

# editorial

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We tend to think that law defines what crime is. This makes sense because contemporary legal codes are concerned with marking out the territory where conduct is permissible by specifying the conduct that is outlawed. Yet the earliest bodies of law – consider for example, the Torah or Hammurabi’s Code – are at least as committed to articulating the good as proscribing the bad. Our modern approach to thinking about law has disadvantages, not least the harm that it does to those who are declared “criminals”. It can also be morally flat-footed. G.K. Chesterton understood this when he once quipped in a Father Brown story that the criminal is a creative artist, and the detective is only a critic.<sup>1</sup>

In this issue of *Working Notes*, we seek to explore the theme of crime as it relates to contemporary Irish culture and social policy. We have drawn together a range of established and emerging scholars to think about crime from within a prison, from the perspective of fraud, from an environmental point of view, and in terms of how it relates to the concept of sin.

David McIlroy is an acclaimed barrister and a gifted theologian. Such skills are rarely combined. For the last number of years, he has been working in consultation with the Jesuit Centre for Faith and Justice on issues relating to the Irish banking sector and, more generally, the economy. His essay *Why Can’t We Take*

*Economic Crime Seriously?*, represents his debut in *Working Notes*. McIlroy is famous for his role in uncovering the Payment Protection Insurance scam, which is among the largest commercial frauds in history. He draws on that experience to sketch how economic crime flourishes, deconstructs some of the myths, and offers practical policy suggestions as to how Irish society can reduce this corruption.

Kevin Hargaden is the social theologian at the Jesuit Centre for Faith and Justice. In this issue, he offers a theological reflection that takes up the work of French philosopher, Michel Foucault, to consider how crime is different from sin. Foucault convincingly argued that criminal justice before the development of the prison, envisioned the body as the site for reparation. In our time and in our prisons – especially when we are blind to this fact about ourselves – criminal justice is concerned with the soul, the internal life, as the place where amends must be made. Hargaden argues that even if a person has no religious commitments, they should endeavour to preserve the unfashionable language of sin, exactly because the carceral state is prone to over-reach. There are crimes which are not sins, and sins which are not crimes, and having a diverse array of linguistic angles from which to describe these interesting cases serves justice. Without the old religious terms, we lose the ability to chasten the contemporary State’s intentions and we are left silent when the

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1 G.K. Chesterton, *The Complete Father Brown* (London: Penguin, 1981). 12. The line is uttered by Inspector Aristide Valentin near the very beginning of the first Fr. Brown story “The Blue Cross”, as he reflects on the genius of M. Hercule Flambeau, who will go on to become Fr. Brown’s nemesis and [spoiler alert] later, friend.

powerful shape the law to render “criminality” a state that only really applies to people without power.

Beth Duane is a PhD researcher in Criminology at the University of Limerick. Her particular research explores violence in prison, but in her essay *Understanding Crime in Prison*, she takes a wider view. Illegal drug use, criminal damage, and violent assaults are not uncommon in Irish prison. Duane draws out the ways in which a culture of criminality represents a major challenge to achieving our basic intention for prisons: that they would be centres of rehabilitation.

In *Laudato Si'*, Pope Francis laments that “the same mindset which stands in the way of making radical decisions to reverse the trend of global warming also stands in the way of achieving the goal of eliminating poverty.”<sup>2</sup> His writings on the fundamentally moral nature of the environmental crisis have been deeply influential and in Sadhbh O'Neill's article, *Carbon Crimes*, we are introduced to one of the most promising developments in environmental activism. An emerging body of research known as “green criminology” has successfully framed the crisis as a legal issue. Culpability and harm can now be clearly demonstrated, connecting the suppliers and utilisers of fossil fuels with the already-occurring losses and fatalities arising from climate disruption. O'Neill's essay is one of the longest pieces we have published in the four decades of *Working Notes*. Of course, it is not for this reason that it warrants

your sustained attention. *Carbon Crimes* is a masterful introduction to a movement of tremendous potential, written in a bracing and clear style and informed by a deep expertise in the science and politics of climate breakdown.

After reading these pieces our hope is that you, the reader, might be able to think more critically and constructively about the complexity involved in declaring something a crime and in labelling someone a criminal. Even these apparently cut-and-dried decisions are fraught with social and ethical implications. If economic crime continues to go largely uninvestigated, if prison can become a school of crime rather than a centre for rehabilitation, if corporate entities can pollute for profit and never face legal consequences, if we retire the language of sin because we imagine it regressive while embracing a vocabulary around criminality that does great damage, then perhaps it is time to think deeply and rigorously about not just what constitutes crime, but what we mean by virtue.

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2 Pope Francis, *Laudato Si'*, 2015, §175.

# Why Can't We Take Economic Crime Seriously?

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*David McIlroy*

David McIlroy is a barrister practising at the Bar of England and Wales and Visiting Professor in the Centre for Commercial Law Studies, Queen Mary University of London. He is the author of *The End of Law* (Edward Elgar, 2019), a book that looks at the relationship between law and justice.

## INTRODUCTION

Economic crime is a defining vice of the neoliberal age. In every direction, the poor, the weak and the vulnerable are being ripped off. The scams take several different forms. Some people are conned when they buy products and services which they want, but which carry conditions exposing them to hidden and unfair charges. Small businesses, which were forced to take out complicated financial derivatives as a condition of a bank loan, were subjected to this by banks on an industrial scale between 1999 and 2009. Many customers were sold worthless financial products as an add-on. Even if the customer knows that they have bought the product, they will not know that the small print means that it gives them no real benefit. This is the case of the many consumers who were sold card protection or payment protection insurance (PPI) policies. Still others are exploited or have money extorted from them. The victims of these crimes could be the little old lady who agrees to part with her savings in a telephone scam, the person who is persuaded to transfer their pension into an offshore development scheme, or the business forced to appoint a fraudulent turnaround consultant who proceeds to strip its assets. Each of these types of economic crime raises its own issues. This brief article will focus on the reasons why all too often, the most blatant and large-scale frauds go unpunished.

## A JUSTICE SYSTEM NOT FIT TO DEAL WITH ECONOMIC CRIME

Neither the British nor the Irish justice system is fit for purpose when it comes to the investigation and prosecution of economic crime. Ken Clarke, barrister, Chancellor of the Exchequer, Lord Chancellor, and the man who would have become leader of the Conservative Party and probably British prime minister but for his pro-European views, was scathing in his assessment of the failure of British justice to

tackle economic crime. In his autobiography, he said:

I have always believed that the British criminal justice system is quite hopeless at enforcing the law on white-collar crime such as fraud. It is far too complicated for the police service, which prefer to deal with the more straightforward offences such as burglary and assault. But it is a hugely lucrative criminal activity and, sadly, had become quite an important part of a lot of the banking and financial services industry. London had undoubtedly become the safest and best place for any dictator, oligarch or corrupt political leader to place his or her ill-gotten gains. ... London ... deserved [its] reputation as the money-laundering capital of the world.<sup>1</sup>

The same is true in Ireland. The Fraud Squad struggled with inadequate powers, out-dated laws, which framed the criminal offences, and chronic under-resourcing. Aidan O'Donnell, president of the Association of Garda Sergeants and Inspectors said, in 2011, that the Garda Bureau of Fraud Investigation (GBFI) was “‘stretched to the limit’ and struggling to cope with the upsurge in white-collar crime.”<sup>2</sup> What has happened since 2011 is that the upsurge has turned into a tsunami. The Garda Inspectorate Report in 2015 found that the GBFI still lacked the necessary skills and means to always be able to conduct a thorough investigation into serious frauds. In 2016, the *Irish Independent* was reporting a backlog of up to six years in garda inquiries into computer crimes.<sup>3</sup> John Devitt, Chief Executive of Transparency International Ireland, condemned the record of different governments in equipping law enforcement agencies with the powers and resources to hold white-collar criminals to account as “dismal.”<sup>4</sup> Though there have subsequently been some increases in capacity, they are far outstripped by the resources the criminals are spending on perpetrating economic crimes.

## ECONOMIC CRIME IS NOT INVESTIGATED PROPERLY

In an age of austerity, economic crime is low on the list of police priorities. It is expensive

1 Ken Clarke, *Some Kind of Blue: A Political Memoir* (London: Macmillan, 2016), 301.

2 Ronan McGreevy, “Gardaí seeks resources in white-collar crime fight,” *The Irish Times*, 19 April 2011, <https://www.irishtimes.com/news/garda%C3%AD-seek-resources-in-white-collar-crime-fight-1.575577>.

3 Tom Brady, “Computer crime cases facing six-year delay due to Garda backlog,” *The Irish Independent*, 1 November 2016, <https://www.independent.ie/business/computer-crime-cases-facing-six-year-delay-due-to-garda-backlog-35177764.html>.

4 John Devitt, “Why wasn’t corruption an election issue when it cost us so much?” *Transparency International Ireland*, 24 February 2016, [https://www.transparency.ie/news\\_events/election\\_2016](https://www.transparency.ie/news_events/election_2016).

to investigate, difficult to prosecute and does not usually generate the photo opportunities provided by offences against the person. As Elaine Byrne points out, when the crime statistics are compiled, “a relatively uncomplicated welfare fraud case is given the same status as an arduous white-collar crime case.”<sup>5</sup>

In Iceland, thirty-six bankers were jailed for their roles in causing the crash of the banking system. In Ireland, it was just seven (including Bernard Daly and Tiarnan O’Mahoney whose convictions were subsequently quashed) and in the UK, just two. Lynden Scourfield and Mark Dobson both worked at HBOS Reading. They established a racket where a business in distress would be forced to appoint David Mills, or one of his associates, as a turnaround consultant. Both Mills and the bank would then bleed the business dry through charging exorbitant fees. Once the business fell into insolvency, Mills would then buy the business for himself and pay Scourfield or Dobson a commission for their assistance. The scam operated for at least four years and would have remained undetected had Scourfield not also started cheating the bank. Even after Scourfield’s activities had been discovered in 2007, Dobson carried on working at the bank until 2012, and complaints by the owners of the affected businesses were suppressed.

In Ireland, though some executives of Anglo-Irish Bank were convicted of fraud and false accounting (using €7.2 billion in circular transactions in order to bolster the customer deposits figure on Anglo’s balance sheet), Seán Fitzpatrick was acquitted of misleading Anglo’s auditors about loans which had been made to him and to people connected to him. The case against Mr. Fitzpatrick collapsed because untrained staff had coached witnesses and an official under enormous stress had mistakenly shredded documents. The lack of resources for the Office of the Director of Corporate Enforcement was a direct cause of the failure of the prosecution.

The economic crimes that are prosecuted are

only the tip of the iceberg. The prosecuting authorities simply do not have the resources. The Garda National Economic Crime Bureau (GNECB), which replaced the Garda Bureau of Fraud Investigation on 1 September 2016, has just 87 members of staff. A series of myths serve as pseudo-justifications for the authorities’ lack of concern with economic crime. Once those myths have been exposed, there are practical steps, which could turn the odds against the criminals.

### THE MYTH THAT IT IS ONLY THE ETHICALLY DUBIOUS OR THE STUPID WHO ARE CONNED

The BBC television series *Hustle* presented the myth that you cannot con an innocent man. Often the easiest person to con is someone who is fearful. Worthless Payment Protection Insurance (PPI) or Card Protection Insurance policies could be sold by manipulating people’s fear of unemployment or ill-health.<sup>6</sup>

The Internet and the telephone are the weapons of the modern scammer. Like the lion running into a herd of antelopes, the scammer can quickly make contact with large numbers of particular victims and identify the vulnerable, the isolated, the gullible, and deprive them of their savings, before disappearing. In one extreme case of which I am personally aware, scammers scared a vulnerable woman into leaving her home and then sold it without her consent, before spooking her into withdrawing the money and handing it over to someone pretending to be a police officer.

Age Cymru, a charity working for old people in Wales, has described the elderly as being “under siege” from sophisticated and persistent scammers. It estimates that up to 150,000 older people in Wales are conned each year, losing an average of £1,200 each.<sup>7</sup> Investment scams alone tricked people in the UK out of £197 million in 2018, according to Financial Conduct Authority figures.

5 Elaine Byrne, “Ireland’s White-Collar Crime Problem,” *Sunday Business Post*, 11 September 2016, <http://elaine.ie/2016/09/14/irelands-white-collar-crime-problem>.

6 The policies usually would not pay out if you were self-employed or suffering from a pre-existing condition, but these issues were never explored at the point of sale.

7 Jenny Rees, “Elderly ‘under siege’ from fake HMRC and police scammers,” 31 December 2018, <https://www.bbc.com/news/uk-wales-46640693>.



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Companies, too, are being increasingly targeted. PwC Ireland, the consultancy firm, found that the number of Irish firms which were victims of economic crime and fraud had increased from 26% in 2010 to 49% over the 2017 to 2018 period. One in ten of those companies lost more than €4 million.<sup>8</sup> Pat Moran, PwC Cyber Leader, describes economic crime as a big business in its own right; tech-enabled, innovative, opportunistic and pervasive.

### THE MYTH THAT IT IS ONLY MONEY THAT IS LOST

Economic crime does not only deprive people of their money; economic crime destroys their sense of security. A vulnerable person who has been the victim of a telephone scam is on edge every time the telephone rings. An elderly person who has been the victim of an Internet scam avoids using their computer, if at all possible. Companies affected by economic crime suffer from drops in employee morale, business relations and in damage to their brand.

### THE MYTH THAT DIRTY MONEY MAKES THE WORLD GO AROUND

The political will to tackle economic crime is lacking. The UK has established one of the most expensive systems to identify money laundering in the world, yet the National Crime Agency's own estimate is that billions of dollars of dirty money are moved through or into Britain each year. Robert Barrington, of Transparency International, estimates that the City's money markets clean up as much as £90 billion of illicit funds each year. The lack of reforms by successive UK governments strongly suggest that the Treasury believes that dirty money makes the world go around, and that London's place as a world financial centre would be threatened if the dirty money were to be chased out.

Ireland's policymakers seem to have been taken in by the same myth. Ireland has established Financial Vehicle Corporations (FVCs), which held €431 billion in assets in 2015, and which enjoy significant tax advantages under section 110 Irish Finance Act 1997. Dublin City University's Shaen Corbet<sup>9</sup> and Trinity College Dublin's Jim Stewart and

<sup>8</sup> PwC Ireland, "Reported economic crime hits record levels in Ireland," 18 June 2018, <https://www.pwc.ie/media-centre/press-release/2018/irish-economic-crime-survey-2018.html>.

<sup>9</sup> Quoted in: Donal Griffin, "Azerbaijan's biggest bank raised \$900m via Irish SPVs before default," *Irish Independent*, 20 June 2017, <https://www.independent.ie/business/world/azerbaijans-biggest-bank-raised-900m-via-irish-sps-before-default-35844498.html>. For more by Corbet, consult: Shaen Corbet, "Turning Tigers into PIGS: The Role of Leverage in the Irish Economic Collapse," in *Lessons from the Great Recession: At the Crossroads of Sustainability and Recovery*, ed. Constantin Gurdgiev, Liam Leonard, and Maria Alejandra Gonzalez-perez, vol. 18, Advances in Sustainability and Environmental Justice (Bingley: Emerald Group, 2016).



Cillian Doyle<sup>10</sup> have strongly criticized this light touch regulation, low tax regime, as presenting an open door for money launderers from Russia, Azerbaijan and elsewhere.

Three policy changes would make a significant difference to the fight against economic crime.

### *Pay whistle-blowers*

In Ireland and the UK, those, such as Sally Masterton at Lloyds Bank, who blow the whistle on economic crimes, are rarely thanked for their actions.<sup>11</sup> Despite the procedures introduced by the Public Interest Disclosure Act 1998 in the UK and the Protected Disclosures Act 2014 in Ireland, they are usually dismissed and then find it impossible to find another job within the financial services industry. When it comes to economic crime, no one likes a grass.

In the USA, by contrast, not only is there a Whistleblower Protection Program; those who blow the whistle on economic crimes receive a proportion of any fines imposed. In November 2013, the Security & Exchange Commission paid \$14m to an individual whose testimony enabled the Commission to recover \$147m defrauded from foreign investors in a Chicago-based scam. The awards made to whistle-blowers in the USA (which can range from 10% to 30%) are both a statement about the importance which the USA places on uncovering economic crime and a strong incentive for whistle blowing to take place. Effective protection and financial rewards for whistle-blowers would give the prosecuting authorities vital evidence and, in many cases, earlier warning about frauds.

In April 2018, the European Commission proposed a directive on whistleblowing. The proposal is still stuck in the byzantine processes of the EU legislative process. Unlike the rules in the USA, the directive does not offer those who expose economic crimes any bounty for blowing the whistle. As Dentons, a law-firm which acts mainly for large financial institutions, observes with considerable

understatement: “Given the press coverage on whistle-blowers who brought to light the corporate scandals of recent years, including reports on their lives being destroyed, the new EU legal protection may not be enough to incentivize individuals to blow the whistle.”<sup>12</sup> The proposed directive is, however, a minimum harmonisation directive and does little more than catch up with the legislation already passed in Ireland. It is open to Ireland (and to the UK post-Brexit) to adopt measures that are far more generous to whistle-blowers.

### *Pay prosecuting agencies*

The police also have little incentive to investigate and prosecute economic crime. In the United Kingdom, the Thames Valley Police spent £7 million on the HBOS Reading prosecution. It recovered just £2 million of its costs. The fines and confiscations imposed following a successful conviction disappear into the government’s central coffers. The incentives would be different if the police knew that a proportion of the sums awarded in a confiscation order would be paid into their budget to fund similar future investigations.

### *Change juries*

Magna Carta established the idea of trial by your peers. Yet the reality of jury trials in complex cases of fraud is that those who are not their peers try the criminals. Because the prosecution has to explain how the fraud worked to a jury, which may be made up of those who struggled with basic maths at school, trials in cases of complex fraud can last for months. The trial of the Anglo-Irish executive David Drumm was the third-longest criminal trial in the history of the Irish Republic. Seán Fitzpatrick’s trial was the longest on record. Highly educated persons find it easy to get excused from interrupting their important jobs for such a long period, meaning that the criminals may well be tried by a jury which is less numerate than the average member of the population.

Trial by your peers as Magna Carta originally

10 Jim Stewart and Cillian Doyle, “The measurement and regulation of shadow banking in Ireland,” *Journal of Financial Regulation and Compliance* 25, Issue: 4 (2017): 396 – 412.

11 Matt Oliver, “Humiliation for Lloyds over £1bn small firm fraud: Bank forced to compensate whistle-blower over damning dossier on scandal at HBOS Reading,” *This is Money*, 14 November 2018, <https://www.thisismoney.co.uk/money/markets/article-6390341/Humiliation-Lloyds-1bn-small-firm-fraud.html>.

12 Michael Huertas and Markus Schrader, “The EU’s Whistleblowing Directive Proposal’s impact on financial services firms,” *Dentons*, 17 July 2018, <https://www.dentons.com/en/insights/articles/2018/july/17/the-eus-whistleblowing-directive-proposals-impact-on-financial-services-firms>.

envisaged it meant trial by those of the same social standing. A contemporary equivalent would be that complex economic crime was tried by a jury composed of those who held a management position or who had accounting or professional qualifications. In the way in which the mediaeval guilds policed the behaviour of their members, so such a jury should criminalise actions that were predatory and dishonest. Such a specialist jury would face competing incentives: on the one hand, the desire to protect those within the guild, but on the other, the desire to protect the reputation of the guild. The result would not be perfectly just: commercial behaviour that was “out of order” would probably still go unpunished, but it is more likely that commercial behaviour that was “way out of order” would be successfully prosecuted.

An alternative would be for juries to be composed of nine members of the public allied with three expert assessors with such skills. In France, serious criminal cases in France are decided by a jury of nine members of the public sitting together with three judges. A majority of ten would be sufficient to convict. This would limit the ability of one corrupt expert assessor to prevent a conviction.

A final possibility would be for economic crime cases to be tried by a judge, sitting together with, say, two assessors. Prosecuting some types of economic crime can be difficult in tight-knit communities. In Gibraltar, when the Marrache brothers were charged with fraud, suspicions of jury tampering led to the jury being discharged and the judge hearing the case on his own.<sup>13</sup> In England, section 43 of the Criminal Justice Act 2003 provides that in cases of serious or complex fraud, the prosecution can apply for the trial to be conducted by a judge alone without a jury. The section has not been brought into force. Trial without a jury would be likely to be a step too far on the island of Ireland, but is surely wrong to allow financially illiterate juries to be blinded by accounting.

## CONCLUSION

Economic crime is a growing problem. It is a myth that its only victims are the greedy and the stupid. It is a myth that it is only money that is lost. It is a myth that dirty money is necessary to make the world of finance go around. Giving the police increased resources to investigate economic crime, rewarding whistle-blowers, compensating the police for successful prosecutions, and changing the way in which economic criminal trials take place, would all tip the scales against the predatory criminals. These policy changes will not bring an end to economic crime, but they will demonstrate that the Irish government is committed to taking it seriously.

<sup>13</sup> “Marrache Brothers Found Guilty and Remanded in Custody,” *Your Gibraltar*, 2 July 2014, <https://www.yourgibraltar.tv/crime-policing/6968-jul-02-breaking-marrache-brothers-found-guilty-and-remanded-in-custody-turnbull-cleared>.



# Theological Reflection: Remembering the Gap between Crime and Sin

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*Kevin Hargaden*

Kevin Hargaden is the social theologian and team leader at the Jesuit Centre for Faith and Justice. His most recent book is a theological treatment of recent Irish economic history entitled *Theological Ethics in a Neoliberal Age* (Cascade: 2018).

## INTRODUCTION

While in the popular imagination, crime and sin tend to be joined in the same universe, when we look to the Christian tradition, we find a much more nuanced account of how these two concepts relate. While few would object to discussions of criminality, there is a knee-jerk hesitancy to engage in any discussion framed in terms of sin. When we consider the history of modern penal institutions, and re-consider the Christian account of sin, we find that the older religious language has merits in terms of transparency and complexity that more popular terms lack. Even without any religious commitments, thinking in terms of “sin” allows us to think about penal policy in a reflexive fashion that is unexpected and profoundly timely.

## THE CARCERAL STATE’S CAMOUFLAGED INTENTIONS

In *Discipline and Punish*, Michel Foucault, one of the most influential philosophers of the twentieth century, offers a genealogical account of the rise of Western penal systems. He recounts in vivid detail how discipline of the internal life of the convict displaced physical punishment — often in the form of public torture — as the level towards which penitentiaries directed their attention. In this shift, Foucault argues, the prison became a laboratory for the development of the institutions that make up much of modern life: schools, hospitals, even the public square. All to varying degrees now mimic this intention to form their participants into compliant subjects. Foucault always had a keen eye for how the power of religion was marshalled to support this effort. The chaplain was a key role in the emergence of prison regimes. A pastor was always required to facilitate and cultivate the transformation that the system was meant to generate. Communal prayers and religious readings, collective worship, and moral instruction were as much a part of the rehabilitative infrastructure as the doctors, psychiatrists, psychologists, educationalists, and other figures which came to be associated with “humane” penal systems.<sup>1</sup> It remains a live

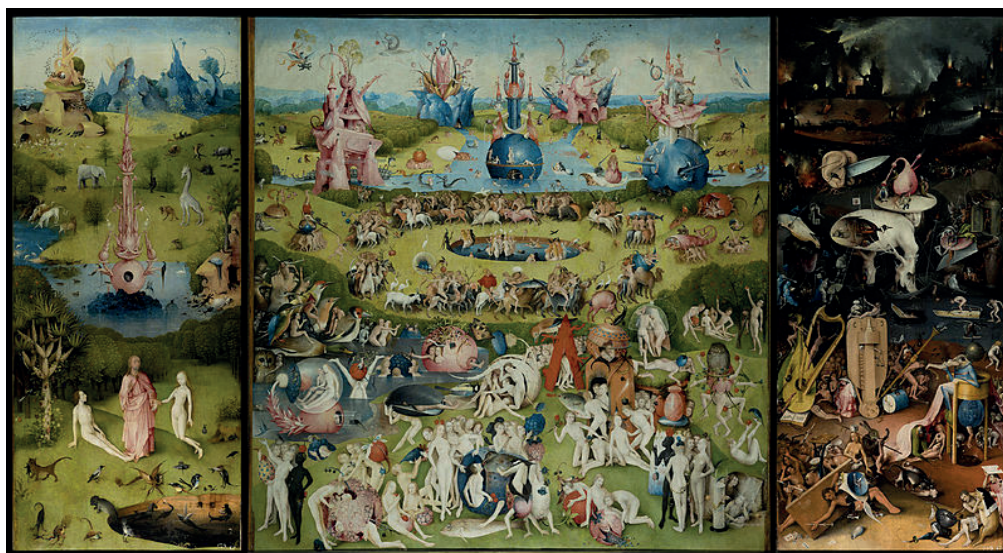
question for those who are today engaged in such ministry: how to work within the carceral system without becoming captive to such co-option.

In the story Foucault tells, we see modern criminal justice systems as an evolving corrective apparatus. Whether in the key of punishment or rehabilitation, the language bound up around penal systems reveals its close overlap with theological concepts. Whether in terms of merit or sanction, renewal or retribution, Foucault exposes how even the most secularised account of penal systems will draw on structures historically borrowed and adapted from a pastoral setting.

This connection is remembered in modern literature. In Anthony Burgess’ classic novel of wanton criminality and society’s disciplining response, *A Clockwork Orange* (it is important to note that this is one of those instances where the book and the film diverge considerably!), the decisive line is pronounced by the prison chaplain, who ponders, “What does God want? Does God want goodness or the choice of goodness? Is a man who chooses the bad perhaps in some ways better than a man who has the good imposed on him?”<sup>2</sup> Here, we begin to see how long after religion has receded from the policy concerns of a society, the prison can take on an indoctrinating task as explicit as any church. Is the promise of penal rehabilitation truly transformative, or is it a coercive training intended to yield willing compliance? How can an external force like the State induce an internal metamorphosis in the soul of a citizen? Beyond any fine-grained analysis of policy or articulate advocacy, is there not something irredeemably presumptuous about the contemporary carceral state? It is not enough for you to avoid crime. Once in its clutches, this vast enterprise intends to impose on you its definition of goodness through a process administered as much by the expertise of the teacher and instructor, the life-coach and the psychologist, as by the prison officer’s more straightforward demands. As the chaplain in *A Clockwork Orange* makes clear, this totalised account of human life is inextricably religious in scale, if not in form. As Foucault has

1 Michel Foucault, *Discipline and Punish* (New York, NY: Vintage, 1995), 246.

2 Anthony Burgess, *A Clockwork Orange* (London: Penguin, 1996), 76.



*The Garden of Earthly Delights, 1490-1510 (Hieronymus Bosch/Wikimedia)*

exposed, through prisons, the justice system intends to affect a conversion of the soul much more ambitious than the compliance of the body.<sup>3</sup>

## NOT THE WAY IT'S SUPPOSED TO BE

Sin, in theological terms, is a secondary concern. This is a particularly to-the-point way of saying that sin requires a prior state of harmony to make sense. For Christianity, the opposite does not hold. Love can exist and flourish without any sense of hate. Virtue could prosper without vice. Popular culture might imagine, informed by Star Wars movies more than anything else, that sin is a balancing force to innocence or righteousness, standing in contrast as yin is to yang. But Christianity insists that the story is more interesting than that. In the classic theological tradition, sin is parasitic on love. The African theologian, Augustine, insisted that sin is a deprivation, a lack, an absence.<sup>4</sup> Developing that idea, the modern Swiss theologian, Karl Barth, dubbed sin “the impossible possibility”.<sup>5</sup> It does not stand as an equal yet opposite force to good, through which the balance of the Cosmos is somehow sustained. The Christian account, as

Barth displays, demands a mystical response to this force which turns good things bad and existing things *unexisting*. Love does not compete to achieve parity with hate. Hate is the word we use to describe the baffling situation which tragically prevails when love is not where it should be. Forget the moralistic manuals. When thinking most clearly, Christianity is clear that sin is pure loss.

In this mode of understanding, sin is as much (if not more) a thing that traps us as it is a list of bad things we do or good things we fail to do. When it comes to crime, ignorance is no defence before the law. This is not the case with Christianity’s account of sin, which builds on the Hebrew idea that sin represents the corrosion of original peace, *shalom*. Notwithstanding how often Christian teachers have bypassed this rich tradition to take the opportunity to bash a Bible and bang a pulpit,<sup>6</sup> in its richest expression, Christian theology conceives of sin as a complex dynamic where harm cuts in all directions. In the Hebrew Scriptures, sin is a category that only God gets to interpret,<sup>7</sup> because diagnosing how culpability plays out in the maze of human interactions is beyond the ken of men and women. As Cornelius Plantinga puts it, “we not only sin because we are ignorant but we are

<sup>3</sup> It intends to extend its influence “into the very grain of individuals, touches their bodies and inserts itself into their actions and attitudes, their discourses, learning processes and everyday lives.” Michel Foucault, *Power/Knowledge* (New York, NY: Pantheon, 1980), 39.

<sup>4</sup> Augustine, *The Enchiridion*, IV.XIV (Louisville, KY: Westminster John Knox Press, 2006), 345.

<sup>5</sup> A representative example is found in Karl Barth, *Church Dogmatics* II.1 (§31) (Edinburgh: T&T Clark, 2009), 66 [503].

<sup>6</sup> James Joyce, *Portrait of an Artist as a Young Man* (London: Chancellor Press, 1993), 189-193.

<sup>7</sup> David’s cry to God that “against you, you only, have I sinned” seems instructive at this point. Psalm 51.

also ignorant because we sin.”<sup>8</sup>

Such zen-like contemplations can have real-world bearings on questions of policy. Thinking about sin in this frame undermines the stigmatizing effect that makes many slow to draw on religious language. But approaching the topic from this direction reveals the large gap that exists between “crime” and “sin”. If sin is seen as a vandalism of creation’s original peace, then it becomes clear how a thing can be sinful and legal, and more importantly, how a thing can be a crime and not at all close to sin.

This dynamic is not just the product of speculative theological musing. It is a reality testified to in the Scriptures. The long, detailed legal codes found in the Torah, which can be so off-putting to contemporary readers, are better understood as attempts to codify Israel’s collective intention to not mimic the apparent default setting of human societies to tend towards a bias for the rich and powerful, with a prejudice against the poor and the excluded. The preoccupation with apparently irrelevant details very often practically applied in terms of who gets to say what’s what, and how are laws and regulations composed (for example, the recurring codes related to weights and measurements, such as Leviticus 19:35). Writing centuries later, the prophets consistently call Israel back to this vocation, recognising how often control of the law allows the ruling class to pass off sin as licit and righteousness as crime (for example: Amos 5:10-13).

This issue of *Working Notes* has considered the concept of crime in the round. It is an idea which is handled in a fascinating manner in the Scriptures. There are crimes aplenty. People are robbed, premises are vandalised, violent attacks proliferate. Yet the narrative is consistently concerned primarily with the ironic tension that emerges when the realm of law/criminality intersects with the domain of morality/immorality. That dramatic tension does not always resolve in the fashion that might be expected. In the most famous instance of this showdown between criminality and sin, the guardian of the law (*Procurator* literally means “one who takes care of” in

Latin), Pontius Pilate, stands before the convicted criminal Jesus and the text leaves the reader in no doubt as to whether or not the one condemned is the one trapped in sin (John 18:28-40).

## CONCLUSION: REDEEMING SIN

In this light, we can see how the language of sin has a continuing utility both for those within the Abrahamic religious traditions and without. Sin, construed as the breach that is corrosive of states of harmony, allows us to go beyond static oppositions between criminality and immorality on one hand, and legality and righteousness on the other. Sin is a valuable imaginative construct that lets us describe the ways in which opposition to systems of injustice can be profoundly moral, even if they are declared illegal. It is much easier to accurately chart the ethical significance of, for example, the occupancy of vacant buildings in a time of housing crisis, if we are still able to draw on this rich category. We can only act in the world we can see, and the only way we learn to see is by learning to say. The language of sin allows us to see how those engaged in such illegal activity may be enacting a brave and necessary protest.

This is all the more relevant in an age when the State has the capacity to set moral agendas without explicitly declaring a moral crusade. Foucault’s critical genealogy trains us to see how the prison takes custody of the body with the ambition of achieving conversion of the soul. Such processes do not serve the aims of God, or justice, or primal peace, but the intentions of the powers-that-be. Those invested in policy formation have a particular responsibility to be alert to the grand aspirations that can be concealed inside mundane regulations. “Sin” gives us the ability to examine our motives, chasten our objectives, and remember the violence that can be hidden behind good intentions. In an age when we so desperately need the intellectual tools that allow us to test our assumptions, critique our values, and scrutinise our actions, it would be an act of linguistic criminal neglect to not redeem a concept such as this.

8 Cornelius Plantinga Jr., *Not the Way It’s Supposed to Be: A Breviary of Sin* (Grand Rapids, Eerdmans, 1995), 18

# Understanding Crime in Prison

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*Beth Duane*

Beth Duane is a PhD candidate at the School of Law, University of Limerick. Her research is on assessing the causes, effects and responses to violence in adult prisons in Ireland.

## INTRODUCTION

Prison life in Ireland is not exempt from crime. While the common belief holds that a person receiving a custodial sentence will be stripped of opportunities to commit crime, research has shown that this is not always the case. Although little is known about the prevalence of crime in Irish prisons, violence against inmates and staff, criminal damage and drug abuse are not infrequent occurrences, with implications for prison security and overall safety, in addition to rehabilitation efforts.<sup>1</sup> Such crimes present a considerable challenge for fulfilment of the mission of the Irish Prison Service – to provide “safe and secure custody, dignity of care and rehabilitation to prisoners for safer communities.”<sup>2</sup> There is also the apparent irony of crime being prevalent in the place we send people who have committed crime. If the centres for rehabilitation are more crime-ridden than the outside world, crime in prison poses an existential threat to the justification for incarceration. Understanding why crime in prison takes place requires an understanding of the vulnerabilities that exist within the prison environment, and within the prison population. Problems prior to entering prison – such as mental illness, substance misuse, homelessness, poverty and unemployment, chaotic family backgrounds and social marginalisation – can amplify these vulnerabilities, presenting challenges for the time spent in prison.<sup>3</sup>

## WHAT DOES CRIME LOOK LIKE IN IRISH PRISONS?

Crime in prison can involve illicit drug use, criminal damage, and violence – each of which will be explored in more detail in the following section.

### *Illicit Drug Offences*

Stipulated in Rule Number 26 of the Prison Rules 2007, “a prisoner shall not have in his or her possession any drug or any medicinal product that may be lawfully purchased without a duly issued prescription...” Yet, drugs regularly enter prisons in an unlawful manner – for example, on persons visiting, or thrown over exterior walls and netting into prison property<sup>4</sup> – and the availability of drugs in Irish prisons continues to create serious security risks that affect day-to-day management, and poses a threat to the safety of prison staff and prisoners alike. Furthering this point, the Limerick Visiting Committee stated that they ‘are still extremely concerned as to the availability of drugs within the prison.’<sup>5</sup> In response to a breach in prison discipline, prisoners found in possession of drugs will have a P19 report written and have certain privileges withdrawn for 56 days.<sup>6</sup>

The magnitude of drug use in prisons is illustrated by evidence showing that 70% of the population, and a higher figure of 85% of the female prison population, have addiction issues.<sup>7</sup> This presents a clear problem as addiction has been identified as being a “major contributory factor in criminality.”<sup>8</sup>

1 From 1 January 2017 to 31 May 2018, there were 3,598 disciplinary sanctions recorded by Irish Prison Service Officials as stated by the Minister for Justice Charles Flanagan. Houses of the Oireachtas, “Prison Discipline,” Dáil Éireann Debate 970, 1, 12 June 2018, <https://www.oireachtas.ie/en/debates/question/2018-06-12/517/>.

2 Irish Prison Service, “Mission and Values”, <https://www.irishprisons.ie/about-us/mission-and-values/>.

3 Houses of the Oireachtas, “Prisons, Penal Policy and Sentencing: Irish Penal Reform Trust,” Dáil Éireann Debate, 8 February 2017, [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2017-02-08/2/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2017-02-08/2/).

4 Smuggling drugs into prison is a criminal offence under Section 83 of the Criminal Justice Act (2006). In addition to legislation, Rule number 36 of the Prison Rules outlines the provisions for visits and stipulates that drugs are strictly prohibited from entering the prison. The Prison Visiting Committees revealed in their 2017 reports that drugs are readily available in multiple prisons across Ireland. Government of Ireland, “Criminal Justice Act, 2006,” Act 2006/26 (2006), §83 and Government of Ireland, “Prison Rules, 2007,” Statutory Instrument 252/2007 (2007), §36. Limerick Prison Visiting Committee, *Prison Visiting Committee Annual Report 2017 Limerick Prison* (Dublin: Department of Justice and Equality, 2019), Wheatfield Prison Visiting Committee, *Visiting Committee Annual Report End 2017* (Dublin: Department of Justice and Equality, 2019) and Cloverhill Prison Visiting Committee, *Annual Report 2017 from Cloverhill visiting Committee to the Minister for Justice Charles Flanagan* (Dublin: Department of Justice and Equality, 2019).

5 Limerick Prison Visiting Committee, 4.

6 These sanctions include: cautions, confinement in a cell, prohibition on engaging in specified structured or recreational activities, reduced visits and phone calls from family members, prohibition on use of the tuck shop and, on a higher end, forfeiture of not more than 14 days remission of portion of the sentence. For more information, see: John Ward BL, “Prison Disciplinary Reports” (Dublin: Irish Penal Reform Trust, 2013), [http://www.iprt.ie/files/John\\_WARD\\_BL\\_16072013.pdf](http://www.iprt.ie/files/John_WARD_BL_16072013.pdf).

7 Irish Penal Reform Trust, *Progress in the Penal System (PIPS): A framework for penal reform* (Dublin: IPRT, 2017), 46.

8 Ann Clarke and Anne Eustace, *Review of Drug and Alcohol Treatment Services for Adult Offenders in Prison and in the Community* (Dublin: Eustace Patterson, 2016), 7, [http://www.justice.ie/en/JELR/PS\\_IPS\\_Probation\\_Review\\_of\\_treatment\\_for\\_offenders.pdf/Files/PS\\_IPS\\_Probation\\_Review\\_of\\_treatment\\_for\\_offenders.pdf](http://www.justice.ie/en/JELR/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf/Files/PS_IPS_Probation_Review_of_treatment_for_offenders.pdf).



The Probation Service and the Irish Prison Service have recognised the role that drugs and alcohol play in criminality and recidivism and have invested in developing a system in response to the high prevalence of drug and alcohol addictions.<sup>9</sup> However, the drugs culture dominating the Irish prison system is often embodied by the attitudes, values and behaviours of prisoners.<sup>10</sup>

Drug use can be particularly attractive to people in custody. This is evident from the numbers who commence drug use during their custodial sentence – a risk magnified by exposure to prisoners who already have a drug addiction on entering prison. There is also something to be said about the nature and experience of prison life itself. Drug use can provide relief from the conditions of imprisonment. As the academic and psychologist Paul O'Mahony puts it, "the stress, idleness, boredom and ubiquitous petty coercion of prison life make the pleasure, release and oblivion provided by the opiate fix or other powerful drugs especially attractive."<sup>11</sup> In addition to being the underlying cause of unnatural deaths among the prison population, drug possession and distribution coupled with tensions created by related gang activity and debt can increase the risk of violent behaviour among prisoners.<sup>12</sup>

Access to addiction and counselling services should be consistent, reflecting the needs of prisoners suffering from drug and alcohol

addictions and mental illnesses. Recognising the magnitude of addiction in Irish prisons, the potential for increased criminality and recidivism, and the risks to safety within the prison environment, the Probation Service and the Irish Prison Service have put in place treatment and support services. However, the provision of these services across the prison system has been problematic due to a recent reduction in expenditure and in access to addiction counsellors.<sup>13</sup> This has led to longer waiting periods and limited access to supports. Efforts are being made to reduce the supply of drugs into prisons, although the effectiveness of these measures remains questionable, as new and inventive ways are continuously fabricated to maintain the drug supply.

### *Criminal Damage*

Criminal damage to prison property accumulates large expenses and intensifies the challenge for prison management in maintaining safe prison conditions for both inmates and staff. There are also far-reaching consequences which exceed psychological and physical harm to prison staff and inmates.<sup>14</sup> In addition to individuals causing damage to the prison property, instances of collective violence such as prison riots can result in large amounts of damage to the prison estate and to the individuals involved.<sup>15</sup> Despite this, there appears to be little acknowledgement of this issue in prison literature, with the focus on more topical issues, such as drug use

9 Clarke and Eustace, 22.

10 Paul O'Mahony, "Social and Psychological Aspects of Drug Treatment and Rehabilitation within Irish Prisons" in *Criminal Justice in Ireland*, ed. Paul O'Mahony, (Dublin: Institute of Public Administration, 2002), 771.

11 Paul O'Mahony, *Key Issues for Drugs Policy in Irish Prisons* (Dublin: Drug Policy Action Group, 2008), 7.

12 A recent study into the causes of deaths in custody in the Irish Prison Service revealed that 68% of unnatural deaths were associated with use of illicit drugs. Madeeha Iqtidar, Kapil Sharma, Ronan Mullaney, Enda Kelly, Mary Keevans, Myra Cullinane, Harry Kennedy, and Damian Mohan, "Deaths in custody in the Irish prison service: 5-year retrospective study of drug toxicology and unnatural deaths," *BJPpsych Open*, 4(5), (2018): 401. Former Irish Prison Service Director, Michael Donnellan commented that "we have calculated that there are 12-14 major groupings within the prison service that we are managing on a daily basis... Protection numbers have gone up in prison because people when they come into prison, they seek protection in our prison environment... There is no doubt that's linked to drugs, it's linked to debts of money that people are owed." "Prison Service: Up to 14 major gangs operating in Irish jails," *Irish Examiner*, June 25 2018, <https://www.irishexaminer.com/breakingnews/ireland/prison-service-up-to-14-major-gangs-operating-in-irish-jails-850981.html>.

13 On 18 September 2018, there were 44 individuals on waiting lists for the Drug Treatment Programme in addition to waiting lists for counselling services. Information provided by the Irish Prison Service to Irish Penal Reform Trust on 18th September 2018. See also information provided in Health Research Board. *Irish National Focal Point to the European Monitoring Centre for Drugs and Drug Addiction, Focal Point Ireland: National report for 2017 – Prison*. (Dublin: Health Research Board, 2018), 20, [https://www.drugsandalcohol.ie/25265/1/NRPrison2017\\_Sep08.pdf](https://www.drugsandalcohol.ie/25265/1/NRPrison2017_Sep08.pdf).

14 A behaviour that damages property is a criminal offence under the Criminal Damage Act 1991, and damage to the prison property is considered a breach in prison discipline under Prison Rules 2007. To illustrate an example: a teenager was recently sentenced to four years in prison for criminal damage resulting from damage inflicted to Oberstown Children Detention Campus property during four stand-offs with staff. The teenager had caused damage to furniture, security doors, windows and had previously set fire to his cell. The total cost of the damage resulting from his behaviour came to €52,226. Another recent case of note found a prisoner guilty to criminal damage to his cell at Mountjoy prison. The defendant caused over €1,700 in damages resulting from a violent outburst in 2013. See: Isabel Hayes, "Teenager Who Caused €50,000 in Damage to Detention Campus Gets Four Years," *The Irish Times*, 27 July 2018, <https://www.irishtimes.com/news/crime-and-law/courts/circuit-court/teenager-who-caused-50-000-in-damage-to-detention-campus-gets-four-years-1.3578703>; Jessica Magee, "Court Told Former Inmate 'lost His Head' after Partner Died by Suicide," *Irish Examiner*, 28 February 2019, <https://www.irishexaminer.com/breakingnews/ireland/court-told-former-inmate-lost-his-head-after-partner-died-by-suicide-907814.html>.

15 For example, in 2015, a riot in Cloverhill resulted in one prisoner taken hostage and eleven individuals admitted to hospital for treatment for minor injuries. The riot caused 'tens of thousands of euro worth of damage ... to the roof, observation posts and other parts of the prison'. "Two investigations after Cloverhill Prison clashes," RTE News, July 30 2015, <https://www.rte.ie/news/2015/0730/718101-cloverhill/>.





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and violence. This is because these issues are viewed to have more serious consequences across prison systems globally, in view of the detrimental effects that they have on prison staff and inmates.

### Violence

The World Health Organisation describes violence in prison as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”<sup>16</sup> Now attracting considerable attention on an international scale, prison violence manifests itself in a multitude of ways including but not limited to threats, extortion, verbal aggression, physical and sexual assault.

Experiencing forms of physical and psychological violence has detrimental effects on individuals in addition to contributing to a climate of fear. Feeling fearful of violence can cause negative long-term psychological effects on inmates, resulting in stress, low levels of

energy, depression and increased problems of physical health.<sup>17</sup> Additionally, victims of bullying can experience poor psychological wellbeing.<sup>18</sup> The impact of violence does not stop once a sentence has ended. Violence continues to affect individuals after release – they cannot simply shed the prison experience from their minds – causing adverse effects on individuals reintegrating back into their communities, including employment and social relations.

Prison violence in Ireland has been described by non-governmental organisations such as the Irish Penal Reform Trust as endemic,<sup>19</sup> and evidence shows that prison gangs and drugs, higher security prisons, addiction and mental illness, overcrowding and cell-sharing, prison conditions and inmate and staff culture all contribute to a culture of violence. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has expressed concern with the high levels of prisoner-on-prisoner violence across the Irish prison system, whilst drawing attention to, in particular, the presence of feuding gangs coupled with a high prevalence of illicit drug use contributing to violent behaviour and bullying.<sup>20</sup>

<sup>16</sup> World Health Organisation, *World report on Violence and Health* (Geneva: World Health Organisation, 2001), 4.

<sup>17</sup> Richard McCorkle, “Fear of Victimization and Symptoms of Psychopathology among Prison Inmates,” *Journal of Offender Rehabilitation*, (1993): 27 – 42.

<sup>18</sup> Joanne Leddy and Michael O’Connell, “The prevalence, nature and psychological correlates of bullying in Irish prisons,” *The British Psychological Society*, (2002):138.

<sup>19</sup> Irish Penal Reform Trust [2017], 16.

<sup>20</sup> Council of Europe, “Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),” (Strasbourg: Council of Europe, 2015), 7.

Assaults on prison officers have come to public attention following the publication of the State Claims Agency's Review of Assaults on Operational Prison Staff by Prisoners which revealed that 77.9% of prison guards have been physically assaulted by prisoners on at least one occasion in their career.<sup>21</sup> Protecting prison officers from unnecessary physical and psychological abuse is of paramount importance to ensure their safety and wellbeing in the commission of their daily duties. Commenting on the high prevalence of prisoner-on-staff violence, the Irish Prison Officers Association has stated that "the current amount and seriousness of assaults on our members is simply not acceptable or sustainable."<sup>22</sup>

While instances of serious violence have obvious negative effects upon the physical wellbeing of prisoners, more low-level forms of violence and effects of the same can often be overlooked and accepted as a part of prison life. These include harassment, intimidation, extortion, and verbal abuse – all characteristic of the daily interactions between inmates in a prison environment. On the other hand, sexual assault and assault causing harm or, even, death have also occurred representing a more dangerous consequence of prisoner-on-prisoner violence. For example, in 2017, there were 417 reported prisoner-on-prisoner assaults across Irish prisons, which is a decrease of 155 assaults from the previous year.<sup>23</sup> While these figures provide a positive perspective of the number of assaults occurring in Irish prisons, it does not give a complete picture of the extent that violence occurs. Figures of assaults are considerably lower than

the available research suggests, as studies show that 80% of violence in prisons goes unreported or undetected.<sup>24</sup> Detailed record-keeping of violent incidents needs to be properly maintained to understand the causes, effects and consequences of violence of prison staff and inmates. Research conducted by this author hopes to fulfil this lacuna in knowledge, by aiming to ascertain the extent that psychological and physical violence occurs in adult male prisons in Ireland and the factors which lead to a violent incident.<sup>25</sup>

Positive developments by the Irish Prison Service have contributed to a reduction in levels of violent behaviour. For example, the Weapon Amnesty project was successful in reducing assaults using weapons at Wheatfield Prison, which decreased tensions and made inmates feel safer in the prison environment.<sup>26</sup> Other programmes such as the Alternative to Violence Project (AVP) operate by teaching inmates non-violent conflict resolution strategies that are effective in providing prisoners with strategies to deal with anger and educate them on how to control their emotions.<sup>27</sup> Lastly, the newly established Violent Disruptive Prisoners Unit opened in November 2018 in the Midlands Prison for prisoners with a history of violence towards inmates and staff.<sup>28</sup> While these developments have been crucial in addressing the problem of violence against prison staff and inmates, greater recognition is needed to understand the extent that this occurs in Irish prisons to better respond to such incidents.

21 State Claims Agency, *Review of Assaults on Operational Prison Staff by Prisoners* (Dublin: National Treasury Management Agency, 2016). Cognisance is given to the argument that prisoners can be subject to violence in prisons perpetuated by prison officers. However, there is at present no available data to substantiate informed analysis.

22 Irish Prison Officers Association, "Assaults on prison officers have amazingly become an accepted norm – no other employer would tolerate this", says the Prison Officers Association", <https://www.poa.ie/latest-news/assaults-on-prison-officers-have-amazingly-become-an-accepted-norm-no-other-employer-would-tolerate-this-says-the-prison-officers-association>.

23 Irish Prison Service, "2018 Assault figures", (Longford: IPS, 2019), [https://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/2018-final-figures.pdf](https://www.irishprisons.ie/wp-content/uploads/documents_pdf/2018-final-figures.pdf).

24 David J. Cooke and Lorraine Johnstone, "Somewhere over the Rainbow: Improving Violence Risk Management in Institutional Settings," *International Journal of Forensic Mental Health* 9, (2010): 151.

25 The purpose of this research is to understand violence in Irish prisons to minimise such events from occurring and to prevent individuals from engaging in this form of behaviour in the future. Beth Duane, *Prison Violence in Adult Prisons in Ireland: Assessing Causes, Effects and Responses* (PhD Thesis, University of Limerick, 2020).

26 Graham Betts-Symonds, *Community Based Health and First Aid in Action in Irish Prisons*, (Dublin: Irish Prisons Service, 2012), 28.

27 Alternative to Violence Project Ireland, *AVP Ireland: Impact Report 2017* (Dublin: AVP Ireland, 2018), 29.

28 The Minister for Justice and Equality commented that the unit provides a new approach to meet, "each prisoner's complex needs, through improving their psychological health, their wellbeing, and their behaviour in a centre of excellence operated by highly motivated, highly trained and highly competent staff". However, the actual impact that this Unit has on the culture of violence in the Irish prison system will be observed in the coming years. Irish Prison Service, "Minister Flanagan opens the Irish Prison Service Violence Reduction Unit, Midlands Prison," 12 November 2018, <https://www.irishprisons.ie/minister-flanagan-officially-opens-irish-prison-service-violence-reduction-unit-midlands-prison/>

## VICTIMISATION IN IRISH PRISONS

Prison can be a damaging experience. Many people in prison are victims themselves. They are likely to suffer from a lack of self-esteem, come from a poor socio-economic background, have a drug and alcohol dependency or suffer from mental illness.<sup>29</sup> Crime in prisons affects inmates and staff, leading to high rates of victimisation, and prisoners can experience victimisation arising from assaults, sexual assault, robbery, cell theft, verbal abuse, threats, and even death. Additionally, prisoners experience routine victimisation that epitomises institutional life. The problem here is that fear of reprisal makes reporting crimes inherently difficult for victims who are deprived of their liberty and have no escape from their perpetrators. Therefore, crime in prisons needs to be scrutinised critically in order to analyse the effects that it has on victims and the prison property.

Levels of victimisation in prisons are high, with over a quarter of individuals – a majority of whom had been victimised themselves – reporting they had bullied another inmate.<sup>30</sup> In addition, routine victimisation in prisons shapes how inmates socialise with one another. Ian O'Donnell and Kimmitt Edgar found that the 'capacity to assault, threaten and rob was in this sense acquired, and was a likely consequence of having been assaulted, threatened and robbed by others.'<sup>31</sup> For example, the Irish Prison Chaplaincy noted that younger prisoners join prison gangs for protection and are often unable to disassociate themselves for fear of repercussions.<sup>32</sup> On this basis, it is discernible that vulnerable individuals in prison find themselves engaging in violent behaviour in response to the social pressures and restrictive determinants associated with the prison environment.

The prevailing attitude is that prisoners are not

'ideal victims'<sup>33</sup> as they have been incarcerated for committing criminal offences. However, it is essential to recognise that inmates who have suffered from crime are victims who are entitled to the substantive rights and protections under the Criminal Justice (Victims of Crime) Act 2017. The need to provide safe and humane custody standards with the goal to rehabilitate individuals who have experienced multiple forms of victimisation before, and during, their custodial sentence needs to be a priority in the future.

## CONCLUSION

Custodial sanctions do not restrict individuals from committing crime. Rather, it is a period of continued involvement with criminal behaviours that mitigates rehabilitative efforts and leads to higher levels of recidivism.<sup>34</sup> While research into crime in Irish prisons is limited, it is discernible that offences involving illicit substances, criminal damage and violence occur on a frequent basis. Widespread criminality makes the Irish Prison Service's mission statement impossible to fulfil at present. There is no clear pathway to establishing a safer environment for prisoners and staff, which is more conducive to rehabilitation with a clear focus towards successful reintegration into society at the end of sentences.

Prisons must be used as a sanction of last resort and there has to be recognition of the harms that are associated with such custodial sanctions in light of the aforementioned vulnerabilities which have a detrimental effect on the physical and psychological wellbeing of prisoners. More investment in non-custodial sanctions and community-based alternatives to imprisonment is needed in order to create a "strong and effective penal and prison system in Ireland."<sup>35</sup>

29 The Jesuit Centre for Faith and Justice, *The Irish Prison System: Vision, Values, Reality* (Dublin: JCJF, 2012), 85.

30 Joanne Leddy and Michael O'Connell, "The prevalence, nature and psychological correlates of bullying in Irish prisons," *The British Psychological Society* no. 7, (2002): 131.

31 Ian O'Donnell and Kimmitt Edgar, "Routine Victimisation in Prisons," *The Howard Journal* 37, no.3, (1998): 277.

32 Irish Prison Chaplains, *Irish Prison Chaplains Report 2010* (Dublin: IPC, 2011), 11.

33 See terminology in Marian Duggan, ed., *Revisiting the 'Ideal Victim': Developments in Critical Victimology* (Bristol: Policy Press, 2018).

34 Chad R. Trulson, Matt DeLisi, Jonathan W. Caudill, Scott Belshaw, and James W. Marquart, "Delinquent Careers Behind Bars," *Criminal Justice Review* 35, no. 2, (2010): 200–201.

35 Irish Penal Reform Trust [2017], 27.