

## Community Service at the Crossroads in Ireland

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**Summary:** Community service as a penal option for criminal offending is at a crossroads in Ireland. Though available as a sanction in court since 1983 as a direct alternative to a custodial sentence, under-utilisation and economic prioritisation have, in recent times, prompted government policy to promote community service as a cost-effective penalty and as a measure to alleviate a burgeoning prison population. New legislation and the development of a prisoner resettlement programme incorporating unpaid community work signal an anticipated significant increase and a broadening of the participant base. However, several problematic issues exist. Its penal philosophy is obscure, its aims are variable according to different stakeholder audiences, and the absence of clarity in effectiveness poses definition and measurement dilemmas. This paper seeks to locate community service as a penal sanction in its current context in Ireland, to identify influencing factors and to ask key questions to determine the way forward.

**Keywords:** Community service, Ireland, courts, sentencing, criminal justice, penal policy, penal culture, imprisonment, alternatives, community sanctions.

### Introduction

The work penalty has found a place between the two extreme poles of (rehabilitative) probation and (retributive and deterrent) imprisonment. This intermediate position undermines its substitutive character. (Beyens, 2010, p. 9)

Community service as a sanction for criminal offending has been available to the Courts in Ireland since 1983, the first Community Service Order (CSO) having been made in 1985. A CSO requires the performance of between 40 and 240 hours' unpaid work in the

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community by a person who is 16 years or over, who has been convicted of an offence for which the alternative appropriate penalty would be an immediate custodial sentence, and who has given his/her consent. There are conditions that must be met before the making of a CSO. A court must be satisfied, on the basis of an assessment report, that the convicted person is a suitable person (capable of completing the Order), that appropriate work is available and that the convicted person has consented to the Order.

Community service is one of the penal community measures administered by the Probation Service in Ireland. Probation Officers have integral tasks in recommending suitability for community service, inducting participants once the Order is made, managing attendance compliance and returning non-compliant cases to court. Community service is most often performed by participants at a group project, supervised by a Community Service Supervisor and facilitated through a network of host agencies that includes schools, voluntary sector agencies, community organisations, charitable organisations and local authorities.

In recent years, community service as a sanction has evoked renewed interest, both as a cost-effective community sanction and as a measure to alleviate an increasing prison population. The Department of Justice, Equality and Law Reform's (2009, pp. 3–7) *Value for Money and Policy Review of the Community Service Scheme* (VFM Review) emphasised the under-utilisation of existing community service resources together with a high level of affinity between the functions of the Probation Service and the penal aims of community service.

The Probation Service's commitment to 're-launch Community Service ... as an effective Court sanction adding value to communities and enriching reparation by offenders' (Probation Service, 2009, p. 17) involved increasing its ability to efficiently manage larger numbers of CSOs from the courts. This development reflected government policy to promote the use of CSOs, and included the piloting of an innovative 'Community Return' programme in 2011.

The Community Return programme provides for qualifying prisoners to be released early from custodial sentences with unpaid community work as a condition of their release. New legislation – The Fines (Payment and Recovery) Act 2014 and The Criminal Justice (Community Service Amendment) Act 2011 – are anticipated to increase use of community service. With a comprehensive review of penal policy in Ireland currently being completed (Department of Justice, Equality and

Law Reform, 2010a, 2010b; Department of Justice and Equality, 2013) and with community service at a crossroads in its history, it is an opportune time to appraise its contribution as a penal measure.

### **An emerging new model of community service**

At a time of reduced public sector funding and a rationalisation of public sector service delivery, the Probation Service's commitments to 'focus resources on community service as a "Service prioritised target"' (Probation Service, 2010, p. 4) and to 'refocus and rebrand Community Service ... as a credible alternative to custody' by implementing a new model of community service delivery (Probation Service 2011, p. 8) reflect the opportunity for community service to become an increasingly prioritised criminal justice measure in Ireland.

The initial focus of the reinvigoration of community service was the Probation Service's commitment to implement the recommendations of the VFM Review. The review's terms of reference included the identification of the aims and objectives of the Community Service Scheme, an examination of the continued validity of those objectives and their compatibility with the overall strategy of the Probation Service, the identification of associated outputs of the scheme, establishing the level of Probation Service staff time used in the supervision of the scheme, establishing the effectiveness of the scheme and finally to evaluate the data and information resources (Department of Justice, Equality and Law Reform, 2009, pp. 17–18 and 84). The VFM Review produced 11 key findings with seven 'high' and four 'medium' priority recommendations (Department of Justice, Equality and Law Reform, 2009, pp. 3–11 and 12–15).

High-priority findings and recommendations included the following.

- Community service was acknowledged as a cost-effective alternative to imprisonment, but Orders had declined for some years up to 2007. The report recommended promoting greater use of community service through analysis of sentencing patterns, consultation with the judiciary and Courts Service to identify suitable offenders and encouraging the judiciary through an information campaign.
- Significant parts of Ireland had very few Community Service Orders. The report recommended that community service be developed in a targeted manner in those areas.

- It found that the successful completion rate for community service was in the 80–85% range. It recommended expeditious processes for dealing with non-compliance and the development of standards for prompt implementation (within 14 days) of Community Service Orders being made.
- It found capacity utilisation to be approximately 33% nationally. It recommended development of capacity utilisation as a key performance indicator, with a target of 70% capacity utilisation and a rationalisation of provision if this was not achieved.
- It found that available management data were of limited value and recommended the development of upgraded information technology and a robust reporting strategy.
- It described cost and management information as weak, and recommended the development of systems for regional and local cost and management information.
- It indicated that management of community service involved a disproportionate amount of Probation Service resources and recommended a revised staffing structure for implementation.

The VFM Review also made the following medium-priority findings and recommendations.

- Wide variations were identified in the lengths of CSOs and the equivalence rate in default custodial sentences (how much community service is required to satisfy a specified custodial period), and recommended providing data on the sentencing patterns of community service to the judiciary.
- Challenges in finding suitable work projects should be addressed through a review of existing work sites and a strategy developed for future procurement.
- Absence of key performance metrics for the operation and management of community service should be addressed by incorporating the VFM review recommendations with key performance indicators.
- Empirical research was identified as necessary to assess the impact of community service in reparation and added value to the community as well as its contribution to positive change in the behaviour of offenders and their integration in the community.

The VFM Review was conducted under the Expenditure Review Initiative, a programme of systematic expenditure analysis introduced by the Irish government in 1997 (Department of Justice, Equality and Law Reform, 2009, p. 16). The review is primarily a cost-effectiveness analysis of community service infrastructure and resource utilisation rather than a policy analysis of the nature, scope and effectiveness of community service from the perspectives of varying penal paradigms. In this regard, it is consistent with Garland's (1996) description of the 'systemisation of criminal justice' as one of a series of governmental 'adaptive strategies' in response to the dilemmas arising from the normality of high and persistent crime rates and the crime control limitations of criminal justice agencies.

The 'systemisation of criminal justice', Garland (1996) maintains, involves responding to the demands for increased workload throughput by developing 'new strategies of system integration and system monitoring which seek to implement a level of process and information management which was previously lacking' (Garland, 1996, p. 455). A related adaptation strategy pertains to:

financial management initiatives which are symptomatic of: the widespread movement towards a more managerialist, business-like ethos which emphasizes economy, efficiency and effectiveness in the use of criminal justice resources. Central government initiatives such as the Financial Management Initiative have been applied to all public services, including the police, the courts, the prisons and community measures, and have led to the development of clearly specified 'performance indicators' against which the organization's activities can be measured, as well as an emphasis upon strategic planning, line management, devolved budgets and financial responsibility within the agencies. (Garland, 1996, p. 455)

While the VFM Review privileged economic priorities over penal ideology, as indicated by Garland (1996), it also provided notable empirical and qualitative insights. It found that community service 'forms a key part of the overall strategic vision and goals for the Probation Service' (Department of Justice, Equality and Law Reform, 2009, p. 4) and that a strong compatibility exists between the benefits of community service and the strategy of the Probation Service in providing reparation to the community, the integration of offenders in the

community and providing an alternative to imprisonment (Department of Justice, Equality and Law Reform, 2009, p. 30).

In an analysis of data from 2006–2007, regional variations were highlighted in use of community service by courts. Of 108 court venues, 29 courts accounted for 80% of CSOs, while just 12 courts accounted for 60% of Orders made.

The cost of a CSO was found to be approximately one-sixth the cost of imprisonment. CSOs were also analysed by offence type and reveal the complexity of the equivalence rate, which results from variable factors in sentencing. Judges are required to indicate the required number of hours' work (40–240 at the discretion of the judiciary) to be performed and also to specify the appropriate default custodial sentence (at the discretion of the judiciary within parameters set out in legislation). The equivalence rate indicates the relationship between the two.

The number of hours' work required and the default custodial sentence are not bound by conversion guidelines. This leads to significant variation in both custodial sentences for an offence and the extent of community service required as an alternative.

Certain types of offence appear to attract a higher number of CSO hours. For example, Public Order type offences, for which 312 CSOs were made on individuals in 2006, had an average alternative prison sentence of 3.5 months and attracted on average 128 hours community service with an average equivalence of 37 hours. On the other hand, CSOs made on individuals related to drug offences, of which there were 110 in 2006, resulted in an average alternative sentence of 6.7 months, 144 hours community service and an average equivalence of 27 hours per month. There is thus considerable variation in the application of Community Service Orders across the different offence types. (Department of Justice, Equality and Law Reform, 2009, p. 46)

Public order, road traffic offences, drugs, theft, assault and criminal damage offences accounted for almost 80% of all CSOs in 2006 (Department of Justice, Equality and Law Reform, 2009, p. 46).

While the impetus for the reform of community service infrastructure and delivery in Ireland has roots in the VFM Review, the seeds of the New Model of community service can also be found in an earlier and broader review of the Probation Service's operations, the Comptroller

and Auditor General's report on the Probation and Welfare Service (2004). Regarding community service, this review highlighted the practice of resource limitations being communicated to the judiciary that may have reduced demand (Comptroller and Auditor General, 2004, p. 36), the significant delays in sentencing due to prolonged intervals required after service for the production of assessment reports (Comptroller and Auditor General, 2004, p. 40), that one-third of CSOs had not been commenced within two months of the Order being made and that less than half had commenced within one month (Comptroller and Auditor General, 2004, p. 41).

In implementing the recommendations of the VFM Review, the Probation Service developed strategies to increase significantly its capability to efficiently manage larger numbers of CSOs from the courts. Newly dedicated Community Service Teams have been in place since early 2010 and a new service delivery model and practices have been piloted and embedded, including the introduction of 'same-day' suitability assessment reports to replace the traditional four- to six-week adjournments required for such assessments.

The Probation Service has also established capacity targets and goals of more efficient and prompt induction (commencement of community service work), attendance management and enforcement (prompt completion of Orders and a swift return to court of participants who do not co-operate with Orders). The Probation Service also prioritised use of 'greener' environmental type and visible community service projects as strategic goals (Probation Service, 2011, pp. 8–9 and 18).

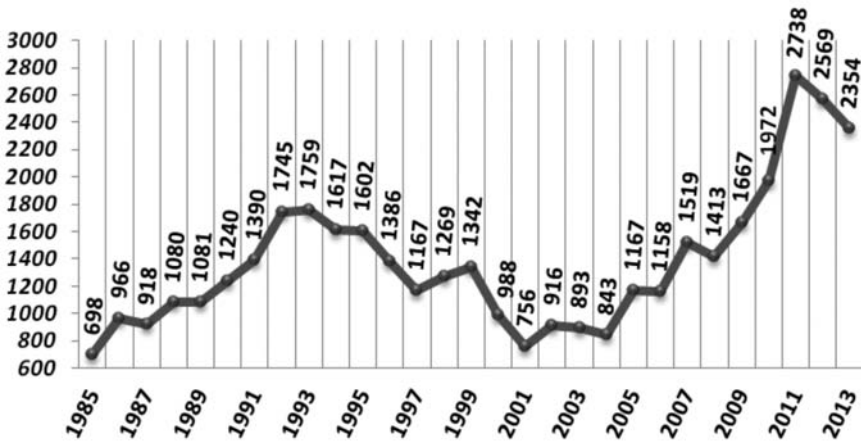
### **The extent of community service in Ireland**

Historical data indicate that following the introduction of community service in Ireland in 1985, a gradual yearly increase followed until 1993, when 1,795 Orders were made, followed by a general decline to a low in 2001 with 753 CSOs (see Figure 1).

This decline has not received adequate analysis and explanation. The Comptroller and Auditor General report (2004) suggested two possible reasons:

- a lack of suitability of community service for offenders with addictions combined with a preference by the Courts to use 'informal

**Figure 1.** Number of Community Service Orders made in the Republic of Ireland, 1985–2013



*Source:* National Crime Council Statistics; Probation Service Annual Reports; Dáil Éireann Debates, Parliamentary Question responses). Derived as follows: 1985 – Dáil Éireann Debates, vol. 389, no. 4, Parliamentary Question response 857/89, 2 May 1989; 1986–2004 – National Crime Council Statistics; 2005–2013 – Probation Service Annual Reports.

supervision’ (supervision during deferment of sentence) when doubts prevailed about offenders’ capacity to participate in community-based sanctions without reoffending (Comptroller and Auditor General, 2004, p. 22)

- a reduction in the rate of unemployment is suggested as explaining reduced use of community service during the normal working week (Comptroller and Auditor General, 2004, p. 23).

After 2001 a gradual increase was evident, but by 2008 the number of Orders had not exceeded its 1993 peak (Department of Justice, Equality and Law Reform, 2009, p. 35). The implementation of the ‘new model’ of community service in 2010 coincided with an 18% increase from the 2009 figure of 1,667 CSOs to 1,972 for 2010, surpassing the 1993 peak for the first time. As the new model was embedded nationally during 2011, the response from the judiciary appeared significant, with 2,738 CSOs made by the courts – a 39% increase on the total for 2010. Since this historic peak, the number of CSOs has declined by approximately 6% in 2012 and 14% by 2013.



## New legislation

In addition to the Probation Service's promotion and reorganisation of the delivery and management of community service, new legislation has been introduced to encourage the use of CSOs as an alternative to imprisonment. In March 2011 the Minister for Justice and Equality, publishing The Criminal Justice (Community Service Amendment) Bill 2011, stated:

There is substantial concern that the sanction of community service orders is not being sufficiently used by our courts in the sentencing of offenders. Increasing the use of community service delivers financial savings, diverts from the prison system offenders whose imprisonment is a substantial expense to the state and provides reparation in the form of unpaid work to the benefit of the community. (Department of Justice and Equality, 2011a)

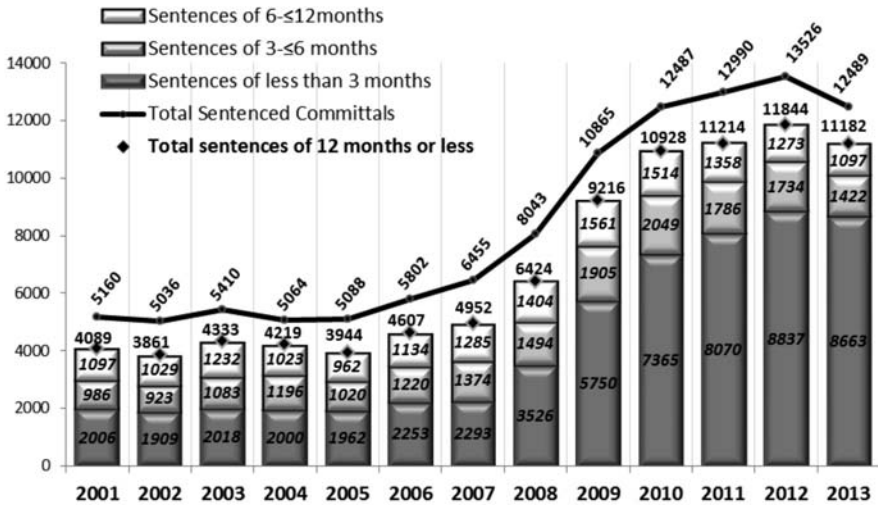
The Criminal Justice (Community Service Amendment) Act 2011 was enacted on 1 October 2011. It obliges judges, when considering a custodial sentence of 12 months or less, to first consider the appropriateness of community service as an alternative sanction.

Figure 2 shows trends in the length of such sentences. The top number for each year is the number of total sentenced committals, below which is the number of total sentences of 12 months or less. The bar chart indicates the sentence length distribution, with sentences of six to 12 months at the top, followed by sentences of three to six months in the middle and sentences of less than three months at the bottom.

The majority of custodial sentences in Ireland are for 12 months or less. Since 2001 such sentences have ranged between 76% and 89% of sentenced committals each year (see Figure 2). Between 2001 and 2007, approximately half of these were for less than three months. Since 2007, a sharp increase in the use of short custodial sentences of less than three months is evident. 67% of committals for 12 months or less in 2010 were for less than three months, approximately 60% of all sentenced committals to prison that year. Sentences of three months or less accounted for approximately 62% of sentenced committals in 2011, 65% in 2012 and 69% in 2013.

The Minister for Justice and Equality commented on the multi-dimensional benefits of community service as an alternative to imprisonment:

**Figure 2.** Trends in lengths of custodial sentences of 12 months or less, 2001–2013 (see text)



Source: National Crime Council Statistics; Irish Prison Service Annual Reports. Derived from National Crime Council Statistics (2001–2006) and Irish Prison Service Annual Reports (2007–2013).

community service as an alternative sanction to custody achieves several goals benefiting the State, the community and the individual offender. Community service delivers significant financial savings, as it is a considerably cheaper sanction than imprisonment. An analysis of the costs involved indicates that the comparative cost of a community service order is unlikely to exceed 34% of the alternative cost of imprisonment and may be estimated to be as low as 11%–12%. Community service benefits the offenders by diverting them from prison, allowing them to maintain ties with family, friends and community, including continuing in education or employment as the case may be. Community service also offers reparation to the community, which benefits from the unpaid work of those serving these orders. (Dáil Éireann Debates, Vol. 729, No. 4; 7 April 2011)

These themes of national (financial savings), community, and individual participant benefits were reiterated by the minister in his second stage speech in Dáil Éireann on 26 July 2011. The minister clarified the

intended impact of community service expansion on prison capacity, stating that ‘the motivation to deliver the proposals contained in this Bill is not to deliver prison spaces but diverting those persons receiving these relatively short sentences away from prison and making them subject to a sanction which benefits them and their communities’ (Department of Justice and Equality, 2011b).

A fall in the number of CSOs made during 2012 and 2013 was noted by the minister when launching Joint Irish Prison Service & Probation Service Strategic Plans and Annual Reports for 2012 and 2013 (Department of Justice and Equality, 2013, 2014).

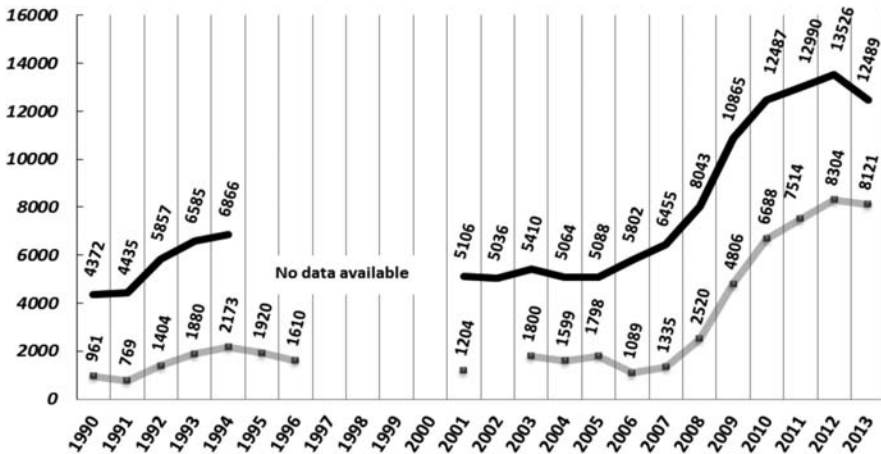
I am concerned with the continued drop in Community Service Orders made ... Although this drop should be seen in the same context as the drop in committals from court to prison, it is particularly disappointing when the Probation Service has the capacity to take on more offenders ... While these figures are certainly better than in the years prior to the review of community service, I want to ensure that even greater use of community service is made. Under the Criminal Justice (Community Service) (Amendment) Act in 2011, judges are required to consider the appropriateness of a community service order in circumstances where an alternative sentence of imprisonment of up to 12 months would be considered. The effects of this legislation should be more visible in the numbers of Orders made. (Department of Justice and Equality, 2014)

### **Non-payment of fines**

The Fines (Payment and Recovery) Act 2014 sets out to minimise the extent of fine default and to ensure, as far as possible, that fine defaulters are not committed to prison. A court must first consider the financial circumstances of the fined person before the fine is determined, fines may be paid by instalment, receivers can be assigned to recover outstanding fines, and community service can be used as a sanction for unpaid fines instead of a custodial sentence.

Fine default, for which the only previous legislative sanction was imprisonment, makes up a significant proportion of those committed to custody. In 1990, 961 prison sentences for fine default accounted for approximately 22% of sentenced committals to Irish prisons (see Figure 3). Between 2001 and 2008, this proportion has varied between a high of

**Figure 3.** Sentenced custodial committals for non-payment of fines (light line) and total custodial sentences (dark line), 1990–2013



Source: National Crime Council Statistics; Irish Prison Service Annual Reports. Figures for non-payment of fines derived as follows: 1990–2006, National Crime Council Statistics; 2007–2013, Irish Prison Service Annual Reports. No data available for 1997–2000 and 2002. Figures for custodial sentences derived from National Crime Council Statistics (1990–2006); Irish Prison Service Annual Reports (2007–2013). No data available for 1995–2000. Neither the Irish Prison Service Report on Prisons and Places of Detention for the Years 1995–1998 nor the Irish Prison Service Report 1999 and 2000 contains separate statistics for remand and sentenced committals.

approximately 33% (1,800 fine default sentences) in 2003 to a low of 19% (1,089 fine default sentences) in 2006.

In more recent years the number and proportion of custodial sentences for fine default has risen dramatically. In 2009, approximately 44% (4,806) of all sentenced committals to prisons were for fine default. This escalated to 53% (6,688) in 2010, approximately 58% in 2011, 61% in 2012 and 65% in 2013.

A study of imprisonment for fine default and civil debt conducted in Ireland in 2002 (Department of Justice, Equality and Law Reform, 2002), based on a sample of 1,514 prison committals in 1999 for fine default or civil debt offences, concluded that:

Persons committed for fine default tend not to be representative of the general population. The relatively high proportion of persons who are unemployed or not in the labour force because of disability is atypical.

A significant minority are living in poverty. It is clear from their own accounts that in many cases these are individuals who have troubled family backgrounds with life problems that overshadow the offences and fines at issue. In general, offenders in these circumstances do not have the capacity to pay the fines, especially if they must be paid in full or if there has been an accumulation of fines ... For offenders, the consequences of imprisonment go beyond the deprivation of liberty. Concerns are expressed about the impact on social welfare entitlements or benefits and also on current or future employment. (Department of Justice, Equality and Law Reform, 2002, p. 53)

The practice of imprisoning fine defaulters in Ireland has been criticised as being ‘as pointless as it is relentless’ because it is viewed as being largely ineffective (O’Donnell, 2009: 1). In another Irish study involving the four-year follow-up of 20,000 prison releases, fine defaulters committed to custody were found to be twice as likely to be re-imprisoned as recidivists as those imprisoned for offences that received an immediate custodial sentence (O’Donnell *et al.*, 2008). Ethical concerns have also been expressed about incarcerating such large numbers whose offending did not warrant a custodial sentence in the first instance (McIvor *et al.*, 2013, p. 21; Irish Penal Reform Trust, 2012; O’Donnell, 2008, 2009).

Short prison sentences have been asserted as having very limited effectiveness (Johnson and Godfrey, 2013; Armstrong and Weaver, 2013; McIvor *et al.*, 2013; Trebilcock, 2011; Killias *et al.*, 2010), as they offer negligible opportunity to address offending pathways or risk factors, cause significant disruption to protective capital and may entrench pro-offending attitudes. In Scotland, these concerns have led to the provision of ‘a presumption against the use of short sentences’ under the Criminal Justice and Licensing (Scotland) Act 2010, whereby prison sentences of three months or less are replaced by alternative community-based measures.

### **The promotion of community service**

The Government Programme for National Recovery 2011–2014 (Government Publications, 2010) committed ‘to review the proposal to build a new prison at Thornton Hall and to consider alternatives, if any, to avoid the costs yet to be incurred by the State in building such a new

prison' (Irish Prison Service, 2011b, p. 1). In April 2011, the Minister for Justice and Equality established the Thornton Hall Review Group to review the need for the Thornton Hall Prison Project.

The planned expansion of community service may be seen to have gathered momentum following the pragmatic policy reversal of the largest planned expansion of the capacity of the prison estate in the history of the state that followed (Irish Prison Service, 2011b). This prison expansion had been intended to respond to the urgent need to address chronic overcrowding and persistent expressions of concern about the poor conditions 'of the old and dilapidated prisons' and 'the safe and humane treatment of prisoners' (Council of Europe: Committee for the Prevention of Torture, 2011, p. 15; Office of the Inspector of Prisons, 2010, 2011).

The Thornton Hall Review Group Report, in analysing projected prison population growth, indicated that there was a high predicted rate of prison population growth (Irish Prison Service, 2011b, p. 29), which, if continued, would result in a doubling of prison population between 2009 and 2016. The issue of overcrowding had resulted in the increasing use of temporary release from an average of 4.4% in 2007 to an average of over 17% in 2011, with the rates for Mountjoy and Cork prisons being 21% and 35% respectively (Irish Prison Service, 2011b, p. i).

Forecasts of trends in the rate of imprisonment over the next five years indicate further increases. These trends, if they crystallise, would require a temporary release rate of in excess of 30%. Temporary release at this level would create a real risk that public confidence in the criminal justice system would be undermined. (Irish Prison Service, 2011b)

The urgency in addressing this penal crisis within the prevailing fiscal constraints led to recommendations for a smaller scale expansion of prison capacity together with the development and increased use of a range of 'front and back door' community sanctions (Irish Prison Service, 2011b, pp. 60–62) that included the introduction of Community Return, a programme of earned temporary release with a condition of unpaid community work, to prepare offenders for release on completion of their sentences and based on principles of normalisation, progression and reintegration (Irish Prison Service, 2011b, p. 60).

## **Community Return**

community service, in Ireland and internationally, has traditionally functioned as a ‘front door’ diversionary penal measure, with the only route to participation being through the Courts. In October 2011 the Probation Service, in partnership with the Irish Prison Service, commenced a pilot Community Return programme in which qualifying prisoners can be released early from their custodial sentences, with a term of unpaid community work as a condition of their reviewable release. Senior officials from the Department of Justice and Equality, the Irish Prison Service and the Probation Service outlined the Community Return programme to the Oireachtas Sub-Committee on Penal Reform in February 2012:

The community return scheme involves swapping prison time for time in the community and paying back through unpaid work. It roughly equates to a week of community work for extra remission of one month. The first 60 or 70 people who have been released under the scheme have proved to be extremely successful in complying with the conditions of their release, for example, in terms of their attendance at work and performance of whatever activities in which they are required to engage.

As well as the work element, we try to include whatever other structures or programmes that the individuals need in the community, be it re-socialisation in their families or community, attendance at drug programmes, etc. To the end of the year, only one or two prisoners needed to be returned to prison. Overall, there was an extremely high level of co-operation and compliance. This is a unique initiative internationally, as I am unaware of anything comparable in place elsewhere. (Oireachtas Sub-Committee on Penal Reform, 2012)

Regarding concerns about the compatibility of CSO and Community Return participants, the Sub-Committee was told:

Prisoners involved in the scheme undertake the same type of work as people on court order community service. In many situations, the groups of offenders work side-by-side. We have found that having people coming out of prison working side-by-side with court ordered community service offenders has had a positive impact. The prisoners

have been good role models for the people sent by the courts to do community service although there was concern that the opposite might be the case. (Oireachtas Sub-Committee on Penal Reform, 2012)

The programme is an incentivised scheme of earned and structured temporary release. It was initially planned for 300 participants per year, now expanded to 450 participants. Prisoners serving between one- and eight-year sentences, who have served more than half of their sentences, may be eligible for consideration, subject to their engagement with an incentivised regime policy (Irish Prison Service, 2012, p. 28). Between October 2011 and December 2013, 584 participants successfully completed the programme, with a reported compliance rate of approximately 90% (Probation Service, 2014, p. 11).

### **A resettlement-enhancing community service?**

Post-prison resettlement adjustment has been increasingly acknowledged as a critical period and process for people leaving prison (Losel, 2012; Maruna, 2006, 2011; Moore, 2012; Munn, 2011; Nugent and Pitts, 2010; Shinkfield and Graffam, 2010; McGuire and Raynor, 2006; Burnett and Maruna, 2006).

Resettlement difficulties have been highlighted by Arditti and Parkman (2011), who emphasise that the detrimental lack of rehabilitative programmes and interventions aimed at building social capital coincides with a crucial resettlement period in terms of asset building and identity formation. Bain and Parkinson (2010, p. 72) discuss the importance of 'de-labelling' to the process of successful resettlement, which, they suggest, is proportionate to the social inclusion of the individual.

Bazemore and Boba (2007) and Bazemore and Stinchcomb (2004) proposed a specific civic engagement model for prisoner re-entry. Civic community service, restorative justice decision-making and reparation and democratic participation are cited as practices to achieve resettlement aims of 'weakening community barriers to the development of pro-social identities for persons who have been under correctional supervision, altering the community's image of such persons and mobilizing and/or building community capacity to provide informal support and assistance' (Bazemore and Boba, 2007, p. 27).



Bazemore and Boba (2007) set out a theoretical model for the 'civic engagement' resettlement model, by focusing on community service as a potentially powerfully generative and transformative process. Theoretical approaches of identity transformation, life course criminological approaches (the understanding of how prosocial bonds are developed and maintained) and theories of social capital and collective efficacy (community building) are presented as key components of the model in bridging the considerable resettlement gap between the offender and the community. The model outlined by Bazemore and Boba (2007) and Bazemore and Stinchcomb (2004) remains theoretical and appears not to have been implemented or evaluated for any resettlement population.

The Community Return scheme is an opportunity for in-depth research regarding its capacity to facilitate more effective transition from prison to the community and for recommendations about how the scheme might enhance such potential and provide an evidence base to inform its development.

### **Community service research in Ireland**

There has been very limited analysis of the effectiveness and penal nature of community service in Ireland. Walsh and Sexton (1999) provided the first comprehensive empirical exploration of community service in Ireland through an analysis of a sample of 269 offenders in respect of whom a CSO had been made from a 12-month period between 1996 and 1997. They conducted a direct observation of practice for one week at Limerick District Court, one day each at five Dublin and at two rural District Courts, interviewed Probation Officers and reviewed practice in other jurisdictions.

Walsh and Sexton (1999, p. 13) describe the penal intention, in 1983, of community service as symbolically punitive and more predominantly rehabilitative. The profile of participants provided by Walsh and Sexton (1999, pp. 25–33) reveals an overwhelming male (95%), young (50% under 24 years of age), unmarried (77%) population, who predominantly resided with parents (65%); with no formal educational qualifications (62%), no vocational skills (42%) and who were unemployed (58%). 81% of CSOs were successfully completed (of these, 3% had breach proceedings initiated but successfully completed following a further opportunity given by the court) (Walsh and Sexton, 1999, pp. 54–55). CSOs were found to be completed most frequently when imposed for

minor assault offences. Breach proceedings were initiated in cases most frequently involving public order offences (Walsh and Sexton, 1999, pp. 57–58). Completed CSOs were achieved within 12 months in 94% of cases but Walsh and Sexton (1999, p. 60) concluded that, when analysed against participant unemployment and availability, CSOs were not being worked off as quickly as they should be, attributing the delays to absenteeism and interruptions in the continuity of work projects.

Just under half (43%) of the sample had no previous recorded criminal convictions, while a further 18% had one previous conviction (Walsh and Sexton, 1999, p. 28). Comparing profile characteristics with existing profiles of a prison population (O'Mahony, 1997), Walsh and Sexton (1999, p. 29) concluded that:

this high percentage of first time offenders served with a CSO cannot be fully explained by the seriousness of the offence(s) of which the offenders were convicted. It is difficult to avoid the conclusion that there is a tendency to resort to CSOs in cases where a term of imprisonment would not have been imposed had CSOs not been available.

Walsh and Sexton (1999, pp. 100–101) concluded with concerns about the need to address the significant sentencing variations and a view that the general principle of 'an alternative to custody' was too broad, and more detailed guidance was required. Concern was also expressed about the irregularity and lack of uniformity in equivalence rate sentencing (amount of community service matched to a custodial sentence) and that legislative changes might be required to address more thoroughly the manner in which the consent of the participant was given and recorded.

The VFM Review (Department of Justice, Equality and Law Reform, 2009) canvassed the views of the judiciary. 100 judges of the Circuit and District Courts were invited to respond to a questionnaire. The 29 responses indicated a highly positive inclination among these members of the judiciary towards community service. 76% of these respondents were strongly in favour of increasing the maximum limit (240 hours) of community service to accommodate more serious offences, while judges were equally divided about the benefits of lowering the 40 hour minimum limit of community service. 82% of the 17 District Court judges and 65% of all judges were in favour of establishing community

service as a sanction in its own right and not as an immediate alternative to a custodial sentence.

Only a narrow majority of judges (52%) expressed confidence that community service is beneficial to the community; there was a similar level of confidence that community service is beneficial to the 'offender' (Department of Justice, Equality and Law Reform, 2009, pp. 50–57). This contrasts with 80% of the 42 Community Service Supervisors surveyed who indicated confidence that community service benefited the community (Department of Justice, Equality and Law Reform 2009, p. 64).

These findings resonate with a New Zealand study of variance in community service views and perspectives of Probation Officers, sponsors (host work placement agencies), offenders, and judges from seven New Zealand probation districts (Leibrich *et al.*, 1986). The New Zealand study found that benefiting the offender was the strongest response (58%) identifying the aim of community service, most likely to be identified by judges and Probation Officers. Providing benefit to the community was identified by 50%, again mostly by judges and Probation Officers. An alternative to imprisonment was identified by 35%, most commonly by Probation Officers. Community–offender integration was identified by 26%, most likely by Probation Officers and least likely by offenders; and punishment was identified by 22%, most typically by judges.

The study also found that a significant majority of respondents were confident that their identified aims were being achieved, with the exception of judges, a slender majority of whom were confident that their identified aims were being met. 'Benefit to the community' was felt to be achieved most strongly by offenders (Leibrich *et al.*, 1986, p. 57). These variations in perspective support Beyens' (2010, p. 10) suggestion that 'the work penalty is a very complex sentence in its execution, because of the diversity of actors involved'.

A number of dissertations and theses have been produced by students in third-level colleges, focusing on aspects of community service in Ireland. Jennings (1990) explores the origins of community service in Ireland and internationally, and analyses its penal orientation. Her suggestion that community service emerged from the numerous penal traditions of coercive labour was the dominant understanding in the international literature at the time, but has since been vigorously

disputed by Kilcommins (2002), who argues that community service is more aptly viewed as a deprivation of leisure time, a relatively recent concept and not a progressive refinement of earlier traditions.

McGagh's (2007) study reviewed Irish and international community service literature, identifying other jurisdictions that have adopted predominantly rehabilitative approaches and practices. Participants having contact with beneficiaries of their work, having access to basic skills training and having positive experiences with prosocial supervisors were seen as effective in completion of orders and possibly resulting in less reoffending. Some rehabilitative practices in the operation of community service were said to occur on an informal basis in Ireland. The data also suggested that because of the setting and the supervisory relationship with clients, Community Service Supervisors are well placed to instigate planned programmes of rehabilitation.

Riordan (2009) explored the utilisation of community service from a judicial perspective in Ireland. He found that its under-utilisation is in part explained by judges' reluctance to equate community service with a custodial sentence. Judges are reported to have a strong desire to use the sanction as a penalty in itself, without reference to custodial consideration, and the requirement for the latter undermines community service's usage (Riordan, 2009, p. 174).

Riordan also highlighted a judicial concern that the sanction may not be adequately monitored and executed (Riordan, 2009, p. iv). Central to judicial concerns, Riordan (2009) maintained, is the historical use of discretionary practices by Probation Officers, which may result in 'probationising' community service and diminish more rigid community service compliance expectations (Riordan, 2009, pp. 83, 114).

In addition, Riordan (2009, p. 105) suggested that while there is significant variation in judicial practice regarding community service, the introduction of 'strict criteria' to standardise the administration of community service might result in greater use of the sanction. Riordan further highlighted the paradox within the legislation which requires rigid sub-custodial criteria in order to impose community service and 'unfettered' judicial discretion in dealing with breaches: 'a wide ranging discretion unwittingly imported from [the] British legislation into the Irish Act appears to undermine the purpose of the community service order as a penalty designed to act as an alternative to custody' (Riordan, 2009, p. 146).

## Community service dilemmas

Community service as a penal sanction has some unresolved historical issues. Its focus on work and task completion contrasts sharply with other probation interventions' orthodox endeavours to engage with probationers in a meaningful way towards effecting change, regardless of how this process is subject to variations in best practice discourses, penal philosophy and political ideology (see, for example, Bottoms and McWilliams, 1979). Community service represents a more regulatory relationship between practitioners and community service participants in implementing and enforcing the requirements of the Court Order, but the extent and nature of this engagement and process, to effect participant change, remain ambiguous.

As a sentencing measure with multiple variables, community service in Ireland has considerable variation and inequitable equivalence rates between the required work and the alternative custodial sentence. The VFM Review found a national average equivalence rate of one month's custodial sentence to 30 hours of community service, with a range of 26–43 hours' work (Department of Justice, Equality and Law Reform, 2009, p. 43).

Walsh and Sexton (1999, p. 35) found that the average equivalence rate was 27 hours' work in lieu of 1 month imprisonment with a range from 11 hours to 63 hours (Walsh and Sexton, 1999, pp. 50–51).

For those participating on the Community Return programme with three days' community service per week, the equivalence rate is 48 hours in lieu of one month's imprisonment.

Fine default participants can be expected to further widen the range of required community service equivalence rates. The Fines (Payment and Recovery) Act 2014 provides a requirement for 30–100 hours' community service for fine defaulters convicted of summarily disposed offences, with the maximum custodial alternative sentence being between five and 30 days' imprisonment determined by the unpaid/unrecovered fine. Community service of 40–240 hours can be applied to fine default in indictable cases, with the maximum alternative custodial sentence being 12 months (The Fines [Payment and Recovery] Act 2014: Sec. 19 and 20).

Within these ranges for Orders in summary and indictable cases, there is no mechanism to mandate the number of hours that should be imposed for an outstanding fine. Significant variations in equivalence

rates between the required community service to satisfy a custodial sentence raise concerns about the 'proportionality and commensurability of punishments' (McIvor *et al.*, 2013, p. 22).

The origins and antecedents of the emergence of community service are disputed (Riordan, 2009; Kilcommins, 2002; Jennings, 1990, p. 14; Pease, 1985) and the penal and judicial philosophy underpinning its use is varied and ambiguous, and remains contested because it has not been sufficiently and consistently grounded in any specific penal paradigm (Gelsthorpe and Rex, 2004; Hine and Thomas, 1996; Bazemore and Maloney, 1994; Hudson and Galaway, 1990; Carter *et al.*, 1987; Perrier and Pink, 1985; Young, 1979).

Penal policy, Garland (1990, p. 7) informs us, has a 'rich and flexible tradition which has always contained within itself a number of competing themes and elements, principles and counter principles'. Each of these gives rise to academic, political, cultural and professional practice discourses, whose 'key terms have been developing and fluid rather than fixed, producing a series of descriptions – "moral reform," "training," "treatment," "correction," "rehabilitation," "deterrence," "incapacitation"' (Garland, 1990, p. 7). Several discourses relating to punishment, reparation, restoration, integrative/reintegrative and expiation might be added, as pertaining to claims made about community service's penal potential.

In describing the aims of community service in Scotland, for example, McIvor (2010) articulates its multidimensional penal aspirations:

Community service in Scotland was intended to fulfil a number of sentencing aims including *punishment* (through the deprivation of the offender's free time), *rehabilitation* (through the positive effects of helping others) and *reparation* (by undertaking work of benefit to usually disadvantaged sections of the community). The *reintegrative* potential of community service was to be achieved through the offender being enabled to remain in the community, retaining employment and family ties, and, through coming into contact with others while carrying out unpaid work, avoiding social isolation. (McIvor, 2010, p. 42; emphasis in original)

It has been suggested that the inherent multidimensional ambiguity surrounding the penal role and nature of community service has contributed to its appeal (Gelsthorpe and Rex, 2004, p. 230). It has been

both praised and criticised for its capacity to appeal to supporters of a range of penal philosophies (Jennings, 1990, p. 52): ‘a chameleon-like sanction that has wide appeal and compatibility with all penal paradigms’ (Beyens, 2010, p. 9), ‘a penalty for all seasons, perfectly adaptable to the seasoned and unseasoned offender, and perfectly adaptable to any micro-climate’ (Hine and Thomas, 1996, p. 134), a sanction that incorporates numerous elements that appeal to protagonists of conflicting penal philosophies and as such represents ‘all things to all people’ (Perrier and Pink, 1985, p. 32).

As far back as 1985, Pease cautioned:

The consequences of confused thinking become evident when community service ceases to be words on paper and starts being work in a community. The choice of type of work, level of supervision, and contact with beneficiaries of service may be determined by the justifying aim of the sentence. If rehabilitative, organizers will seek to maximize contact between offender and non-offender volunteers; if reparative, they may well seek to find work for crime victims. If rehabilitative, an organizer may be guided in the decision to revoke an order by the circumstances of the individual offender. Because the probation officer, the sentencer, the revoking court, and community service organizers may hold different views about the justifying aim, there are many possible confusions. (Pease, 1985, p. 59)

Despite this basis for wide appeal, community service exemplifies Garland’s (1990) analysis of the challenging task facing the range of penal sanctions:

Contemporary penalty exists within societies which are themselves marked by pluralism and moral diversity, competing interests and conflicting ideologies. In such a context, and with the need to appeal to a range of different audiences at one and the same time, it is no surprise to find that penalty displays a range of rhetorical identifications and a mosaic of symbolic forms. (Garland, 1990, p. 275)

The ambiguity surrounding the explicit purpose and penal philosophy of community service has problematic consequences. A lack of reinforced clarity about its place in the rank of sentencing tariffs gives rise to

confusion about its optimal target population and consequent inconsistent sentencing practices by the judiciary (Gelsthorpe and Rex, 2004, p. 203; Riordan, 2009).

Related concerns also surround its reputed intention towards its target population, to divert people from custodial sentences who would otherwise have been imprisoned (McIvor, 2010, p. 42; 1998a; 1998b, p. 280; 1990; McIvor and Tulle-Winton, 1993). Similar concerns relate to its potential for 'net-widening' and 'mesh-thinning', whereby its use as a punitive alternative to other non-custodial sanctions, instead of a direct alternative to imprisonment, increases the severity of sanction for those who would not ordinarily have been considered for a custodial sentence (McIvor, 2010, p. 56; Kilcommins, 2002, p. xlix).

Recent commentaries about the expansion of unpaid work sanctions in Belgium (Beyens, 2010), Spain (Blay, 2010) and the Netherlands (Boone, 2010) contend that this has corresponded not to a reduction in the use of prison sentences, but to an expansion of prison populations and of the penal system as a whole. The implications of a lack of clear and adequately anchored explicit purpose are articulated by Bazemore and Maloney (1994):

A major problem with community service today is that it is ordered and implemented in a vacuum with reference neither to sentencing objectives nor to a theory of intervention with offenders. In the absence of a guiding conceptual framework for intervention and lacking value-based guidelines and performance objectives derived from a clear mission, it is impossible to gauge success or failure of these sanctions or determine quality of the service experience. If the goal is punishment or bureaucratic convenience, for example, many current projects may well be accomplishing intended performance objectives. If the goal is meaningful restoration to the community or offender rehabilitation and reintegration, however, community service as now practiced in most jurisdictions would be viewed as a failure. (Bazemore and Maloney, 1994, p. 25)

Difficulties also pertain to the definition and measurement of the effectiveness of community service as a penal measure (McIvor, 2010, p. 51). The capacity utilisation of community service resources and the completion of required community service by participants might be assumed as acceptable successful outcomes. However, other intended



goals such as benefit to the community, participant reparation and reintegration, impact (independently and comparatively to other sanctions) on participant offending and a reduction in sentencers' use of imprisonment pose a matrix of significant quantitative and qualitative design, measurement and evaluation challenges.

### **Concluding comments**

Irish penal policy is notable for the absence of an ideological philosophy driving its direction and content (Rogan, 2011a, 2011b; O'Donnell, 2007; Kilcommins *et al.*, 2004), and sentencing practices in Ireland display a historical preference for custodial rather than community measures (O'Donnell, 2004, 2005; Healy and O'Donnell, 2005; Bacik, 1999).

Government penal policy development in Ireland has also tended to be characterised by prolonged periods of inertia and has involved the adoption of pragmatic solutions to political crises (Rogan, 2011a). While susceptible to policy transfer from abroad, Irish penal policy tends to manifest these influences in 'a dilute and distinctive hybrid form' (Kilcommins *et al.*, 2004, p. 292). As Rogan (2011b) summarises:

This picture of Irish prison policy, therefore, has a number of contradictory elements, some which could be considered progressive and others less so. Equally, the ideological basis for many of these developments is uncertain. The penal ideology of Ireland is ill-defined and changeable. Neither punitive nor more liberal sentiments are deeply embedded. The sensibilities which make up Irish conceptions of prison policy have somewhat shallow roots, giving rise to a form of prison policy which incorporates sometimes conflicting penal approaches and objectives. (Rogan, 2011b, p. 33)

It might appear, then, that an ideologically malleable penal policy in Ireland is compatible with a pliable, multi-paradigmatic penal sanction such as community service.

As a pragmatic solution, Pease (1985) suggests that the intuitive appeal of community service to those who engage in it is not evidence that the sentence rests on a firm theoretical footing. The 'smorgasbord of penal purpose' is most likely when a sentence has intuitive appeal (Pease, 1985, p. 58). He notes prevalent factors 'underlying the rapid develop-

ment of community service schemes'. These include concern about prison overcrowding and the cost of building new prisons, a shift towards increased interest in more punitive non-custodial options, and concerns that victims and 'offenders' should be somehow reconciled (Pease, 1985, p. 58).

Despite its inherent pragmatism, tensions still exist between promoting and balancing several competing considerations. These include the penal credibility of community service as viewed by public and political support, its credibility as viewed by the judiciary, whether community service produces a benefit to the community and is adequately enforced and implemented and, not least, its legitimacy for those subjected to it, in that it involves 'giving' and not the retributive 'taking' of reparation (Young, 1979, p. 36). As Maruna and King (2008, p. 346) suggest, 'by symbolically transforming the probationer into a "giver rather than a consumer of help", non-custodial penalties might be seen in a more positive light'.

At the core of these concerns is an apparent struggle between an orientation that prioritises punitive versus alternative transformative processes for participants, involving rehabilitative, restorative and reintegrative participant enhancement values. A primary concern is articulated by McCulloch's (2010, p. 401) claim that 'there is a danger that the reparative, re-integrative, and rehabilitative ideals of community payback become obscured in misguided efforts to publicly "package" community payback as a punishment first and last'.

The new priority target populations, non-compliant fine defaulters, custodial sentences of one year or less and a prison resettlement cohort further demonstrate the potential elasticity of unpaid community work as a penal measure and also highlight the necessity to overcome concerns relating to the ability for unpaid work to operate successfully at more than one point in the criminal justice process (McIvor *et al.*, 2013, p. 21).

How participants approach community service from their varying contexts and perspectives makes for potentially interesting comparative research into the relative compliance with, impact of, and experience of the punitive, reparative, reintegrative, restorative and rehabilitative dimensions of community service. Hypotheses to be tested could include a range of participant factors as well as the nature of sliding or escalating tariff pathways to participation, how consent is provided and its perceived fairness and legitimacy.

While the ‘new model’ of community service might address judicial concerns regarding its administration by the Probation Service, retaining the potential for enhancing rehabilitative, restorative and generative capacity may foster higher levels of compliance, promote the legitimacy of the measure for participants and in doing so facilitate participant desistance from offending. In this sense, consideration of the quality of the community service experience might yield greater benefits than a preoccupation with increased quantity.

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