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## **PRISONERS OF IGNORANCE**

*It's 25 years since the Whitaker Report on our prison system was published. We are still grappling with the issues it dealt with because we did not take its advice, writes **Kevin Warner***

This summer marked the 25<sup>th</sup> anniversary of the report by the Committee of Inquiry into the Penal System, which was chaired by the eminent public servant, T. K. Whitaker.

The committee also included a Supreme Court judge, Seamus Henchy, representatives of social partnership, various academics and the social justice campaigner, Fr. Peter McVerry.

In setting up the inquiry, the government was concerned with a number of issues, including prison overcrowding and poor staff-management relations. They also specifically asked the committee to consider how numbers in prison could be reduced, and to evaluate prison conditions and facilities.

It is sobering to look today at the Whitaker Report, a very substantial document that runs to over 350 pages. Virtually all the core recommendations have been ignored. Indeed, in relation to several significant matters, the prison system has been taken in totally opposite directions to what was set out in the report. This applies to the numbers held in prisons, the conditions of imprisonment, early release arrangements and the governance of the prison system.

### **The numbers imprisoned**

When the Whitaker Committee reported in the summer of 1985, there were still fewer than 2,000 held in Irish prisons. Yet, that number had risen in the previous decade and the committee was concerned to reverse this trend “for social as well as financial reasons”.

Their report noted that “most crime at present originates amongst unemployed youth in disadvantaged urban areas” and they urged the state to address the underlying problems of these areas by promoting social equality and improving policies for unemployment, education, health and welfare, especially in relation to children and juveniles. Their thinking seems to concur with a phrase common in Finland: ‘good social policy is best criminal policy’. Prison, said the Whitaker Report, should only be used “as a last resort”, when “no other form of penalty is appropriate”.

In concrete terms, the Whitaker Committee saw prison numbers being reduced by two principal means. Firstly, they advocated the use of a range of non-custodial penalties for less serious property crime and the like, and a strengthening of the Probation and Welfare Service to support this switch. Secondly, they wanted greater remission of sentences (at the two-thirds rather than the three-quarter point) and, in addition to that, a system of supervised early releases.

The committee envisaged such changes reducing the prison population by at least 500. However, account also needed to be taken of some 300 who were at that time on 'special leave' (i.e. they were 'shed' from prison because of overcrowding) and the Whitaker Report did not want this "haphazard" form of release to continue. Balancing such issues, Whitaker proposed a prison system of no more than 1,760 places.

That prison population would represent a rate of incarceration of less than 50 per 100,000 of the population of the country. Our general population has risen since then, of course, but in today's terms this Whitaker recommendation, were we to follow it, would mean about 2,250 men and women in prison. However, this July, Ireland had almost 4,500 in prison and a rate of incarceration of close to 100 per 100,000 – double the Whitaker level, even allowing for the rise in the country's population.

### **Prison conditions**

The Whitaker committee considered prison conditions in 1985 to be unacceptable in several ways and stipulated clear standards to improve matters. They recommended every prisoner should have:

- sleeping accommodation in a single cell
- access to toilet facilities at all times
- much more out-of-cell time (at least 12 hours per day)
- flexible access to participation in ordered activity, such as education and work, and
- liberal visiting arrangements, especially for families.

Matters have become far worse rather than better in the ensuing quarter of a century. Answers to Dail questions asked by Ciaran Lynch, TD, earlier this year reveal a picture of widespread inhumane and degrading treatment.

In defiance of Whitaker and European standards, some 60% of all prisoners must now share cells. Nearly all of those who share must perform toilet functions in each other's presence. In Cork and Mountjoy prisons, 'slopping out' is still the norm. Nearly all prisoners are now locked up for much longer than the 16 hours a day that the Whitaker Report declared "excessive". Well over 300 are now locked up for 23 hours a day, and this is not counting those 'on punishment'.

Moreover, in recent times, cut-backs, overcrowding, segregation and a 'security' obsession have reduced access to activities like work and education. Arrangements for family contact are also now greatly restricted and do not meet the Whitaker standards.

### **Remission and prison leave**

When the Dail formulates laws, and when judges pass sentences, all involved in these decisions are fully aware that standard remission applies, so that prisoners will normally be released at the three-quarter point of the sentences given. This practice is almost universal in western countries and, indeed, many European countries remit one-third or more of a stated sentence.

Whitaker recommended a change from one-quarter to one-third remission as one means of lowering the prison population, but this recommendation has not been implemented. In addition, the committee proposed “well-judged” (as opposed to “haphazard”) releases, recommended “by review committees representative of all the services operating in the prison”.

Although legislation now allows for such early releases, the Minister for Justice and prison directors have declared they will use this facility only in “exceptional” circumstances.

### **An independent prison board**

The Whitaker Committee was severely critical of the overall management of prisons, noting that “the detailed administration of prisons has moved to an excessive degree into the Department of Justice”.

They recommended instead “a separate executive agency or board”, which would include “members with experience and competence in the fields of psychology and psychiatry, education, care and social reintegration”. Their scathing view of the Department of Justice may well have been one reason why only a small number of copies of the Whitaker Report were ever printed, and was soon out-of-print.

A truly independent board was not established. In 1997, the then Minister for Justice John O’Donoghue, promised legislation to establish a board on a statutory basis “in the new year”. Whatever year he had in mind, such a board has never come about, and the idea has been officially abandoned. Rather, a pointless ‘interim board’, which can offer only “advice and guidance”, exists but appears to have little of value to say. Today, the administration of the prison system is, in reality, as tightly bound into the Department of Justice as it ever was in Whitaker’s day, and the “malaise” in the prison system his report spoke of persists as deeply as ever.

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