and in need of radical change. Unfortunately, the only change in the air is further expansion of this already failing system.”



Fr Ciaran Enright
National Prison Chaplain

The central proposition of the Whitaker Report was that given the limited positive value of imprisonment, its harmful effects and its undoubted costliness, imprisonment should be used as a last resort. It is a sad reflection on society that, more than twenty years later, the poorer and more vulnerable members of our communities continue to form the greater part of the prison population. Indeed, the prison-building programme that we have witnessed over the last number of years has ensured the provision of a massive increase in the number of prison spaces far exceeding the recommendation of the Report.

Irish prisons have become more and more like warehouses for the poor and the vulnerable, offering little or no hope to many of those imprisoned there, or indeed to the wider community that may be under the illusion that imprisonment will effect real change. There is no escaping the appalling reality that disadvantaged petty repeat offenders, and not serious criminals, make up a significant portion of the prison population.

Irish prisons have become a dumping ground for the mentally ill and those struggling to cope with the effects of homelessness, addiction or personal vulnerability. We have actively developed a failing system, continuing to make imprisonment a sanction of first resort rather than a last resort.

The Committee of Inquiry into the Penal System came at a time when there was already growing fear and anxiety around an increase in crime. It noted very clearly the epidemics of violent robberies of elderly occupants of isolated rural dwellings and of car thefts by urban juveniles. It offered, however, a balanced, reasoned response that was appropriately focused on the root causes of crime and convinced of the necessity to develop community-based responses. It is nothing less than a tragedy to think that the vision this Report offered has been to a large extent ignored.

Our current criminal justice system is greatly lacking in insight and almost devoid of vision. Furthermore, it is clear

that the current prison system is dysfunctional and in need of radical change. Unfortunately, the only change in the air is further expansion of this already failing system.

As a full-time prison chaplain, my daily contact with offenders and their families gives me a privileged insight into their struggles and difficulties. The current regime within the prison system disturbs me greatly. It is deeply troubling to witness firsthand the utter and total boredom of hundreds of men who have little or nothing to do to occupy their days in prison. A small percentage attends school or workshops where available. Others languish in their cells, wait for visits, become cleaners of a small area, or use drugs to pass the time. Some are afraid to mingle with the prison population, because of the nature of their crime or internal feuding.

Extensions approved and built in many prisons stand witness to a sustained investment in the bricks and mortar of a failing system. All of this continues while on a daily basis prisoners, many of whom

are able bodied, intelligent and capable people, walk aimlessly around prison yards or lie in bed for over seventeen out of every twenty-four hours.

My experience of prisons is that they are harsh places of detention and in no way conducive to the change of life that many need and want. Neither are they places of rehabilitation or preparation for reintegration into society. I have found that there is no great openness in our communities to understand the actual reality of prison life. There is a growing sense within our so-called developed society that locking offenders up and throwing away the key is the only realistic response.

Those who hold public office appear reluctant to lead a public debate that will explore the root causes of crime and examine the radical alternatives to imprisonment. The Whitaker Committee provided the ideal platform for such a discussion. Unfortunately, however, we have as a society opted to bury our heads in the sand. The hard facts indicate that we have got it

wrong. We have lost the plot, and now need to move towards a response to crime that will address the real issues rather than continuing to respond with a prison system that is failing miserably for offenders, victims and society at large.

As a person of hope, I believe that change is always possible, that it is never too late to learn. I would hope, therefore, that while we may have forgotten many of the lessons offered by the Whitaker Committee, the passing of the twentieth anniversary of its Report might once again give us an opportunity to examine seriously the direction our penal system is taking. Politicians, communities, Government departments and bodies, the judiciary, all need to engage in serious dialogue with a view to finding more positive ways of dealing with criminal offending. We need to look at alternatives to imprisonment that might bring greater reconciliation to society, healing to victims and hope to offenders.

I believe that the model of restorative justice as an

alternative to imprisonment has a significant contribution to make in the debate on crime and imprisonment. It has been employed in many jurisdictions throughout the world and has shown its many benefits. Combined with a serious effort to tackle the poverty, deprivation and inequality in society, it gives concrete expression to the spirit that is at the heart of the Whitaker Report. It is only when we honestly recognise the limitations and inadequacies of the prison system that we will begin to address the needs of offenders and of society in the area of justice.

The time has come for a new response, a different way. The Whitaker Report will continue to offer many lessons and point us in the direction of this new way. It offers us the seeds of a more hopeful future.

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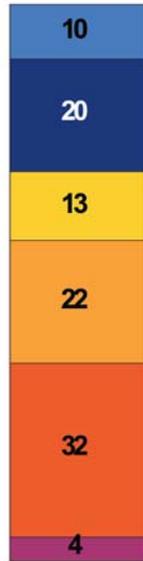
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Appendix

- Agree completely ■
- Agree somewhat ■
- Neither ■
- Disagree somewhat ■
- Disagree completely ■
- Don't know ■

Increasing the number of people in prison will reduce crime (1,000)
%



According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **54% of respondents do not believe that increasing the number of people in prison will reduce crime. Only 5% of those surveyed identified building additional prison places as their preferred measure for tackling crime.**

Offenders with a drug addiction should receive treatment in drug recovery programmes instead of being sent to prison (1,000)
%



According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **81% of people surveyed believe that offenders with a drug problem should be placed in drug recovery programmes instead of serving a prison sentence.**

Most people come out of prison worse than they go in (1,000)
%

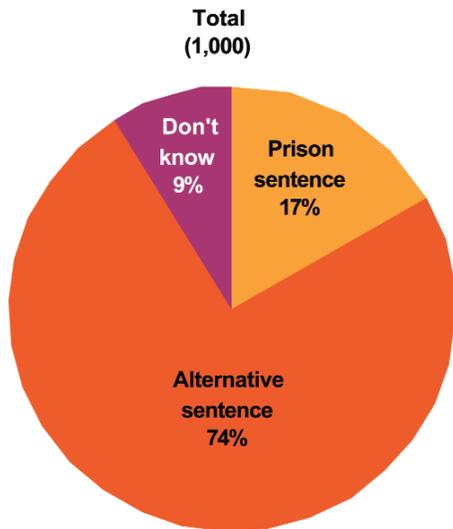


According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **66% of respondents believe that most people come out of prison worse than they went in.**

Mentally ill offenders should receive treatment in mental health facilities instead of being sent to prison (1,000)
%

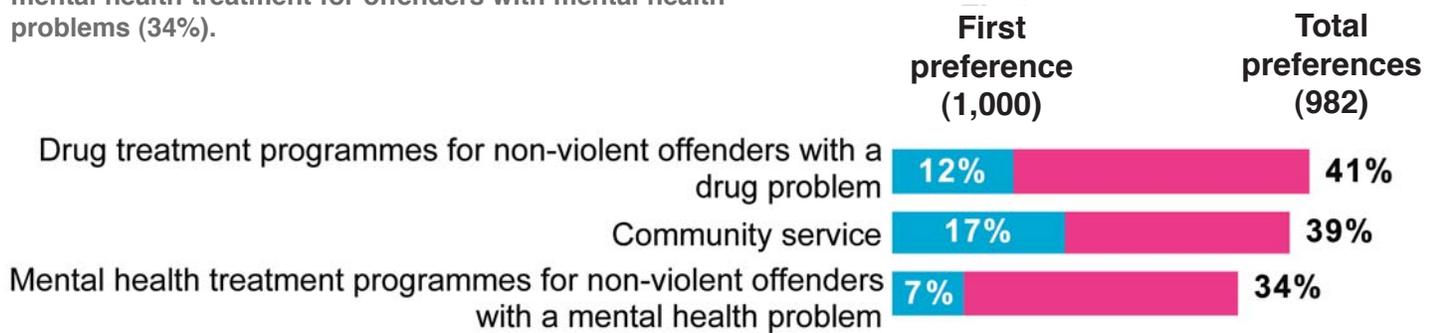


According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **91% of respondents believe that offenders with mental illness should be treated in a mental health facility instead of being sent to prison.**



According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **74% of respondents are in favour of using alternatives to prison when dealing with young offenders.**

According to a 2007 TNS/MRBI poll commissioned by the Irish Penal Reform Trust, **the public's preferred options for dealing with non-violent offenders are drug treatment for offenders with drug problems (41%), community service (39%) and mental health treatment for offenders with mental health problems (34%).**





When it was published in 1985, the *Report of the Committee of Inquiry into the Penal System* – also known as the Whitaker Report – represented the most detailed and thoughtful analysis of the Irish prison system to date. Over twenty years on, the findings of the Whitaker Committee remain vital for decision-makers in Ireland.

The Committee challenged the cosy consensus among the press and politicians about the nature of prison, and its role in the criminal justice system. At a time when Ireland was experiencing unprecedented levels of crime, the Committee – mindful of the costs and limitations of incarceration – recommended capping the number of prison places at 1,500.

The Report concluded it was “difficult to find convincing proof that imprisonment operates as a major or universal deterrent” to crime, and found incarceration a poor crime prevention strategy, noting that any such effect is only “a temporary one since it lapses on the prisoner’s release”. Instead of ever-growing prison populations, the Committee advised the expansion of non-custodial forms of punishment, reparation and restitution to victims and other forms of community sanctions.

Unfortunately, much of the Committee’s analysis fell upon deaf ears, both in the Government of the day and certainly of those subsequently.

In 2007, Ireland has over 3,000 people in prison, and if current Government plans to build new super-prisons come to fruition, we will have a prison population nearly three times that judged a sensible maximum by the Whitaker Committee.

In this book, eighteen contributors address the relevance of the Whitaker Committee’s findings to the current debate on prisons and criminal justice in Ireland.

Drawn from the ranks of politics, academia, law, human rights, the community/voluntary sector and the Prison Service itself, these voices urge pause for reflection about Ireland’s current race to incarcerate.

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THE DEGREE OF CIVILIZATION IN A SOCIETY
CAN BE JUDGED BY ENTERING ITS PRISON

FYODOR DOSTOEVSKY