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Marginal Figures? – Child Detention in the Republic of Ireland. A History of the Present

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Submitted for the degree of Doctor of Philosophy

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Declaration

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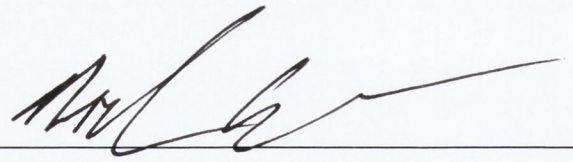
Signed: 

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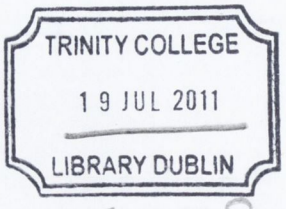

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Summary

This thesis explores the practices and systems of child detention in the Republic of Ireland with reference to the past. Methodologically and theoretically the thesis is informed by a 'history of the present' approach. Such an approach involves a disavowal of 'taken for granted' understandings through the 'problematisation' of a given subject (Castel, 1994; Dean, 1994; Foucault, 1977a). In this thesis the problem posed in the present is why the practice of child detention, albeit now marginal in numeric terms, remains a productive sphere? In other words why do sites of containment continue to emerge, and *who* are the subjects for *whom* this form of government is specified?

Analytical attention is directed towards the children for whom institutionalisation (or the carceral order) continues to be the specified form? In line with the 'history of the present' method, this subject is explored through an analysis of discourse in the archive, where discourse is understood as 'the statement as it occurs in the archive' (Foucault, 1972). Here the archive analysed are the case files of young people who have been detained in three children detention schools (formerly Industrial and Reformatory schools) in the Republic of Ireland from 1970 to the present and the government reports, the parliamentary record and literature from non-governmental organisations of relevance to this area.

In combination with the theoretical lens of governmentality (Foucault, 1997; Miller and Rose, 2008; Rose et al, 2006), this thesis explores that manner in which power and knowledge have productive effects. This is demonstrated by the way in which subjects are brought to visibility at the site of the institution and within wider discourse. The 'emergence' of the category of the 'deprived child' from the site of the institution and the strategies adopted to govern this subject are set out. Critically, the thesis demonstrates that through the practices of recalibration and the techniques of assessment and classification new problematised subjectivities are brought to light, for which the site of the institution remains the template of government. By this it is meant that the assessment, categorisation and proposal for remedying young people

who are viewed as problematic has productive effects. It produces new problems (and sometimes old manifesting as new) and it leads to calls for new sites of containment.

The range of 'problematised subjectivities' for which this form of government is specified is explored and some key themes are discerned. Here subjectification is predicated on visibility in time and space. Further still, in line with the governmentality perspective, which directs analytic attention away from the locus of the state, the role of non-State actors in this sphere of productivity is also explored. The thesis critically explores the roles that are played both within and beyond the state in sites of formation.

It is argued that while rationalities legitimating containment may oscillate, there are patterns of continuity and discontinuity evident over time. And in fact the repertoire of rationales for containment retain a consistency over time that serves to reconfigure problematised subjects and give the sites of containment their continued productive effects. Here in line with the 'history of the present' approach adopted it is argued that the present is continually '…played out, and innovates, utilizing the legacy of the past' (Castel, 1994:238).

Acknowledgements

The process of undertaking this thesis has very much been a journey, and as such there have been numerous turns and divergences along the way. The idea to first embark on academic work came as a result of my participation on the Post-Graduate Diploma in Child Protection and Welfare in Trinity College Dublin and from the prompting of Dr Helen Buckley the Director of that programme. At the time I had returned to the Republic of Ireland to work with the *Special Residential Services Board,* and this organisation supported me in the early stages of this work. In particular I would like to thank Roger Killeen, the former Chief Executive of this organisation, Finbarr O'Leary, the Deputy Chief Executive and my friends and colleagues Olwyn Beatty and Bronagh Gibson.

In the early stages of my PhD I started work as a Research Fellow in the Children's Research Centre, Trinity College Dublin. Here I was fortunate to work on projects with Dr Paula Mayock who has been an important mentor and friend throughout. Working alongside my colleagues in the Children's Research Centre was an invaluable experience. Throughout the peripatetic journey of this study, I have shared spaces and conversations with many people along the way. Included in the long list of people who have 'shared the pain' and whom I would like to thank for their support are Jess Breen and Dr Stephanie Holt.

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Chapter One - Introduction

This thesis explores the practices of child detention in the Republic of Ireland with reference to the past. A 'history of the present' method is used to *problematise* the current practice of child detention by critically analysing the discourses that give this form of government effect. The study highlights that although now a relatively marginal practice within the broader sphere of child welfare, protection and juvenile justice; the practice of containment remains productive. By this it is meant that through the production and reproduction of problematised subjectivities the sites and rationales for containment are constantly reconfigured. Over time various intersections of power and knowledge are deployed to bring visibility to subjects for whom it is argued that such interventions are necessary. Furthermore a varying repertoire of discourse is deployed over time to argue for the continued 'need' for sites of containment.

The emergence of a separate carceral order for children and young people in the mid-nineteenth century is explored. Here the carceral order is understood as an order modeled on the idea of a prison (Foucault, 1977a). The particular focus of this thesis is the more recent history of the system and in particular the attempts made to reconfigure and recalibrate the institutional framework from the 1970s onwards. In this thesis, the date of 1970 is taken as the starting point of analysis in relation to current practices of child detention. The reason for the choice of this date is set out in the thesis. Briefly here, this was the year of the enactment of the *Health Act (1970)*, which put in place the 'modern' local structures for the administration of health and social services. One of the direct effects of the formation of these systems was the employment of social workers at a local area level by statutory services and the establishment of residential care facilities managed directly by these services.

1970 was also the year in which a seminal report of inquiry into the Reformatory and Industrial School, the precursor of the current system, was published. *The Report of Inquiry into the Reformatory and Industrial School System (1970)*, more commonly referred to as the *Kennedy Report (1970),* is credited with marking a break with the past and heralding more progressive attitudes towards children and their welfare.

While this assertion is a point that this thesis critically interrogates, the relevance of the report to the subsequent formation of the system is nonetheless central.

Methodologically it is argued that the problems of the present can be illuminated by a consideration of the past. Analytic attention is directed towards the discourse that gives such problems effect, the historical context through which they emerge and the strategies that are developed to address them. The study adopts a *governmentality* perspective, through which the core themes of power, knowledge and subjectivity are explored. Here it is argued that even in the context of de-institutionalisation a range of discourses give effect to continued practices of containment. The productivity of these discourses is considered with reference to the archive. It is argued that through the dual techniques of individualisation and totalisation continued problematised subjectivities emerge for which the carceral order is the specified remedy.

While overall rates of institutionalisation have declined, particularly in relation to the population under consideration, the continued productivity of discourse in this area and the young people who are deemed to still require an institutional response is a topic of key analytical concern. To this end, the *'history of the present'* approach adopted in this thesis seeks to 'problematise' the continued practice of child containment, recognising that as a marginal practice within the overall 'system' of child welfare and youth justice, its relevance is often elided. One of the purposes of the 'history of the present' approach is to explore a subject in the present by analysing its history (Foucault, 1977). Adopting the techniques of archaeology and genealogy, the relevance of power, knowledge and subjectivity to the practice of child detention is explored in relation to the discourses produced across time and in different domains (Dean, 1994; Foucault, 1970; 1972; 1977a, b; 1981).

The concept of discourse is key, Foucault (1972:30- 31) specifically identified discourses as: 'practices specified in the element of the archive, where the archive was '…the general system of the formation and transformation of statements. As 'practices', discourses are productive and function as sets of rules; they allow the production of statements that can be viewed as either 'true' or 'false' (Castel, 1994; Dean, 1994; Hall, 1997 [2004]). Discourses are therefore understood as 'rule-governed systems for the production of thought' (Dean, 1994:14), and are defined by Foucault (1972) as historically variable ways of specifying knowledge and truth. In

other words, what is possible to speak of at a given moment.

The archaeological method involves exploring networks of what is said, describing regularities and differences or patterns of continuity and discontinuity. The genealogical method is concerned with the 'wider conditions of possibility' that give discourses effect, or in other words the spaces in which the discourses can be accepted as 'true' (Skehill, 2000a: 458). Within this thesis both of these approaches are used to explore different elements of the archive of child detention. A consideration of the temporal dimensions of current practice as the 'history of the present' approach implies, is a core underpinning orientation of this study. A further important theoretical and analytical consideration of this work is the exploration of the operation and productivity of power.

Setting the context - Rationale for this study

The rationale for undertaking this study emerged from my own work as a practitioner within the youth justice system both in the United Kingdom and the Republic of Ireland. In both contexts the use of detention for children and young people was framed as a 'measure of last resort', yet nonetheless it remained a productive practice. In England and Wales for example in the 1990s and early 2000s the numbers of young people sentenced to custody rose significantly (Muncie, 2009). In the Republic of Ireland by contrast the numbers of young people in penal custody was historically low, yet at the same point a number of new secure facilities emerged to contain young people who were deemed to be 'out of control'. To my mind these were pretty similar facilities to their Industrial School predecessors, albeit newly built and differently coined as 'special care units'.

A further point that I considered worthy of note was the categories of young people who were specific targets of such intervention. In the UK context critical attention has been directed towards the over-representation of young people from ethnic minorities in custody (Feilzer and Hood, 2004). In the Republic of Ireland my initial impression was that despite an evidently high number of young Irish Travellers in custody (approximately 12%) relative to their total percentage of the population (approximately 0.5%), this subject had garnered relatively little attention (Carr, 2009). A consideration of the over-representation of this minority group within the carceral

estate was the initial consideration of this thesis.

I began the study by seeking to determine the numbers of Irish Travellers placed in children detention schools over time, and to explore if there were any particular patterns in relation to sentencing disposals, for example if Travellers were treated differently in judicial decisions to their non-Traveller counterparts. In order to establish even the most basic information in relation to numbers detained (as this information is not routinely recorded by the schools), I negotiated with the children detention schools that I would access this information through an analysis of the individual case files, which were held in the archives of the individual schools. Through an analysis of the case files I hoped to explore the discourse used to describe Travellers and to establish, the numbers of Travellers detained since each school opened, the reasons for their remand or committal, length of admission etc. and to compare this data with all children admitted.

However, after several weeks trying to compile this information from the case files, it quickly emerged that there was large deficits in relation to the information on file that would have made any comparative of possible differential treatment meaningless. For example, not all offences for which young people were charged were recorded by the originating court, in trying to track the passage of cases over time through the information on the files, some charges would disappear and others re-emerge etc. However, what remained of interest was the manner in which young people both Traveller and non-Traveller were described in the reports written in the schools, how young people's behaviour was diagnosed and how remedies were proposed in the recommendations set out in the reports for the court. The formation of these subjectivities through discourse initially at the level of the institution and then in relation to the wider politic became the main focus of the study.

Origins of the system

The origins of the present child-care and juvenile justice system can be traced to the establishment of Industrial and Reformatory Schools in Ireland in the mid-nineteenth century (Barnes, 1989; O'Sullivan, 2009; Robins, 1980). However, despite recent attention towards Ireland's history of containment, evident in the establishment of the *Commission to Inquire into Child Abuse* in 2000 and the publication of its final report

in 2009, the subject of the containment of children and in particular current practices, has received limited scholarly attention within the Republic of Ireland.[1]

The small numbers of studies that have specifically explored the area have noted particular aspects of the system's history. One of the more remarkable features of the Irish context is the manner in which institutions, largely operated by orders of the Catholic Church proliferated, to the extent that in 1950 approximately 6,000 young people were detained in industrial or reformatory schools on any one-day (O'Sullivan, 1999). Of further note, is the longevity of the institutional template, with the remaining schools only finally being re-designated as 'children detention schools' or 'child care units' in 2007.

In the Republic of Ireland, in common with other countries, the institutional confinement of 'deviant' populations, a practice which came to prominence in the mid-nineteenth century, has retracted remarkably. O'Sullivan and O'Donnell (2007, for example highlight that in 1950, more than 1% of the Irish population were 'coercively contained' in a range of institutions, including Industrial and Reformatory Schools. From the high numbers of young people detained in the 1950's, today less than one hundred per day are 'coercively confined' (O'Sullivan, 2009; O'Sullivan and O'Donnell, 2007).[2]

The wider sphere

In wider literature the patterning of institutional containment and the subsequent process of de-institutionalisation has been critically explored. Cohen (1985:31) for example describes these as the two 'master shifts' in the history of the social control of deviance. In particular, it has been argued that the movement from the institution has led to a 'dispersal of control' into the wider sphere (Cohen, 1985; Foucault, 1977; Garland, 1985; 1990). This analysis posits that wider, less coercive nets are cast to

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[1] Following from a number of reports of child abuse in institutions such as reformatory and industrial schools the Irish government established *a* Commission *to Inquire into Child Abuse* on 23rd May 2000. The statutory commission was tasked with inquiring into the historic abuse of children in institutions. The Commission published its final (five volume) report in May 2009 (CICA, 2009).

[2] In an overview of the facilities used to confine 'deviant' populations in the Republic of Ireland in the 19th and 20th centuries, O'Sullivan and O'Donnell (2007:28) describe a range of institutions including prisons and borstals, Magdalene Homes and psychiatric hospitals that have been 'utilized to reform, quarantine or reject those who did not conform to societal norms.'

regulate populations. And while displaced, the institution continues to form the backdrop of this web of control.

In later analyses the prison 're-emerges' as a central institution in what has been described by Garland (2001) as a 'culture of control'. Literature focusing specifically on young people within the criminal justice system has noted similar trends of *repenalisation* and *adulteration* evidenced in increasing rates of incarceration (e.g. Muncie, 2006b; 2006c). However, the applicability of these analyses beyond the Anglo-American sphere has been the subject of critical debate. Kilcommins et al (2004), for example have considered this question in relation to the Republic of Ireland and conclude that such meta-narratives have limited applicability in this context. Similarly, comparative literature on youth justice and child welfare systems point to a far more complex picture (e.g. Hill et al, 2007; Muncie and Goldson, 2006). A more accurate characterisation is perhaps provided in Muncie's (2006c:771) descriptor of:

> ...an amalgam of rationalities, oscillating around, but also beyond, the caring ethos of social services, the neo-liberal legalistic ethos of responsibility and the neo-conservative ethos of coercion and punishment.

Following from such a characterisation, this thesis explores these themes. Critically it is argued that while rationalities may oscillate, there are patterns of continuity and discontinuity evident over time. And in fact the repertoire of rationales for containment retain a consistency over time that serves to reconfigure problematised subjects and give the sites of containment their continued productive effects. Here in line with the 'history of the present' approach adopted, it is argued that the present is continually '...played out, and innovates, utilizing the legacy of the past.'(Castel, 1994:238).

The Productivity of containment

This thesis highlights that although now a relatively marginal practice within the broader sphere of child welfare, protection and juvenile justice; the practice of containment remains productive. Over time various intersections of power and knowledge are deployed to bring visibility to subjects for whom it is argued such

interventions are necessary. In this thesis these core thematics of knowledge, power and subjectivity are theoretically explored from a *governmentality* perspective (Foucault, 1997; Miller and Rose, 2008; Rose et al, 2006). Broadly defined, a *governmentality* perspective concerns the 'techniques and procedures for directing human behaviour' Foucault, 1997:82).

In particular it has been argued that such techniques are characteristic of 'liberal' forms of rule. So defined,' liberal' government (and latterly neo-liberalism) is understood as a change in rationality towards governing in the interests of society and not just a realm confined to the interests of the 'state' (Foucault, 1997; Miller and Rose, 2008; Rose et al, 2006). Here one of the key theoretical contributions of governmentality literature is its consideration of the operation of power beyond the locus of the state (Burchell et al, 1991; Miller and Rose, 2008; Rose et al, 2006). Using this framework, this thesis critically interrogates the manner in which interventions of containment are given effect. In particular, the specification of particular 'subjects' who are deemed to require this form of intervention is explored.

Reflective of a pattern of continuity in discourse across time, various arguments based on 'welfare' or 'justice' or 'needs', 'rights' and 'interests' are deployed and point to the remaining centrality of the institution within the carceral topography. While the precise meanings of these demarcations or organising principles are the subject of considerable debate (e.g. Goldson, 1997; Harrikari, 2008; Harris and Timms, 1993; Hill et al, 2007; Muncie and Goldson, 2006), here the argument is made that these rationales are discourses that have productive effects, one of which is the continued productivity in practices of containment.

Outline of the thesis

Chapter Two provides a straightforward historical narrative with reference to existing accounts and explanatory frameworks. Such an approach is subsequently problematised with reference to 'history of the present' method. However, the purpose here is to provide a broad overview of some of the documented key debates and concerns in order to situate the overall discussion.

Chapter Three provides an outline of the number of perspectives from which the detention of children and young people can be considered. The intersections of 'justice' and 'welfare' as organising principles are critically explored. Here the theoretical approach of *governmentality* adopted in this thesis is set out. One of the central contributions of the *governmentality* approach is to move from meta-narratives of class and state-based power to consider the operation of power beyond the State. While such a view has been the subject of criticism and ongoing debate, it is argued that the governmentality perspective provides a more nuanced understanding of the operation and intersections of power, knowledge and subjectivity. In a system where the effects and production of power are clearly manifest in a range of sites, many of which have only recently come under the direct 'control' of the state, it is argued that such a perspective is particularly apposite.

Chapter Four of the thesis sets out the methodological approach adopted in this study. The rationale for adopting the 'history of the present' method is contextualised with reference to the key elements of this approach including the concept of problematisation. Here problematisation is understood as a means of exploring a problem in the present by viewing it from the perspective of the historical basis from which it has emerged. The past is analysed with reference to the archive, *archaeology* and *genealogy* the key tools of archival analysis are described. The particular archive of this study is set out. This includes government policy documents, legislation and records of parliamentary debate and publications from non-governmental organisations. Uniquely, in the Irish context, the archive analysed also includes almost 2,000 individual case files on young people who were detained in Industrial and Reformatory Schools post-1970. Included in the case files are characterisations and descriptions of the *subjects* of the system and this it is argued provides a particular vantage point to consider discourse at the micro-physical level of the system's operation.

Chapter Five uses the genealogical method to analyse the discourse of 'official policy' manifest in the parliamentary archive, government policy documents, government commissioned reports and inquiries. The parliamentary archive includes

the parliamentary record of both houses of the *Oireachtas*[3] and the government files held in the State's National Archives.[4] In line with the governmentality perspective adopted and cognisant of the role of non-state actors in the formation of discourse, official policy documents from a range of non-governmental organisations are also considered.

Chapter Six shifts focus to analyse discourse at the level of the institution. Here the individual case files of young people who have been subject to detention post-1970 to the present are explored through an analysis of individual case files. These case files held in the archives at the sites of containment (Reformatory and Industrial Schools) were analysed using an archaeological and genealogical approach. Here the manner in which subjects were brought to light or made visible at the level of the institution is a key focus. In particular, descriptors of identity and the location of the subject within space are key elements of the discourse that serves to legitimise calls for this, or that form of intervention in young people's lives. At this level also the archaeological approach included a focus on surfaces of emergence, i.e. new problems or categories of concern that are produced.

A further consideration within this thesis is the liminality of the sites of containment in the child-care system post-1970. This liminality is taken to mean the peripheral status of these sites in the field of contemporary child-care and juvenile justice practices but also their porosity in terms of the categories of young people requiring containment. It is unarguably the case that the overall rate and patterning of 'coercive confinement' has waned. Notwithstanding this significant contraction, this thesis seeks to demonstrate the continued productivity of institutions as sites of manifestation in which rationales for new forms of containment emerge. Here it is argued that these sites are productive at the level of the microphysical operation of power-knowledge where the use of assessment as a technology of government 'produces' subjects, which are then transmitted to the wider field of public discourse -

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[3] The *Oireachtas* is the Irish parliament comprising of two houses and the Presidency. The *Dáil* is the house of directly elected representatives (*Teachta Dáil- TD), while* the Séanad (Senate), the upper-house is comprised of representatives and appointees. The President while officially head of state is a largely symbolic role with limited real political powers (Coakley and Gallagher, 1993).

[4] The National Archives are the central repository of government records in the Republic of Ireland. The information held there and accessed for this study is discussed in detail in Chapter Four.

the site of the courtroom is considered as a particular example.

While the institutions are situated on the edge of the carceral topography this thesis argues that their symbolic function is more centrally enduring serving as it does to bring subjects to visibility and visibility to subjects. The continued productivity of these sites both at the level of the emergence of the subject and in the arguments put forward for new sites of containment is explored in Chapter Seven. Here through the genealogical method, the 'emergence' of new sites of containment following the overall contraction of the institutional template post-1970 is explored. These sites of 'emergence' form part of the key analytical foci.

Chapter Seven identifies that these processes are by no means linear. This Chapter explores the emergence of specific institutions through the genealogical approach and the process of *eventalisation*, involving an exploration of points of continuity and discontinuity in how specific subjects emerge for whom the carceral order of the institution is deemed the necessary mode of government. In this chapter the 'emergence' of three 'new' institutions post-1970 are explored.

Conclusion: An enduring template

It is undoubtedly the case that in the Irish context, in numerical terms at least, the institutionalisation of children and young people has become a marginal practice. However, in this thesis analytical attention is directed towards the operations of power at the margins or 'peripheries' where it is argued that an analysis of the 'carceral order' reveals the 'underside' of the 'unacknowledged truth' of liberal societies which are otherwise characterised by individual rights (Foucault, 1977a; 1988; Faubion, 2002; Miller and Rose, 2008). It is therefore argued that the operation of power in these capillaries provides an important analytical lens for considering the inter-relationships between power and knowledge and the productive effects of this dialectic (Foucault, 1976a; 1977a).

The central argument advanced in this thesis is that although discredited, the institutional template remains an enduring template for subjects considered to be beyond the bounds of other forms of government. This is evidenced by the varying discourses that are employed at the level of public policy and within the sites of

emergence - the institutions. A varying repertoire of discourse is deployed over time to argue for the continued 'need' for sites of containment. These can broadly be categorised as mobilising arguments cased on 'welfare'; 'justice'; 'needs'; 'rights' or 'interests'. Although the precise meaning of these terms and whose 'needs', 'rights' and 'interests' are being described is a subject open to enduring interpretation (Harris and Timms, 1993).

Chapter Two - A Conventional Historical Narrative

Introduction

This chapter aims to presents a 'conventional historical' and by virtue of this, a somewhat linear account of the development of the child welfare and juvenile justice system in the Republic of Ireland. The presentation of such a conventional narrative will be subsequently problematised (Castel, 1994; Dean, 1994; Foucault, 1977a); nonetheless it forms the basis for setting the context of the discussion. The purpose of providing this account, based on both primary and secondary data sources including government archives, newspaper reports, popular literature and academic analysis, is to situate the subsequent analysis within the context of current explanatory frameworks. The chapter outlines that the current system of child welfare and juvenile justice in the Republic of Ireland can be traced to the establishment of 'Poor Law' provisions and the subsequent formation of separate institutional provision for children and young people in the form of Industrial and Reformatory Schools in the mid-nineteenth century (Arnold and Laskey, 1985; Barnes, 1989; O'Sullivan, 1998; Robins, 1980).

The emergence of this system within Ireland and the subsequent entrenchment of the institutional model are noted. In particular, the role of the Church and State and analysis of the particular features impacting on the longevity of the Industrial and Reformatory School system are explored. The delays in achieving legislative reform and the eventual 'splitting' of child welfare and juvenile justice in legislative terms in the 1980s are documented as are the shifts over time towards a focus on 'child abuse' and an emergent 'children's rights' perspective. Given the focus of this thesis and the fact that other accounts have documented the early stages of the system (Barnes, 1989; O'Sullivan, 1999; Robins, 1980), greater emphasis is placed on the system's more recent history, in particular the period post 1970.

Origins of the system

The origins of the present child care and juvenile justice system can be traced to the establishment of Industrial and Reformatory Schools in Ireland in the mid-nineteenth

century (Barnes, 1989; O'Sullivan, 2009; Robins, 1980). Reformatory Schools were originally developed to separate juveniles from adult offenders with the aim of reforming young people involved in crime (Barnes, 1989; May, 1973; O'Sullivan, 1998; van Krieken, 1991), while Industrial Schools were established as institutions for children of the 'perishing classes', including the 'vagrant', 'mendicant' and 'destitute' (Barnes, 1989; Schlossman, 1998).

The first reformatory school for boys was established in the former military barracks at Glencree, Co. Wicklow in 1858 following the introduction of the *Reformatory Schools (Ireland) Act, (1858)*. The first Industrial School, St Mary's, Lakelands, opened in Dublin in 1869 following the passage of the *Industrial Schools Act (Ireland) (1868)* (Barnes, 1989).[5]

Within a short period of time, the numbers of Industrial Schools grew exponentially (Barnes, 1989; O'Sullivan, 1999). In a one-year period (1869-1870), a further twenty-one schools opened (Barnes, 1989). At the peak of the system's operation in the late nineteenth century there were seventy-one industrial schools in Ireland, detaining 8,000 children on any one day (Raftery and O'Sullivan, 1999).[6] Historical accounts of the Irish system note the central role that the Catholic Church (and in particular religious orders such as the Sisters of Mercy and the Christian Brothers) played in the establishment, operation and development of these institutions (Barnes, 1989; Flannery, 2009; Luddy, 1995; Robins, 1980; O'Sullivan, 1999; 2009).

Children Act - 1908

The *Children Act (1908)* was introduced across the United Kingdom (which at the time including Ireland). The Act, sometimes referred to as the 'Children's Charter' (Bradley, 2009), consolidated existing legislation relating to industrial and

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[5] The legislation introducing Reformatory and Industrial Schools to Ireland was based on legislation introduced elsewhere in the union (Ireland was at the time under British Rule). The *Reformatory Schools (Ireland) Act, (1858)* and *Industrial Schools Act (Ireland) (1868)* were both predated by legislation introduced in England in 1854. And further amending legislation followed in England in 1857, 1861 and 1866 (Barnes, 1989).

[6] Similar to Reformatory Schools, Industrial Schools were fully residential institutions, which provided industrial, training in addition to some literary education. Barnes (1989) in an analysis of the Industrial School system in Ireland argues that the purpose and functions of the two types of institutions (never absolutely delineated) in fact coalesced over time, becoming more 'closely bound together' (Barnes, 1989:26).

reformatory schools and introduced a range of 'progressive' measures that aimed to delineate the system of justice for young people from that of adults (Dingwall et al, 1984; May, 1973; Shannon, 2005a).[7] For example, the legislation provided for separate juvenile courts and prohibited the death penalty or the imposition of penal servitude for under 16's (Bradley, 2009; May, 1973). The legislation further reflected a 'welfarist' orientation through the introduction of provisions aimed to regulate the behaviour of children and their families (Dingwall et al, 1984).[8]

Following Irish independence in 1921, the legislative and administrative structures that were in place prior to the foundation of the State remained largely intact (Coakley and Gallagher, 2004). The *Children Act, 1908* therefore continued as the main legislative instrument and the Industrial and Reformatory School system remained under the operation of religious orders with minimal State involvement (Barnes, 1989; Ferriter, 2004; O'Sullivan, 2009; Raftery and O'Sullivan, 1999; Robins, 1980). The numbers of industrial schools and the children contained continued to expand until 1890 (O'Sullivan, 1999). Thereafter the number of children contained declined, but the population of the schools did not begin to reduce substantially until the 1950s (O'Sullivan, 2009).

Evidence of the overall scale of the system is seen in the numbers of children placed in the schools over time. From 1868 to 1969 a total number of 105,000 young people were committed to Industrial Schools. From 1858 to 1969, 15,899 were committed to Reformatory Schools (Raftery and O'Sullivan, 1999). By the 1950s, the system held 6,000 children per day and by 1969 there were 2,000 children contained in thirty-one institutions (Government of Ireland, 1970; O'Sullivan 1999; 2009). Some of the reasons for the eventual decline of the population of the schools are set out in an inquiry into the system carried out in 1970, which asserted that 'improvements in living standards, improved social services' and an increase in the use of adoption and boarding-out (fostering) were contributory factors (Government of Ireland, 1970:3-4). Following the findings of this government-sponsored commission in 1970, which was

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[7] The *Children Act (1908)* was introduced across the United Kingdom, which at the time included Ireland. The *Children Act (1908)* formed part of a range of legislation passed by the Liberal Governments of 1906-1914 (Bradley, 2009).

[8] For example the Act introduced prohibitions on juvenile smoking and prohibited under-14s from entering public houses (Bradley, 2009; May, 1973).

highly critical of the institutional model of child care, the system entered into terminal decline (Government of Ireland, 1970).[9] Nonetheless the longevity of the template is noteworthy; the last remaining Industrial and Reformatory schools were only officially (i.e. legally) re-designated in 2007 following the introduction of legislation, which finally repealed the *Children Act, 1908.*[10]

Alongside the longevity of this model, a number of features are noteworthy. Over time higher numbers of young women than young men were committed to institutions. This was reflected in the pattern of institutional provision with higher numbers of institutions catering specifically for females (Barnes, 1989; Robins, 1980; Torode and O'Sullivan, 1989).[11] Various analyses have explored this particular phenomenon. Luddy (1995) for example has highlighted the role that female religious orders played in the regulation of women. Further, the links between Catholicism and the regulation of female sexuality have been explored (Kennedy, 2001; Smith, 2007). Particular attention is drawn to the relationship between Catholicism and the project of national identity formation that took place in Ireland post-independence and in particular the conceptions of gender and sexuality set out in the Irish Constitution (1937) (Kennedy, 2001; Smith, 2004; Valiulis, 1995).[12]

Other analyses suggest a more materialist imperative. O'Sullivan and O'Donnell (2007:28) have argued that the Industrial and Reformatory school system was part of a winder pattern of 'coercive confinement': that is the range of institutions including prisons, borstals, Magdalene Homes and psychiatric hospitals that have been 'utilized to reform, quarantine and reject those who did not conform to societal norms…' While the populations institutionalised (i.e. unmarried mothers, children of the poor

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[9] Government of Ireland (1970) *Report of the Committee of Inquiry into Reformatory and Industrial School Systems.* Dublin: Stationery Office.

[10] The *Children Act (2001)* repeals the *Children Act (1908),* however, this legislation was not fully enacted before being amended (*Criminal Justice Act, 2006* and *Child Care (Amendment) Act, 2007*). The passage of amending legislation *Child Care (Amendment) Act (2007)* finally led to the repeal of the 1908 Act (Kilkelly, 2007; 2008).

[11] For example, Barnes (1989) notes that within the first year of the introduction of reformatory schools to Ireland of the six schools established, one was for boys, and five for girls. Within seven years, ten reformatories had been established (five of which were certified for young women) Robins (1980).

[12] For example, the Irish Constitution, *Bunreacht na hEireann,* formulated in 1937 places women firmly in the domestic sphere (Kennedy, 2001). Women are specifically mentioned in two articles of the Constitution (Articles 41 and 45) both of which articulate that the woman's role is as a mother within the home. Here the Irish Constitution is explicit in its view of the role of women as mothers and wives (Earner-Byrne, 2007; Valiulis, 1995)

and those considered 'infirm') were people who are deemed to be an economic burden (Scheper-Hughes, 2001; Smith, 2007). This was particularly accentuated in a society with a strong emphasis on familial self- sufficiency, subsidiarity and poor welfare provision (Kennedy, 2001).[13]

A further noteworthy feature that has attracted wide attention more recently, through a government-sponsored inquiry into the historic operation of the system, is the manner in which the schools, although funded by departments of the State, were subject to limited external scrutiny (Flannery, 2009; O'Sullivan, 1999; 2009). In effect, the religious orders operated the schools autonomously. The limited role the State played in the governance of the system has been the subject of attention in recent years and has been described as laissez faire or 'neglectful' (Arnold, 2009; Ferriter, 2004; Gilligan, 2009; Raftery and O'Sullivan, 1999).

Further evidence of the 'neglectful' approach of the State in this area is demonstrated by the fact that the legislative framework governing the system has remained intact for almost a century (McCullagh, 1992; 2006; Shannon, 2004b). The *Children Act (1908)* has provided the legislative template for the administration for child welfare and juvenile justice in the Republic of Ireland for most of the twentieth century (Buckley and O'Sullivan, 2007; Kilkelly, 2006a; McDermot and Robinson, 2003; Shannon, 2004b). Irish law in relation to child welfare and protection was modernised with the introduction of the *Child Care Act, 1991*, while juvenile justice legislation was updated through the enactment of the *Children Act, 2001* and further amending legislation introduced in 2006 and 2007.[14]

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[13] The principle of *subsidiarity* was set out in a papal encyclical in 1931. It outlines that the State can grant help *'subsidium', but* should not replace the role of the family (Kennedy, 2001). Kennedy (2001:188) highlights that the principle of subsidiarity was articulated by Pope Pius XI in the wake of the rise of fascism: "The Pope andhis advisers, aware of the darkening shadow of totalitarianism in Europe, sought to emphasise the rights of individuals and smaller groups." Part of the rationale for the adoption of these principles within the Irish Constitution (1937) was because they were seen to represent a break from the British emphasis on economic liberalism (Kennedy, 2001). Furthermore, Kennedy (2001:189), argues that the principle of subsidiarity suited the notion of private ownership of property, which following a long history of colonization was 'embedded in the Irish psyche'.

[14] The provisions of the *Children Act (2001)* were subsequently amended in further legislation: Criminal Justice Act (2006) and *Child Care (Amendment) Act, 2007.*

Commission of Inquiry into the Reformatory and Industrial School System (1936)

The first sustained State attention into the operation of the system came with the establishment of a government appointed committee in 1934, which was tasked with examining the existing statutory provisions in relation to Reformatories and Industrial Schools and the care, education and training the young people received (including any provisions for their aftercare) (Government of Ireland, 1936). The commission was also required to explore the staffing and financial arrangements of the institutions. More specifically the members were asked to consider the treatment of young people 'found to be suffering from physical or mental defects' who were committed to Industrial Schools (Government of Ireland, 1936:4). At the time the commission was established there were fifty-two Industrial Schools and two Reformatory Schools in operation in Ireland with a total population of 6,563 children.[15] Of these institutions, almost 70% catered exclusively for females.

The subsequent report of the commission, *Commission of Inquiry into Reformatory and Industrial Schools Report*, more commonly referred to as the *Cussen Report* (1936) after its chairperson, Justice Cussen, provided a unique insight into an otherwise largely ignored system. Evidence of the scale of some of the institutions is given in this excerpt from the report:

> In our opinion the best results can be obtained only where the number under any one Manager does not exceed 200 pupils. We think that in no case should the number exceed 250. It is necessary in this connection to refer specifically to the case of Artane Industrial School, which is certified for 800 boys and where there are on average about 700 boys. It is in our view impossible for the Manager in an Institution of this size to bring to bear that personal touch essential to give each child the impression that he is an individual in whose troubles, ambitions and welfare a lively interest is being taken. (Government of Ireland, 1936:21)

The report contained insights into some of the difficulties with the system, reference is made for instance to the uneven geographical distribution of the schools, problems

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[15] Of the two Reformatories one was for boys, operated by the Oblate Fathers and situated in Glencree, Co. Wicklow, the other was for girls, operated by the Sisters of the Good Shepherd and situated in Co. Limerick. Of the fifty-two Industrial Schools, eleven were designated for 'Senior Boys; five for 'Junior Boys' and the remaining thirty-four for girls (Government of Ireland, 1936).

with funding, and the high number of children in institutions with 'physical and mental defects'.[16]

The Commission cautioned on the need to carefully select staff, and the need to address some specific concerns regarding the treatment of children, including the use of discipline and the provision of a proper diet. The overall findings nevertheless endorsed the continued operation of the system, with the proviso that there should be increased investment in the schools:

> As a result of our investigations we are satisfied that, subject to the introduction of various changes which we have indicated in the course of this Report as desirable, the present system of Reformatory and Industrial Schools affords the most suitable method of dealing with children suffering from the disabilities to which we have referred, and we recommend its continuance. We specially recommend that the management of the schools by the Religious Orders, who have undertaken that work should continue. (Government of Ireland, 1936:11)

Some of the recommendations made in the *Cussen Report* were implemented, for example some alterations to funding mechanisms were enacted in the *Children Act, 1941* and further amending legislation was passed under the *Children's Amendment Act (1957),* however, these changes were relatively minor and did not involve any substantial reordering of the system (CICA, 2009; O'Connor, 1963; Raftery and O'Sullivan, 1999). The Reformatory and Industrial School continued to operate as previous and the system was not subject to another State inquiry for a further thirty-years (Arnold, 2009; Government of Ireland, 1970).

Behind institutional walls

While the publication of the *Cussen Report (1936)* provided an insight into the operation of the Industrial and Reformatory schools and the population contained

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[16] The *Cussen Report* records that in August, 1934 there were "56 mentally defective 10 boys and 46 girls) and 46 physically defective (26 boys and 20 girls) children", in residence in industrial Schools. "...In addition there would appear to many border-line cases who would receive benefit from specialised treatment." (Department of Education, 1936:35). The report continues: "...we consider it in every way undesirable that mentally defective children, even of the higher grade, should be placed with normal children. Such children are a burden to the other children, and being unable to keep up with the class; their condition tends to become worse." (Government of Ireland, 1936:35).

therein, various historical accounts have noted that the schools and therefore the general system for 'deprived' children otherwise received limited public attention in the first half of the twentieth century (Arnold, 2009; Ferguson, 2007; Ferriter, 2004; Maguire and O'Cinneide, 2005; Flannery, 2009). Socio-historical analyses have argued that the Church/State relationship led to an overall reluctance to question the authority of the Church in such spheres (Ferriter, 2004; Foster, 1989; Garvin, 2004; Inglis, 1998; Whyte, 1980). Furthermore, it has been argued that the Church provided necessary social services that the State could otherwise ill-afford (Flannery, 2009; Maguire and O'Cinneide, 2005). It is argued that in a newly formed State, more material concerns such as economic survival led to an elision of 'social issues' at a political level, resulting in a laissez-faire approach to these areas (Garvin, 2004; Lee, 1989). A later government inquiry further referred a tendency within Irish culture to hide its 'problems' behind institutional walls (Government of Ireland, 1970).

Emerging critiques and changing social context

Various accounts note that it was not until the late 1950s and early 1960s that any sustained commentary or critique of the system emerged (Ferriter, 2004; Flannery, 2009; O'Sullivan, 2009). These included commentaries by Cowan (1960),[17] a former politician, and O'Connor (1963), a District Court judge. Cowan, for example was highly critical of the funding system for the schools and the lack of government oversight. While O'Connor (1963), notes the conditions in some of the schools:

> The atmosphere is somewhat unreal, particularly in regard to the lack of contact with the opposite sex and this unnatural situation frequently leads to a degree of sexual maladjustment in inmates…Discipline is rigid and severe, approaching at times pure regimentation, with the result that the inmates are denied the opportunity of developing friendly and spontaneous characters; their impulses are suffocated, and when they are

[17] Cowan (1960) is particularly critical of the regime operated by religious brothers in institutions for boys outlining the experiences of past pupils of these institutions whom he later encountered in Borstals and Prisons. His publication is entitled: *Dungeons Deep: A monograph on prisons, borstals, reformatories and industrial schools in the Republic of Ireland, and some reflections on crime and punishment and matters relating thereto.'* Cowan first stood for election, as a *Labour Party* candidate in 1937, but was unsuccessful. He subsequently became a Dail representative for the *Clann na Poblachta* political party in 1948. He was re-elected as an independent candidate in 1951 and held his seat until the next election in 1954. He was not successful in the 1954 election and did not hold any other parliamentary office.

> suddenly liberated their reactions are often violent and irresponsible…I do not think that it is wise to have a religious order managing the reformatory school. The inmates tend to feel that the over-riding atmosphere in the institution is one of punishment and I do not think that it is a good idea to have this impression associated with the priesthood.

It is also interesting to note the manner in which O'Connor's (1963), contemporary account documents concerns regarding a 'rise' in youth crime. In particular a link is made between the increase in crime and the context of youth unemployment. O'Connor (1963) refers to the 'new' housing estates in Dublin and the possibility of the emergence of 'Teddy Boys' in Ireland. [18]

Changing demographic patterns evident in increasing urbanisation and a consequent shift from an agrarian-based economy also gave rise to a greater focus on 'social issues' at the political level (Ferriter, 2004; Kennedy, 2001; O'Sullivan, 2009). This is evident in the establishment of the *Commission on Youth Unemployment (1951)*[19]*;* the publication of the *Report of Joint Committee on Vandalism and Juvenile Delinquency (1958)*[20] ; the establishment of the *Inter-departmental Committee on the Treatment of Crime and Prevention of Delinquency (1962)* and the *Commission on Itinerancy* in 1960.[21]

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[18] Clearly influenced by putative trends elsewhere, he writes: "The Teddy boy signifies his distinctive status by the clothes he wears and by his exotic hair style. He seeks above all some form of self-esteem and he achieves this by the way he is attired, and by association with other youths who dress in a similar manner. The Teddy boy, however, means something more than just a youth in Edwardian costume. He signifies a certain anti-social behaviour, an attitude of rebelliousness and viciousness, tending towards violence....Although the appalling atrocities committed by teddy boy gangs in the United States of America, or the brutal behaviour of these elements in England, have no counterpart in this country, nevertheless, there have been several incidents of personal violence committed by youths, particularly in Dublin city, where broken bottles, knives and other weapons were used. The peak period for this type of crime was 1956-8 but since then there has been a decline, perhaps due to the great numbers of unemployed youths who have left the city to get work in England. Remnants of these gangs ware to be found in slum areas or in our artisan housing estates. " O'Connor (1963:88)

[19] This Commission made reference to the numbers of former residents of Industrial and Reformatory Schools who constituted the ranks of the young unemployed.

[20] Again, this report expressed criticisms of the Reformatory and Industrial Schools, echoing some of the previous findings of the *Cussen Report (1936),* the *Report of the Joint Committee* stated that the institutions were perceived to be too large. Pre-figuring the findings of a later inquiry into the system, it also argued that the schools were not meeting the *psychological needs* of the young people in their care.

[21] The Commission was established to investigate and make recommendations regarding the 'problem of itinerancy'. 'Itinerants' now referred to as 'Irish Travellers' are Ireland's indigenous

Tuairaim Report (1966)

A number of accounts of the history of the Irish child care system have noted the influence of the publication of *A Report on the Residential Care of the Deprived Child in Ireland (1966)* by the *Tuaraim* organisation (Government of Ireland, 1970; Keenan, 1997; McCarthy, 1996; O'Sullivan, 2009; Shannon, 2005a; Skehill, 2005. The London Branch of the *Tuaraim* group established in 1954 'to encourage the participation of Irish citizens in public affairs' published the report.[22]

Members of the organisation visited a number of the Industrial and Reformatory Schools and critiqued the operation of the system comparing it unfavourably to the situation in England, noting the disproportionate number of Irish young people sent to institutions. *Tuaraim* called for reform of the *Children Act (1908)* and the establishment of coordinated and properly resourced child care services. They further argued that children under the age of 16 should be treated as requiring 'care' rather than a justice oriented intervention.[23]

Other contemporary discourse point to an increased level of public awareness regarding the inadequacy of the institutional model and led to calls for 'reform' of the system. In the same year of the publication of the *Tuaraim Report*, the Irish Times

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nomadic population. The latest census notes that they presently constitute less than 1% of the of the Republic's population (Central Statistics Office, 2006). The *Report of the Commission on Itinerancy* was published in 1963. In it particular attention was paid to 'itinerant' children whom the report recommended along with their families should be 'assimilated' into the general population through a project of 'settlement' (Crowley, 2005; Helleiner, 2000)

[22] *Tuaraim,* (Irish for *'Opinion'*), published pamphlets on a diverse number of topics, including the Irish Fish Industry, Proportional Representation and Ireland's relationship with the United Nations. The London Branch of this group was established in 1960, in the foreword of this pamphlet it is noted that the: "... members derive benefit from the detachment from Irish affairs which results from living outside the country for even a short period."

[23] While the *Tuaraim* (1966) report critiques aspects of the Reformatory School System, Raftery and O'Sullivan (1999) note that some of the more serious criticisms of the system which were reported to the group were not included in the final report. In particular the contribution made by Peter Tyrell, a former resident of Letterfrack Industrial School, who shared the manuscript he had written documenting a catalogue of abuse in the school. Tyrell died a year later by suicide, setting fire to himself. His body was found on Hampstead Heath in London. A copy of Tyrell's manuscript was later found by the historian Daire Keogh in the archived papers of Owen Sheehy-Skeffington, a noted human rights' activist and a former senator in the Irish Seanad with whom Tyrell had been in contact (Keogh, 2009; O'Sullivan, 2009). Tyrell's manuscript was finally published in 2006 as *Founded in Fear – Letterfrack Industrial School, War and Exile.*

published a series of articles entitled: *'The Young Offenders'* (Viney, 1966).[24] The series provided detail on various aspects of the justice system and included a bleak depiction of Daingean Reformatory, one of three institutions accommodating young offenders.[25] Of the staff in the schools, Viney (1966) writes:

> Their vocation, however, is unsupported by any formal training in institutional child care. With a few recent exceptions, the religious staffs of these institutions have made little attempt to keep up with international writing, discussion and experiment in the care of deprived and delinquent children. Often hogtied by hard work and shortage of cash, sometimes demoralised by the day-to-day frustrations of scraping and improvising, they have generally read little and travelled less. And until the past decade, certain of the institutions were regarded with their orders as places of banishment or refuge for inadequate or misfit religious. These were not the most suitable men to have the care of children. (Viney, Irish Times, 04/05/66)

Figure 1 overleaf is a copy of Viney's article on Daingean Reformatory published in the *Irish Times* on 4th May 1966.

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[24] The eight part series was entitled 'The Young Offenders' and included articles on: 1. 'The Trouble with Larry (27/04/66); 2. Patterns of Crime (28/04/66); 3. The Caution Man (29/04/66); 4. What Price Probation? (02/05/66) 5. The Hidden Motives (03/05/66); 6. The Dismal World of Daingean (04/05/66); 7. Children at Risk (05/05/66) and 8. Boys behind Bars (06/05/66). Viney makes reference to the *Tuaraim Report* (1966) in his article critiquing conditions in Daingean Reformatory (Irish Times, 04/05/66).

[25] The other two institutions were: Upton Industrial School, Cork and Letterfrack Industrial School, Galway.

Figure 1- The Dismal World of Daingean, *Irish Times 04/05/1966*

THE YOUNG OFFENDERS—6 By MICHAEL VINEY

THE DISMAL WORLD OF DAINGEAN

EXACTLY thirty years ago, a commission of inquiry into industrial and reformatory schools made its report to the Government. It was full of recommendations for reform. Some of them were adopted, but many others, even more essential to the welfare of the children, were neglected. Here are four examples:

- *"A memorandum of such circumstances as the Justice may think desirable, and of the child's history, should be sent to the manager . . . It will be obvious that the information contained in the memorandum of this kind would be of great value . . ."*

Young offenders may still arrive at the gate of the Daingean reformatory in the charge of a guard whose only contact has been to drive them from Dublin. The committal order can arrive in the post. A boy may be in Daingean for six months without a background report of any kind, even from the Garda Siochana. And probation officers' reports are only now beginning to trickle through.

- *"We are not satisfied as to the adequacy of the methods of supervision and after-care of children discharged from these schools . . ."*

The inadequacy or absence of after-care is still a powerfully valid criticism of the Daingean reformatory and of the industrial schools, which care for young offenders.

- *"It is not possible in any of the certified schools, or in any of the other institutions we visited, to afford the specialised attention and training that the higher grade mentally defective children require . . ."*

This is still true.

- *"In the maiority of the schools the trades taught—many of which are obsolescent—have in view the needs of the institutions rather than the future of the boys . . . We recommend that special attention be paid in the boys' schools to training in . . . house-painting, paper-hanging, plumbing, electrical work, plastering, glazing, upholstery and general house repairs . . ."*

Thirty years later, no such training exists in any institution caring for young offenders.

Intermittent Attacks

Since the 1936 report, Daingean and the industrial schools have been under intermittent fire—most recently and most formidably in the London Tuairim booklet, "Scrap Of Our Children," published earlier this year. It is a painstaking and devastating document and my own findings confirm a lot of it. But the essential facts of the situation are, I feel, the following:

There are some 45 certified industrial schools and three reformatories (of which Daingean, for boys, is by far the largest: the other two, for girls, are small, comparatively well-run institutions in Dublin and Limerick). All the industrial schools are privately owned by religious orders and managed by them under the supervision of the Department of Education. The Daingean reformatory is a dilapidated 18th Century cavalry barracks owned by the Board of Works but managed and run by the Oblate Fathers, under the Department's supervision.

Capitation Grants

While the orders have varying financial resources of their own, most of their managers are in practice totally dependent, for maintenance of themselves, their staffs and the children in their care, on money granted by the Department and the local authorities in almost equal amounts. In a reformatory, this totals £3 11s. 6d. per child per week; in an industrial school, £3 7s. 6d. And at Daingean, for example, *everything* has to be paid for out of this capitation—not only the food and clothing, but even the wood for the carpentry class, the books in the schoolroom and the community's travelling expenses.

These grants do not correspond to any sort of costing. Nine of the managers I talked to had any clear idea of what it actually costs to maintain a boy in their school for a week. The hidden subsidy of the institution's farm and the absence of a community salary structure tend to make budgets pragmatic, to say the least. The current grants are merely a reflection of what the orders have managed to screw out of the Department of Education and the local authorities (who still often pay their share six months late).

The orders are convinced of their vocation for the work they do and it is this (coupled, perhaps, with fears for their independence) which has muffled their very real resentment of the State's parsimony. They have come near to refusing to carry on the work unless the State maintains their institutions adequately, but have never quite reached the point of open rebellion.

No Formal Training

Their vocation, however, is unsupported by any formal training in institutional child care. With a few recent exceptions, the religious staffs of these institutions have made little attempt to keep up with international writing, discussion and experiment in the care of deprived and delinquent children. Often hogtied by hard work and shortage of cash, sometimes demoralised by the day-to-day frustrations of scraping and improvising, they have generally read little and travelled less. And until the past decade, certain of the institutions were regarded within their orders as places of banishment or refuge for inadequate or misfit religious. These were not the most suitable men to have the care of children.

But I would describe as men of integrity and concern the present managers of the three institutions I visited: the Daingean reformatory and the industrial school's at Upton in County Cork and Letterfrack in Connemara. Between them they are caring for some 500 children (though fewer than half the 98 at Upton are young offenders). They welcomed my visits and talked with candour.

"The only solution for Daingean," I was told, "is obliteration." The manager was showing me the school's largest recreation hall: a loft condemned as unsafe in 1939 and again in 1956. It now gives access to a small and shabby schoolroom. Here an unqualified, but painstaking, teacher was using a well-thumbed assortment of books to interest his class in the use of written words. About half the boys who enter Daingean, at whatever age, are illiterate and many of them can't even write their name.

One of the class, however, engrossed in Wordsworth's poems, confided that he had written a poem—a "saga" of 14 verses. What was it about? Well, it was about a boy who ran away from Daingean and got a job with a goldsmith. And he was wrongly accused of stealing gold from this place and put in jail. And when he came out of jail he became rich and respected and he gave a job to the goldsmith. And then he found out it was the *goldsmith* who had taken the gold and got the boy blamed for it.

Such are the fantasies of the children of Daingean. Theirs is a world of overriding shabbiness and decrepitude. Their everyday clothes are greasy and unkempt or even straightforwardly tattered. There are 17 showers for the 105 boys now in residence, so they average a shower about every three weeks.

Dreary Surroundings

The boys eat in a refectory which used to be the cavalry stables, with an arched ceiling and few windows. Their food is a lot better lately, but still high in starch and low in vitamins. Many of the boys sent to Daingean are already stunted through malnutrition at home: lemonade and chips is their idea of heaven. So a boy of 15 may well have the physique of a child of 10.

The boys assemble in a long, bare room with a bench round the walls. The Tuairim report described it as being "like a station waiting room without the posters." To Daingean's staff it is "the corral." When all the boys are gathered in and puffing at their cigarette ration, the air rolls blue round the flaking walls.

Only the dormitory wing shows acceptable structural and decorative standards, even if it does regiment the boys into very large L-shaped dormitories with a night watchman brooding from the corner. There is a small hall built as a gymnasium—but with a floor of concrete. And beyond it are the high-walled concrete playgrounds where the boys play most of their games. There are playing fields on the farm, used under close supervision. But although a class canal runs past the reformatory gates, the boys can't swim in it "for fear of polio."

The Teachers

Within the walls is a "technical school": two workrooms for woodwork and metalwork. All the equipment and material in them has had to be paid for out of the capitation grant or assembled by dedicated scrounging. Two young and lively teachers, provided and paid for by the Offaly Vocational Education Committee, try to bring their two dozen boys to Group Certificate level within a year (nine of them got it in 1965). Nothing about this work is easy: some of the boys going into the technical classes can't even read the inches on a ruler. But the two teachers seem to relish the challenge, both in educational and human terms.

Once a week a middle-aged woman painter comes into Daingean to teach art to a group of about a dozen boys. This is a fairly new experiment and in the first weeks a priest used to stay with her in case of trouble: but he wasn't needed. Most of the boys had qualified for the class because they were too withdrawn or apathetic to express a preference for doing something else. To judge by their paintings, art is reaching around their fears to touch some blazing imaginations: the pictures are bold and gay—counterparts, perhaps, to the "goldsmith" saga of the 14-year-old poet in the loft. This kind of creative evidence hints at what Daingean might achieve if the system were properly tuned to the spirit of a growing boy.

Daingean is approved for 250 boys, but a progressive disillusionment with its standards shown by the children's court justices led, until very recently, to a steady decline in committals. In June, 1959, it held 180 boys; in September, 1962, there were 136; in March this year there were 105, aged from 13 upwards. The minimum period of committal is two years, the maximum four—but in practice, most of the boys are released after about 18 months, having signed a promise to behave themselves and write monthly letters back, or be brought back to finish their time.

Off the Beaten Track

Although only some 30 miles from Dublin, the reformatory is very much off the beaten track, both geographically and in the amount of real contact it has with the family, home and background of its charges.

I have mentioned already that it is not uncommon for boys to be delivered to Daingean by a guard whose sole contact with them has been the job of driving them down from Marlborough House, the remand home in Dublin. The manager must accept them, knowing only their names, and hope that documentation of some kind is not too long in reaching him. He and his staff must piece the boys' backgrounds together as best they can—from the terse and formal facts in the guards' report, from the psychologist's assessment, from letters pacing between the boy and his home (when these exist) and from what the boy himself is willing to confide.

The village of Daingean is served by a single daily bus from Dublin and parents without their own transport find visiting very difficult. Those from the capital are allowed to visit on the first Sunday in the month: to allow them in more often "would be a big burden on the staff." This is one reason for the reformatory's very reasonable holiday programme, which allows boys home for a couple of weeks at Christmas and in the summer. Last Christmas, 80 boys went home and, for the first time ever, all of them came back.

Need for Welfare Officer

Some of the rest, of course, had no homes to go to. Others had to stay behind because their parents did not return the holiday form and Daingean had to assume the boys would not be welcome. One of these children cried for three days.

About a fifth of the boys get no letters or visitors during the whole period of their detention. And the staff of Daingean are often left to guess at what might be the reasons. This situation, as the manager agrees, just isn't good enough. Indeed, by any enlightened standards of child care it is unthinkable. And even by the cooler criteria of a crime prevention programme, it is folly. The function of Daingean demands the employment of at least one full-time welfare officer with his own car and expenses. As it is, the staff are left worrying about money for stamps.

A welfare officer would maintain a live and constructive liaison between Daingean and the world outside. No boy should be left without letters or visits if this neglect can be ended. No boy should have to read of his home's disintegration and feel that no one will even try to prevent it happening. No boy should have to be held from going home on holiday because Daingean has to "assume" he isn't wanted.

But where a welfare officer would really come into his own is setting the scene for a boy's release from Daingean. In the first article of this series, I told Larry's story. I don't suggest it was typical, but simply that it remains possible, under the present system, for a boy to be released from Daingean and find that his home no longer exists. This could never happen if Daingean were being served by a full-time welfare officer.

Trying to Keep Contact

Daingean's manager does his best, by letter and telephone and by the use of voluntary contacts, to ensure that no boy is released into the unknown. He and his staff have learned that not even the parents can always be trusted in their claims of jobs ready and waiting. But there is a limit to the checking they can do at such a distance. If they know for sure that a boy has no immediate home or job to go to, they try to hold him until he can be placed with relatives, or in a hostel. But if they had a welfare officer, there would be no question of "holding" a boy; this preparation would already be made.

The boy's written promise to behave and write back every month is an attempt at contact and supervision. "It's the best I can do to keep a line out to the boy," says the manager, "but it's a long and slender line and sometimes it snaps."

Most of the boys leaving Daingean are only too glad to have finished with the place (though occasional phone calls from London or Birmingham show just how lonely a lad can get). And those who run away or don't return from holidays at home are often helped to stay at liberty—or at least, stay lost to Daingean—by the simple lack of liaison between the reformatory and other agencies. One boy who ran away last year seemed to have vanished altogether. Every garda station had been warned to look out for him, but months passed without a word. Eventually, his whereabouts became known. He was serving a sentence in St. Patrick's juvenile prison—arrested, tried and sentenced, all without a word to Daingean.

Tomorrow, I shall discuss the industrial school system and contrast our institutions caring for young offenders with a religious-run training school in Belfast.

Tomorrow: *CHILDREN AT RISK*

'Boarding out' and 'At nurse'

While institutional provision was clearly the dominant mode of 'child care' for children removed from their families, provision also existed for 'boarding out'. Skehill (2004; 2005) notes that the origins of fostering can be traced to the 'Boarding out' system which was established in 1862 with the aim of removing children aged under five from workhouses. The scheme was later extended to children up to the age of fifteen.[26] Children were also placed 'at nurse' with 'foster parents' by voluntary organisations and individual philanthropists (Skehill, 2005).[27] Under the provisions of the *Children Act (1908),* two inspectors were appointed to visit children 'boarded out' or 'at nurse'. Overall, the practice of 'boarding out' or placing children 'at nurse' was poorly utilised throughout the country. Some reasons for this are set out in the *Report of the Commission of Inquiry into Child Abuse (2009).* Identified reasons include an overall lack of knowledge within local authorities regarding the potential benefits of family placement, haphazard administration systems and poor mechanisms for recruiting and vetting of potential families (O'Sullivan, 2009).

A further noteworthy factor which Skehill's (2000a; 2004) research on the history of social work in the Republic of Ireland highlights is that social work, the profession most associated with facilitating this role, did not begin to gain 'discursive space' within the sphere of child welfare or protection until the 1970s. Prior to this period the role of intervening in cases of 'child cruelty', was carried out on an *ad hoc* basis by the *Irish Society for the Prevention of Cruelty to Children (ISPCC)* (Ferguson, 1996; 2004; 2007; Skehill et al, 1999).[28] In fact the State did not become directly involved

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[26] This was enabled by the enactment of the *Pauper Children (Ireland) Act, 1898* and the subsequent *Boarding Out of Children in Unions Order, 1899.* (Skehill, 2004).

[27] The *Report of the Commission into Child Abuse (2009) (Vol. iii: 303)* notes the following: "Foster care, previously known in Ireland as 'boarding out' or 'at nurse', is a form of out-of-home care that allows for a child to be placed in a family environment rather than an institution. Foster care has been provided over the years through the State and non-government sectors, and by both formal and informal private arrangements. Funding for these placements was generally made to the foster parents by the organisation responsible for the placement or by the child's relatives. Foster care arrangements, including the assessment of potential foster carers, the supervision of foster placements, and payment allowances for children in foster care have been standardised and become better regulated in recent years."

[28] Originally established as the NSPCC (*National Society for the Protection of Cruelty to Children)* in Ireland it was re-coined as the ISPCC *(Irish Society for the Prevention of Cruelty to Children)* in 1956 (Ferguson, 1996). The operation of the ISPCC is explicitly explored by the *Commission to Inquire into Child Abuse (2009) Volume V.* The role of the organisation as set out in its charter was to: *To prevent the public and private wrongs of children and the corruption of their morals; To take action for the*

in the employment of the professional training of social workers until the early 1970s (Skehill, 2000a).

Kennedy Report

The decision of Donagh O'Malley, Minister for Education, to establish a *Committee to Inquire into the Reformatory and Industrial School System* in 1967 was prompted by emerging concerns regarding the operation of the system such as those documented (O'Sullivan, 2009).[29] Justice Eileen Kennedy (a judge based in the Dublin Children Court) was appointed Chair of the *Committee of Inquiry into the Reformatory and Industrial School System*, the broad terms of reference of which were:

> To survey the Reformatory and Industrial Schools systems and to make a report and recommendations to the Minister for Education. (Government of Ireland, 1970: vii)

The Committee met formally on sixty-nine occasions and published its report in 1970, under the official title: *Reformatory and Industrial Schools Systems Report,* (Government of Ireland, 1970); it is more commonly referred to as the '*Kennedy Report'*. The report documents that on 30th September 1969, there were three Reformatory Schools in Ireland, accommodating a total of 104 young people, and thirty-one Industrial Schools in which 1,899 young people were detained.[30] Of this number girls constituted the far greater amount, with more than twice their number detained (1307 girls, 592 boys) (Government of Ireland, 1970).

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enforcement of laws for their protection; To provide and maintain an organisation for the above objects; To do all such other lawful things as are incidental or conducive to the attainment of the above objects (CICA, 2009, Vol. v: 1). Inspectors, who were tasked with carrying out these functions, staffed ISPCC branches. The Inspector was known colloquially as the 'cruelty man' (Horgan, 2009). The Inspectors had a role in committing children to Industrial Schools through applications to the courts under the *Children Act (1908).* Maguire and O'Cinnéide (2005), who have carried out research on the archives of the ISPCC, note that families themselves instigated a substantial proportion of applications for the committal of children. Ferguson (2007) further argues that despite recent critiques, the inspectors and the schools did attempt to address the issue of 'child cruelty' through their interventions.

[29] National Archives, Department of the Taoiseach Files: 98/6/156 Children – General.

[30] Of the Industrial Schools, five were classified for 'Senior Boys'; three for 'Junior Boys and the remaining twenty-three for girls. The report further records that there were no remaining certified schools under Protestant management, the last having closed in 1917, this left a situation whereby a Protestant child (or indeed a child from any other denomination) could not be committed to these institutions: "Children, other than Roman Catholics, who come before the Courts are entrusted, through the local Gardaí, to the charge of the local pastor of their own denomination, who sees that they are placed in the care of suitable families or schools." (Reformatory and Industrial Schools Systems Report, 1970:2)

In profiling the numbers of young people in the school, and the reasons for their committal the report provides detail of the social context of the system. Some young people were committed to institutions from birth, (49% of the population in 1969 were under the age of 10), and the reasons for their committal included family deprivation, 'broken homes' and social stigmatisation (illegitimacy and the treatment of unmarried mothers within Irish society is referred to regularly throughout the report).[31] The manner in which children from Industrial and Reformatory Schools were stigmatised within the local communities, compounded in some cases by the wearing of uniforms, the use of shared clothing and their enforced isolation from the community is described in the report:

> There has been a tendency, now mercifully disappearing, towards an institutional style of clothes for children in industrial and reformatories. This tendency is to be deprecated as it serves only to give the child the impression that he is something apart from and inferior from others in ordinary homes. (Government of Ireland, 1970:19)

The picture provided of daily life in some of the institutions detailed physical, emotional and educational deprivations. The physical infrastructure of many of the institutions were described as being unfit for purpose, the standards of care and levels of nurturing were criticised as was the quality of the education that many of the young people received. The report highlights that the majority of institutions were poorly funded, receiving inadequate capitation grants.[32]

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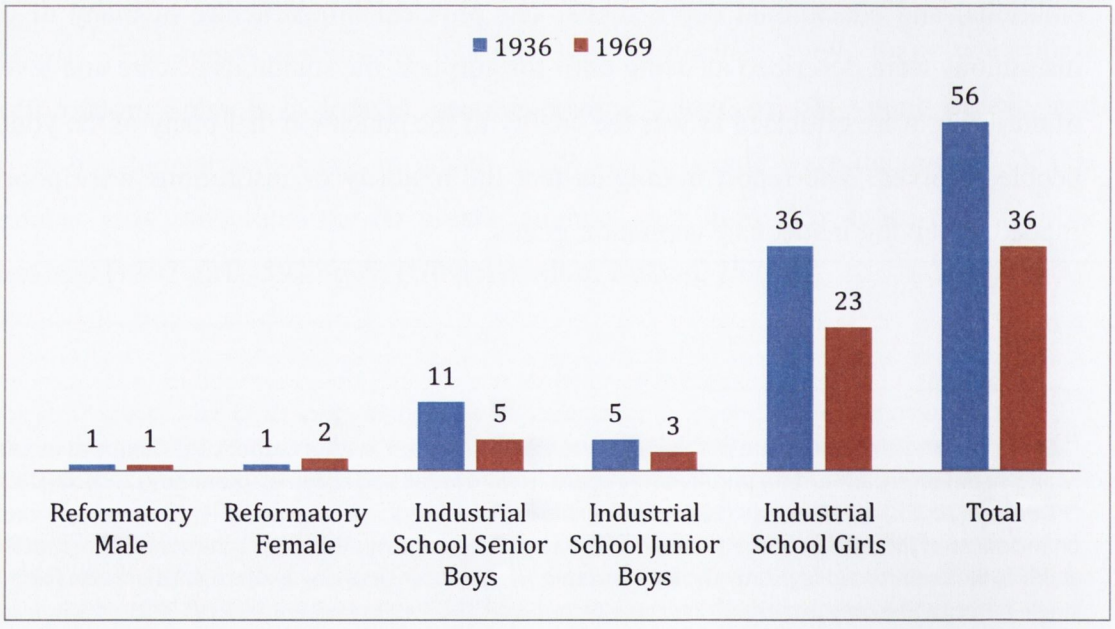
[31] Giving birth to a child outside of marriage was viewed as a 'sin' within Catholic teaching and as such 'was a social offence meriting punitive treatment that included social denial' (Kennedy, 2001:44). O'Donnell (2005b) and Rattigan (2008) have explored how the social stigma of illegitimacy impacted on incidents of infanticide in the first half of the twentieth century. The stigmatisation of 'illegitimate' children was reinforced legislatively. For example, in the absence of any welfare entitlements for single parents, the only provisions available were under the *Public Assistance Act (1939),* which enabled local authorities to place illegitimate children in institutions. Under this legislation, Public Assistance Authorities can pay or contribute towards the cost of maintenance of a child in a suitable, school, institution or foster home 'who is illegitimate, deserted or otherwise destitute or deprived of a normal home.' The Act is clear in its articulation that single parenthood was not viewed as 'normal', and illegitimate children were *de facto* categorised as 'deprived' (Kennedy, 2001)

[32] Furthermore, the capitation system led to instances, documented within the report, where young people were kept on within institutions, as to release them would be financially disadvantageous. The following quote is included in the section of the report dealing with the administration of the system: "In fact one school manager stated that he could "not afford to release children" for that very reason." (i.e. as a result of the method of funding by capitation), (Reformatory and Industrial Schools Systems Report, 1970:30).

The *Kennedy Report (1970)* recommended the reconfiguration of residential care arguing that large-scale institutional facilities were not in keeping with 'modern child-care practices'. The report specifically recommended the establishment of small, 'group-home' facilities and the immediate closure of two of the larger institutions – *Daingean Reformatory* in Co. Offaly and *Marlborough House 'Place of Detention'* in Dublin city centre. Recognising that for most children care was best provided within their families, it further advocated the development of preventative services to assist families in need.

While the publication of the report has been described as a 'watershed' for Irish child care (Keenan, 1997; McCarthy, 1996; Shannon, 2004), it is clear that the institutional model critiqued in the report was already terminally in decline by 1970. This can be most vividly illustrated by **Figure 2** below which compares the numbers of institutions in operation in the period between the two government commissioned inquiries, the *Cussen Report (1936)* and the *Kennedy Report (1970).*

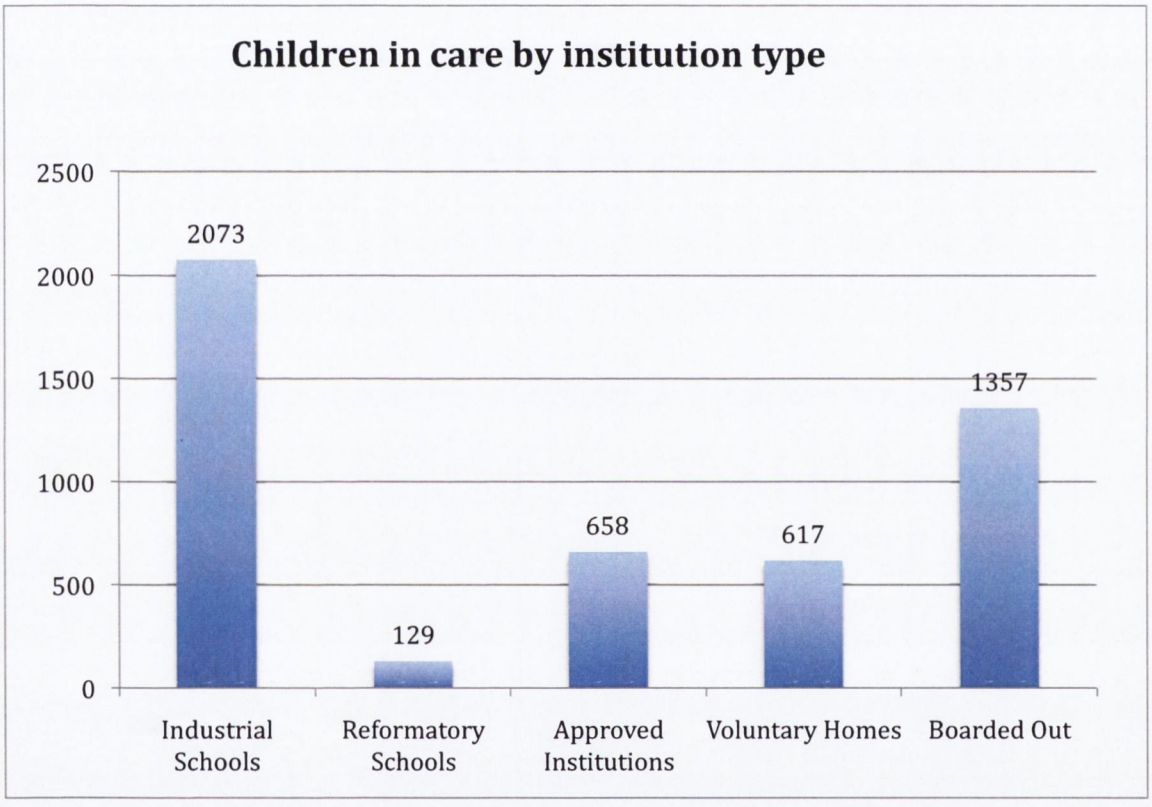
Figure 2: Numbers of Industrial and Reformatory Schools in 1936 and 1969



The data compiled and presented in the *Kennedy Report (1970)* and set out in **Figure 3**, illustrates that by 1969, in addition to the two-thousand-plus children in Industrial and Reformatory Schools, a further 1,300 children resided in 'institutions approved by

the Minister for Health'[33] and in 'Voluntary Homes which have not been subject to approval'. A further 1,357 children were 'boarded out and at nurse'. This means that in the period under consideration of the almost 5,000 children removed their families, more than half of these were already outside the Industrial and Reformatory School system.

Figure 3: Numbers of children in care by placement type (1969)



Various explanations have been put forward for the contraction of the system from the 1950s onwards. One factor of note is that the numbers entering the religious orders had begun to decline markedly in this period (Inglis, 1998). The 'workforce' to run the institutions, assigned a low status in relation to mainstream education or

[33] 'Approved homes were typically former orphanages and managed by Catholic religious communities or Boards of Trustees affiliated to Protestant churches. These homes were distinguished from the Reformatory and Industrial Schools for a number of reasons. Firstly their number was fewer and the homes were privately run and children were more usually placed there on a 'voluntary basis', i.e. through private arrangement. Typically, this involved families paying for a child's placement. Sources of funding also included endowments and charitable donations. In the main these homes tended to be better operated (although evidence of abuse in these facilities was also heard by the *Commission to Inquire into Child Abuse).* Secondly, because of their private status the homes tended to take children from families of a higher social status (Raftery and O'Sullivan, 1999).

healthcare, was therefore diminished (Flannery, 2009; O'Sullivan, 2009). [34] A further contributory factor was the introduction of the *Adoption Act (1952).*[35] Prior to the introduction of this legislation, informal adoption existed only on a small scale and was primarily arranged via private charities affiliated with the Catholic Church. The 1952 Act, led to the establishment of *An Bórd Uchtála (The Adoption Board),* which has the powers to make adoption orders. Kennedy (2001:44) notes that: 'Illegitimacy was central to adoption' and it 'provided a mechanism for absorbing non-martial children into traditional families' (Kennedy, 2001:21). Given that 'illegitimate' children were one of the main constituents of the institutional population, the introduction of this legislation had an impact on the 'supply' to the institutions.[36]

Impact of the Kennedy Report

The view that the *Kennedy Report* represented more of the death knell than the epitaph of the institutional template of child care has been most recently articulated in the *Report of the Commission to Inquire into Child Abuse (2009).* Nonetheless various analyses note that the report acted as a catalyst for change, providing support to calls for 'reform' of the system (McCarthy, 1996, O'Sullivan, 2009; Shannon, 2004a). The *Kennedy Report (1970),* characterised the children in the institutions as 'deprived' and one of the notable impacts of the report was the manner in which various advocacy

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[34] Several accounts note that the large numbers entering the religious orders from the mid-nineteenth to the mid-twentieth century provided a workforce for a range of ministries in the spheres of education, health and social welfare (Inglis, 1998; Luddy, 1995; McConvery, 2009). The hierarchical nature of these orders and the fact that work in institutions was considered to be relatively lowly has been more recently set out (McConvery, 2009). Taking the Christian Brothers (the order which ran most of the male Industrial and Reformatory schools) as an example, in 1831 there were only 45 brothers but by 1900 there were nearly a 1,000 and by 1960 this figure had quadrupled (Ferriter, 2004). In fact the numbers entering into various orders was so high that many of the religious served abroad as missionaries (Ferriter, 2004). In a collected volume of responses to the *Ryan Report (2009),* McConvery (2009), a Carmelite priest, sets out a short history of various religious orders, noting the class-based distinctions between orders. For example, differences between various religious orders of women based on dowries paid on entry to the order are noted: "Not all women entering religious life were able to bring a dowry with them, nor did they have the education that would enable them to teach. Although the early founders declared that a dowry was no obstacle to entry and could be compensated with education on the one hand or good will or industry on the other, nevertheless a two tier system of membership began to evolve." (McConvery, 2009:29).

[35] Further amendments to adoption legislation were introduced in Acts in 1964, 1974, 1976, 1988 and 1991.

[36] This 'supply' effect was also illustrated when the numbers of 'illegitimate' children being placed for adoption declined following the introduction of welfare supports for mother's of 'illegitimate children' through the *Unmarried Mother's Allowance* in 1973 (Kennedy, 2001).

groups mobilised around the figure of the 'deprived child' to campaign for reform of the system.

One such organisation was CARE (Campaign for the Deprived Child),[37] a group, whose members included a number of emergent figures with expertise in child care.[38] CARE announced that it was founded 'because sub-standard conditions continued to exist, which should long ago have been rectified, had adequate concern and interest been shown in Government and other reports which highlighted these conditions'.[39] The organisation outlined its aim to 'seek reforms' in the administration of child welfare and juvenile justice services for 'deprived children', whom it characterised as the following:

> Children in families under stress'; children who never had a family (this includes children of unmarried mothers); 'children whose families breakdown' and 'children in trouble with the law' and 'other deprived children' ('battered babies, juvenile drug addicts, schoolgirl mothers are problem groups – and there are many more- which attract attention from time to time. (CARE, 1972:14)

In a series of publications, the organisation criticised the continued over-reliance on residential care and argued for increased investment and greater resources for preventative or family-support type services (CARE, 1972, 1974, 1977, 1978, 1981). The influence of the group is demonstrated by the extent of coverage their campaign received and the fact that two of its members were later appointed to the *Task Force in Child Care Services* established by the government in 1974 (Department of Health, 1980; Keenan, 1997; McCarthy, 1996).

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[37] Other groups formed in the period included: 'The Association of Resident Managers of Industrial and Reformatory Schools'. A report in the Irish Times (12/11/71) indicates the *Council for Social Welfare*, a committee of the Catholic Bishops' Conference was established in the wake for the report and was responsible for instituting a new course in Kilkenny for residential child care workers.

[38] The original chairperson of the group, Seamus Ó'Cinnéide, was later appointed to the government's *Task Force on Child Care Services*. Members of the CARE Council included: Ian Hart (also later appointed to the Task Force) and author of several publications on young offenders (Hart 1967; 1970); Dr Paul McQuaid and Dr Gerry O'Neill, two child psychiatrists who worked in Finglas Remand Unit; Peter Shanley (author of publications on youth and crime) and Sister Stanislaus Kennedy, later founder of Focus Ireland (a homeless charity) (CARE, 1972). Alan Shatter, now a Fine Gael T.D and Shadow Spokesperson for Children (2009) became the organisation's chair in 1977. Robbie Gilligan (now Professor in School of Social Work and Social Policy, Trinity College Dublin) later became chair of the organisation in 1979.

[39] Irish Times, 10/02/1971

In a parallel development, in the same year as the publication of the report the introduction of the *Health Act (1970)* led to the establishment of area-based health boards and community-based social services (Keenan, 1997).[40] Under these new administrative arrangements the Health Boards directly employed social workers. However, the process of the embedding and recognition of social work as a profession was relatively slow, by 1974 there were 110 social workers employed in the Republic, of this number, 50 worked for the health boards, the remaining 60 worked for voluntary agencies that provided services to the health boards (Buckley et al, 1997; Skehill, 2004).[41] Following the recommendation of the *Kennedy Report,* the Health Boards eventually began to take on some of the responsibility for children in care, and alongside the religious orders became involved in the establishment of smaller community-based residential units. This occurred in tandem with the closure of some of the larger institutions (Keenan, 1997; O'Sullivan, 2009).

One of the recommendations of the *Kennedy Report* was that the institutions should be renamed because of the stigma associated with them. Industrial schools catering for young people who had been placed there for 'welfare' reasons were to become 'residential homes' and the Reformatory Schools and Industrial Schools, which accommodated 'young offenders' became known as 'special schools'. This recommendation was given effect on an administrative level; however, the legal designation of the schools under the *Children Act, 1908* remained the same (Keenan, 1997; O'Sullivan, 2009; Shannon, 2004b).

Allocation of Ministerial responsibility

As a result of the legacy of previous administrative arrangements, responsibility for various aspects of child care has historically been divided across government departments (Keenan, 1997; O'Sullivan, 2009; Shannon, 2004b; Skehill, 2005). The Department of Health held responsibility for children in 'approved homes' and those 'boarded out or at nurse'. This responsibility was exercised by the employment of two

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[40] Keenan (1997) notes that this model was similar to that adopted in England and Wales following the publication of the *Seebohm Report (1968)*. This report and the subsequent *Local Authority Social Services Act (1970)* led to the establishment of 'personal social services as a central element of state welfare provision' in England and Wales (Parton, 1991:19). Links between the *Seebohm* proposals and the Irish *Health Act (1970)* have also been explored by Skehill (2004).

[41] Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General

'lady-inspectors' who visited children in their placements. The work of the various appointees to this role and the inadequacy of resources to fulfill their responsibility has been set out by Skehill (2004) and is most recently described in the *Report of the Commission to Inquire into Child Abuse (2009).* The Department of Education was responsible for the financing and administration of the Reformatory and Industrial Schools and the Department of Justice was responsible for the administration of the courts, police (Gardaí) and probation services. This Department also had responsibility for detention arrangements for over-16's placed in prison facilities.

From their examination of the Industrial and Reformatory School system, the Kennedy Committee concluded that one of the most fundamental deficits within the system was the overall lack of responsibility for the schools at government level. The committee therefore recommended that responsibility for child care should be devolved to one department. Following from this, in 1974 the government decided to assign primary responsibility for child care to the Minister for Health (DoH, 1980; Keenan, 1997). However, as O'Sullivan (2009) has noted the precise ramifications of this government decision were not fully set out, and as a result inter-departmental wrangling continued regarding the precise re-configuration of responsibility.[42] In particular the 'special schools' (i.e. the remaining Reformatory and Industrial schools under the control of the Department of Education) were the subject of some debate, indicative of the particular problems associated with their operation (O'Sullivan, 2009).

While the focus of *Kennedy Report* had been the Industrial and Reformatory School system, its publication led to increased attention on the wider sphere of child care (Keenan, 1997; McCarthy, 1996; Skehill, 2005). An inter-departmental group established by government to consider the report's recommendations proposed the establishment by government of a 'working party' with access to 'outside experts' to consider the following areas:

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[42] The following excerpt from a memo prepared by the Department of Health for government in 1982 supports this view: "...notwithstanding the Government decision of 1974, the main responsibility for child care services has not yet been translated into legislation and the present legal responsibilities of the Minister for Health and the health boards in this area are quite limited. At present, there is no single statutory body with specific responsibility for meeting children's needs. To remedy this situation, it is proposed to give health boards new statutory powers and obligations to identify families with children in need and to provide whatever services are required to meet these needs." (O'Sullivan, 2009: 391)

1. The identification of children at risk and the requirements by way of preventative measures;
2. The assessment of children at risk;
3. The court system and the adequacy of methods of disposition (including boarding-out or fosterage and residential care);
4. Standards of child care in regard to education, trained staff, specialist services, buildings and equipment etc.
5. Provisions as to after-care, employment etc. [43]

This proposal was to eventually lead to the establishment of the *Task Force on Child Care Services* by the Minister for Health in 1974. The Task Force comprised of representatives from the main government departments (i.e. health, justice and education) and 'outside experts' who included members of the advocacy organisation CARE.[44] Included in the remit of the Task Force was a requirement to produce a *Children's Bill, which* would 'update and modernise the law in relation to children' (DoH, 1975:5).[45]

Interim Task Force Report (1975)

Shortly after its formation the Task Force presented an interim report to government setting out what it considered to be the most 'glaring gaps' in existing services (DoH, 1975:6). Particular attention was paid in the *Interim Report of the Task Force (1975)* to the training needs of residential child care staff and the perceived requirement for a range of specialist residential units for specific categories of young people. These included proposals for the establishment of 'residential assessment centres', 'hostel accommodation' and special residential centres for Traveller[46] young people; 'acutely emotionally deprived boys and girls' and young people who 'could not be accommodated within existing institutions (DoH, 1975).

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[43] Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

[44] The original members of CARE appointed to the Task Force were: Dr Ian Hart and Séamus Ó'Cinnéide (DoH, 1975).

[45] The specific terms of reference of the Task Force were as follows: "1. To make recommendations on the extension and improvement of services for deprived children and children at risk; 2. To prepare a new Children's Bill, up-dating and modernising the law in relation to children; 3. To make recommendations on the administrative reforms which may be necessary to give effect to the proposals at 1. and 2. above." (DoH, 1975:5).

[46] Irish Travellers are an indigenous nomadic group. They constitute less than 1% of the total population (Breatnach, 2006; Helleiner, 2000).

In the same period, the *Interdepartmental Committee on Mentally Ill and Maladjusted Persons* (otherwise known as the *Henchy Committee,* after its chairperson Justice Henchy*),* was established by the government with the following remit:

> To examine and report on the provisions, legislative, administrative and otherwise, which the Committee considers to be necessary or desirable in relation to persons (including drug abusers, psychopaths and emotionally disturbed and maladjusted children and adolescents) who have come, or appear likely to come in conflict with the law and who may be in need of psychiatric treatment.
>
> (Government of Ireland, 1974a: 3)

This committee produced two reports specifically dealing with 'juvenile offenders': *Assessment Services for the Courts in Respect of Juveniles (1974a)* and *The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders (1974b).* Both reports recommended the establishment of a range of facilities for specific categories of young people. For example, the committee recommended the provision of a 16-bed secure facility for adolescents it categorised as 'aggressive sociopaths' (Government of Ireland, 1974b).

The recommendations set out by the *Task Force* and the *Henchy Committee* were formulated in the context of the closure of the two main facilities for young offenders – Marlborough House and Daingean Reformatory in 1972 and 1973 respectively. The *Kennedy Report* had recommended the 'immediate closure' of both institutions. Prior to its closure in 1973, Daingean Reformatory contained an average of 47 boys per annum. This figure is significantly lower than the rates of occupancy at the peak of its operation (i.e. 216 per annum in the years 1941 -1949).[47] While immediately prior to its closure in 1972, Marlborough House Place of Detention had an average daily occupancy of 16 boys (O'Sullivan, 2009).[48]

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[47] (CICA, Vol. 1, 2009: 619)

[48] Marlborough House, Glasnevin Co. Dublin was registered as a 'place of detention' under Part V of the *Children Act (1908).* Its specific functions are set out by (CICA, Vol. 1:729): "(a) It was used to accommodate boys sent on remand pending the hearing of their court cases; (b) It was used as a substitute to imprisonment, at the discretion of the court, for periods of detention not exceeding one month; (c) It provided temporary accommodation for boys who had been committed to industrial schools awaiting transport/escort, and (d) It was used by the Gardaí or NSPCC to lodge boys in for safe custody, pending disposal of their cases, where the boys had no fixed abode, or had parents who had

In 1972 Finglas Children's Centre 'a newly built complex' with 'full provision for social psychological, psychiatric and educational assessment' opened,[49] and in the following year, Scoil Ard Mhuire a 'special school'[50] (with the official designation of a 'reformatory') for boys, opened in Lusk, Dublin. The Finglas centre was established with the funding and sanction of the Department of Education but was operated and managed by the De La Salle Brothers. Scoil Ard Mhuire was run under similar arrangements by the Oblate religious order. Both facilities catered for boys aged 12-16, with Finglas' primary function being to operate as an 'assessment centre' for the Courts.

Following the closure of Daingean on 16th November 1973, most of the remaining boys were transferred to Scoil Ard Mhuire. However, the new facility was operated by the same religious order (the Oblates) that had been responsible for the first reformatory opened in Glencree in 1858 (which was subsequently relocated to Daingean). Their involvement, in the new facility, however, was relatively short-lived. Scoil Ard Mhuire remained in operation for a 9-year period, closing in 1985, following the Oblate order's decision to cease working in this area. In evidence to the *Commission to Inquire into Child Abuse* (2009), the representative of the Oblate Order, Fr. Michael Hughes, stated that insufficient funding from government for appropriate staff levels was the reason that the order decided it would no longer operate Scoil Ard Mhuire:

> The place where we parted company with the State in Scoil Ard Mhuire was that ultimately they would not—they were not prepared to sanction a sufficient number of

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refused to provide bail." Between 1944 and 1972 there were approximately 21,500 admissions to Marlborough House.

[49] "Marlborough House was replaced by Finglas Children's Centre conducted by the De La Salle Order on behalf of the Department of Education. The centre is a newly-built complex which opened in January 1972, although the Remand Unit proper did not open until August, 1972." Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

[50] While the term 'special school' was introduced on an administrative basis as per the recommendation of the *Kennedy Report,* the schools still retained their legal designation under the *Children Act, 1908.* Scoil Ard Mhuire was legally licensed as a 'Reformatory School' and Finglas Children's Centre (comprising of two separate units, St Michael's and St Laurence's) was licensed as an 'Industrial School'. The warrants issued by the Courts ordering a child's detention in these units continued to use these terms up until 2007 when the relevant section of the *Children Act (2001)* with amendments was implemented and the *Children Act, 1908,* was finally repealed.

> staff members to cover all the responsibilities and we felt at that stage that we should withdraw. (*Commission to Inquire into Child Abuse*, 2009: Vol. 1: 611)

Finglas Children's Centre was similarly intended as a replacement for Marlborough House, although the *Commission to Inquire into Child Abuse (2009)* documents that there was considerable debate between Department of Education officials and the De La Salle order regarding the precise purpose and function of the new facility and although Finglas opened in January 1972, it did not accept young people on remand until August of that year.

In addition to these two new schools, the Department of Education was also planning to build a further 'secure' school, Trinity House, on the site adjacent to Scoil Ard Mhuire in Lusk, Co. Dublin. However, following delays in the construction of this facility, in 1978, the government made the decision to re-designate an adult prison, Loughan House in Cavan, for use as a 'reformatory'. According to the government this decision was taken in light of continued absconsions of boys from less secure facilities such as Scoil Ard Mhuire, Finglas and St Joseph's in Clonmel and complaints from a number of quarters, including the judiciary regarding an overall shortage of places. Announcing the opening of the 'reformatory', the government stated:

> Loughan House will be used only until a new centre being built at Lusk, Co. Dublin is ready. The use of Loughan House is said to be in reaction to the difficulty in coping with young delinquents, and the high rate at which they have been absconding from open centres.[51]

The re-designation of Loughan House prison attracted considerable controversy, with numerous groups, including the afore-mentioned CARE, the *Irish Association of Social Workers (IASW)*, and the *Irish Society for the Prevention of Cruelty to Children (ISPCC)* and the *Prisoners' Rights Organisation (PRO)* campaigning against the 'children's prison'.[52] The controversy led to a renewed academic interest in the subject of the 'youthful offender', and the appropriate State response to the issue, as publications from this period by staff and students from the Social

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[51] Murray, P. (1978) Irish Times, 28/10/78 "14-year-old sent to Loughan House as first inmate." On 21st April, 1978 there were 209 boys in special schools in Ireland and the opening of Loughan House added further capacity of 90 places. Dáil Éireann, Volume 305, 25th April, 1978

[52] Irish Times, 21/12/78: "26 groups outline criticisms of Loughan House."

Administration Department of University College Dublin demonstrate (Burke et al, 1981 and Cook and Richardson, 1981).

In parallel to the contraction and reconfiguration of the special school system, further recalibrations were taking place elsewhere in the child care system. Following the recommendations made in the *Interim Report of the Task Force on Child Care Services (1975)* proposing the need for separate residential facilities for Traveller children, the *Dublin Itinerant Settlement Committee* obtained funding from the Eastern Health Board to open a residential unit for Traveller boys.[53] The unit, 'Trudder House' was opened in Co. Wicklow in 1975 and continued in operation until 1995.[54] A further unit called 'Derralossary' specifically for Traveller girls, was opened in Roundwood, Co. Wicklow in 1982 (this unit remains in operation).

During this period, however, overall the numbers of children in 'care', including in the 'special school' system continued to decline. **Figure 4** below demonstrates the decline in the numbers of children in care between 1970 and 2005.[55] By the 1970s the number of children in care was less than 4,000 (in the 1950s this number had been 8,000) (O'Sullivan and Breen, 2008).

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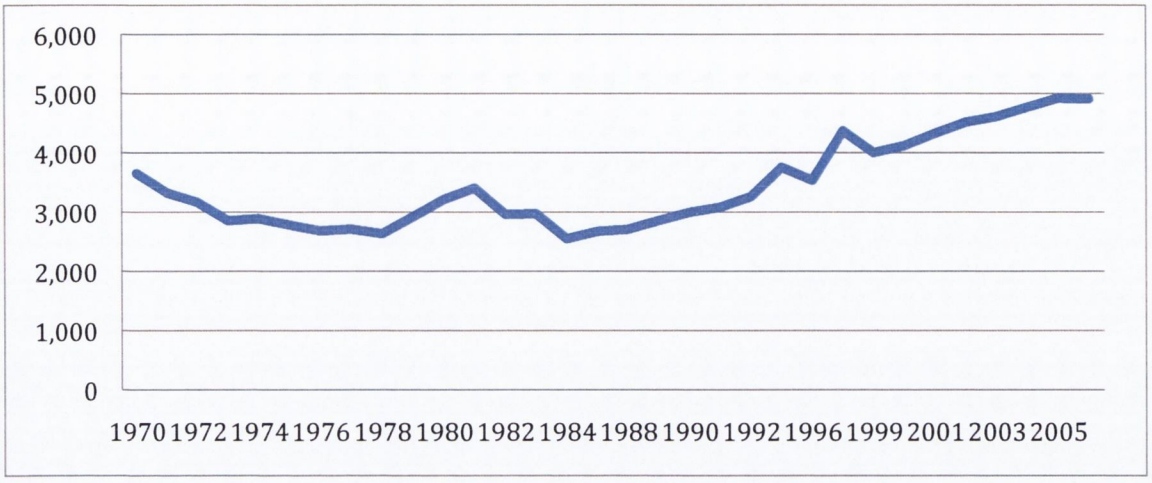
[53] Locally based voluntary bodies known as 'Itinerant Settlement Committees' were established following the recommendations of the *Commission on Itinerancy (1963)* which proposed that 'settlement' of Ireland's indigenous nomadic population – itinerants (now referred to as Irish Travellers) – was the means through which this group would be 'assimilated' into the wider 'settled' population. The Commission's Report has been extensively critiqued (e.g.: Bhreathnach, 2006; Crowley, 2005; Helleiner, 2003). Adopting a *governmentality* perspective, Crowley (2005) argues that the 'settlement committees' represented an important intermediary between the public realm of state power and the private realm of the Traveller family (this theme is explored further in later chapters of this thesis).

[54] More than 200 children were accommodated in this unit in that period.

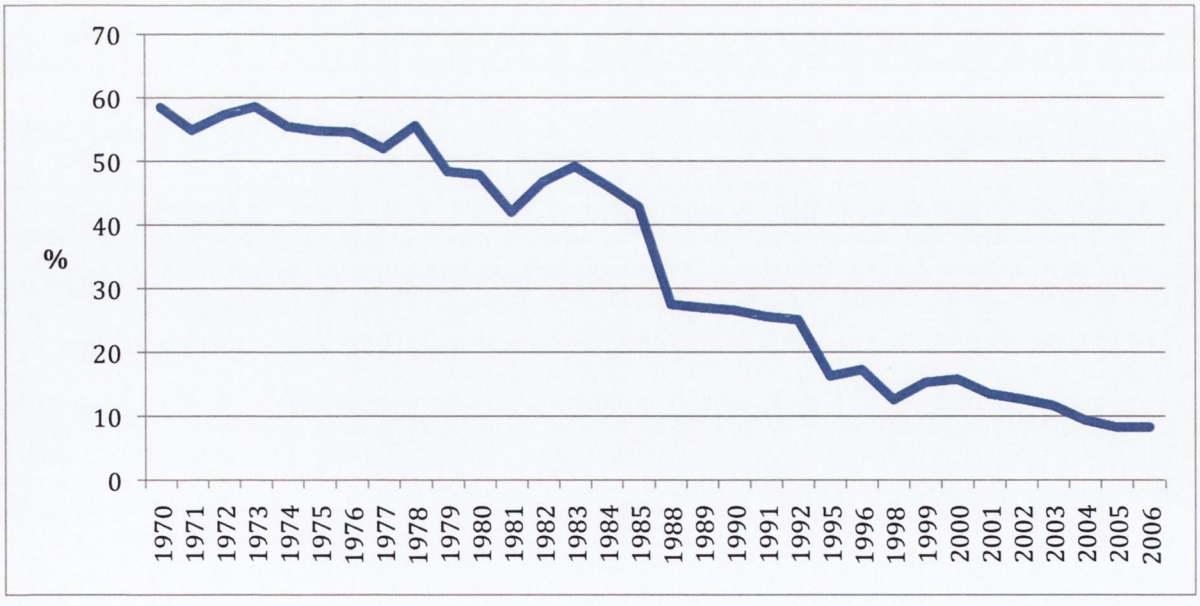
[55] This table is based on data from O'Sullivan and Breen (2008).

Figure 4: Numbers of children in care (1970-2005)



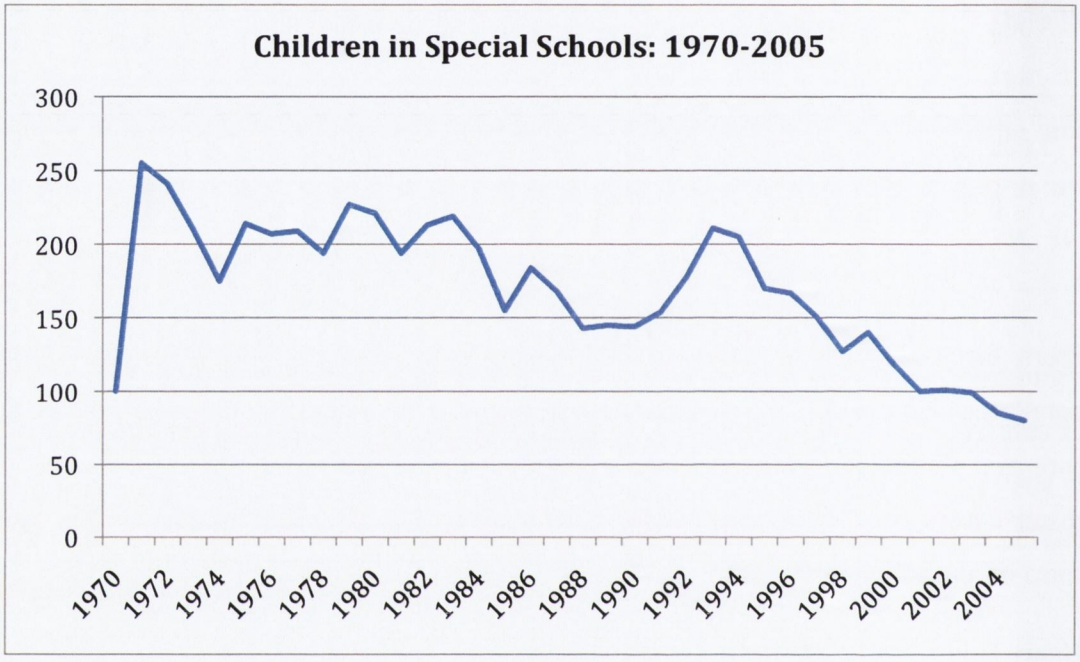
From the 1980s the numbers of children entering into care began to rise but in parallel, as **Figure 5** illustrates, the overall proportion of children placed in residential care as a percentage of the children in care began to fall and the population placed in foster care rose. By the mid-1980s foster care replaces residential care as the main form of alternative care provision (O'Sullivan and Breen, 2008).

Figure 5: Proportion of children in residential care



Further still as **Figure 6** illustrates, the overall numbers of children in 'special schools' continued to decline (O'Sullivan and Breen, 2008), indicative of a significant re-ordering and re-patterning of the system.[56]

Figure 6: Children in special schools: 1970-2005



Attendant on these changes were significant alterations in the administrative arrangements governing the system. In 1982, the Department of Health assumed responsibility for all residential care facilities other than the 'special schools' (which remained the responsibility of the Department of Education) and the system of funding for residential care was re-calibrated (Keenan, 1997). In 1984 the capitation system of funding ended (whereby units were funded per child) and was replaced by a block-based funding system (i.e. annual budgets) (Keenan, 1997). The *Kennedy Report (1970)* had previously recommended ending the capitation funding system for Industrial and Reformatory Schools on the basis of evidence that it provided a disincentive towards moving children out of institutional care.

[56] The comparatively low figure for 1970 is explained by the fact that Finglas opened in 1972 and later Scoil Ard Mhuire opened in 1973 thereby increasing the overall capacity of the schools.

Report of the Task Force on Child Care Services (1980)

After a period of six-years the *Task Force on Child Care Services (1980)* delivered its final report to government. Delays in the completion of the report were compounded by changes in the Task Force's composition (Keenan, 1997). By the time that the Final Report was published the political landscape had significantly altered, not least because of an ongoing economic recession (Ferriter, 2004; Keenan, 1997). Further, the Task Force was divided in its final recommendations, and a supplementary report with divergent views and recommendations was presented as an addendum to the main report. Further still, individual members noted their 'reservations' on a further number of areas.[57]

The members of the Task Force observed in their introduction to the Final Report that the issues that they were required to consider were more complex than originally envisaged:

> At an early stage we discovered that the problems which presented themselves for consideration were not at all susceptible to quick and easy solutions because they were related to the most basic philosophical and political ideas about human rights and the responsibilities of the State. (DoH, 1980:33)

Perhaps most fundamentally, the Task Force failed to produce a draft *Children's Bill.* Commenting on the Task Force's Report, Keenan (1997:66) notes the following:

> In a favourable political and economic climate it would have taken considerable skill and determination to reconcile such diversity of opinion into coherent and progressive draft legislation. In the event other priorities were adopted and much of the zeal and enthusiasm for reform of the child care system was lost.

The main recommendations of the report were that the administration of child care services should be centralised and coordinated, from departmental to regional and local level:

> The absence of co-ordinated planning at departmental level is reflected in the manner of delivery of the services at local level and it often happens that children in similar

[57] The reservations of the individual members were primarily assertions of Departmental positions, for example, the representative of the Department of Justice, rejected the 'welfarist' proposals set out in the supplementary report (DoH, 1980:408)

> circumstances are dealt with by different agencies and in some cases, by more than one agency. There is an obvious need for an authority at a regional level which should carry overall responsibility for child care and family support services in its area. (Department of Health, 1980:4)

The importance of family support and 'early intervention' approaches are foregrounded and the use of foster care in preference to residential care where possible is advocated. Contrary to the recommendation of the *Kennedy Report,* the Task Force's (majority) recommendation was that the age of criminal responsibility should remain at 7 years. The report (again with reservations) recommended that separate legal mechanisms should be developed for children requiring 'care' or 'control', although as noted, the Task Force did not produce a template for such legislation.

Post Task Force

In 1982, the Department of Health drafted a *Children Bill,* which proposed that responsibility for child care services should be devolved to the health boards. This included taking over responsibility for the remaining Industrial and Reformatory schools (O'Sullivan, 2009). The Bill also contained provisions strengthening the powers of intervention for children deemed to be 'at risk'. The memo on the Bill prepared for government by officials in the Department of Health set out the following:

> The Scheme of the Bill provides for a new system of residential care for deprived children, to be administered under the aegis of the Minister for Health and the Health Boards. This system will replace the reformatory and industrial schools system for which the Minister for Education is responsible at present. A government decision of 25th August 1982 gave approval in principle to the transfer from the Minister for Education to the Minister for Health of functions in relation to children's residential homes (formerly known as industrial schools) and the Scheme of the Bill provides for a similar transfer of responsibility for a number of special schools (formerly known as reformatories). (O'Sullivan, 2009:392)[58]

Contrary to the Task Force's recommendation, the Bill proposed raising the age of criminal responsibility from 7 to 12 years. Further demonstrating what can be

[58] Excerpts from this memo from the archived files of the Department of Health (C.1.01.03.6) are included in O'Sullivan's (2009) chapter on the history of residential child welfare in the Republic of Ireland prepared for the *Report of the Commission to Inquire into Child Abuse (2009).*

characterised as a 'welfarist' orientation, the 1982 Bill proposed that juvenile justice proceedings should be 'non-retributive' and focus on 'helping the child' (O'Sullivan, 2009:393-394).

It is evident however, that the Department of Health's proposals met with resistance from other quarters of government. In particular, the Department of Education expressed reservations regarding the transfer of the 'special schools' to Health on the basis that the education of young people within these facilities was a paramount consideration and therefore its responsibility. The Department of Justice had limited input into the drafting of the 1982 Bill (apparently of its own volition), it nonetheless strongly criticised the 'welfarist' model proposed and suggested that such an orientation had become outmoded (O'Sullivan, 2009).[59]

The eventual outcome of the inter-departmental debate was the development of two further bills dealing specifically with child welfare and protection (Keenan, 1997).[60] The *Child (Care and Protection) Bill (1985)* dealing exclusively with child care and protection was drafted but was not debated by the *Oireachtas* before the collapse of the coalition government in 1987 (Keenan, 1997). The bill was further re-drafted as the *Child Care Bill (1988)* and this finally became legislation as the *Child Care Act (1991).*

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[59] Department of Health Child Care Bill – Consultation with Government Departments cited in (O'Sullivan, 2009: 395): "In the context of juvenile justice, the Bill apparently provides for a 'welfare model'. In this model juvenile justice forms part of a more encompassing child care and protection system and it is interwoven with other more general services which the Heads would make available to children and young people. It also involves a high level of interference by the State's Social Services. Furthermore, it emphasises in the first place the needs of the child irrespective of the act committed or its seriousness; much attention is given to social and psychological conditions surrounding the offence and decisions are aimed at the individual needs and interests of the juvenile. What is generally accepted as the main alternative to this 'welfare model' in this area, namely, the 'justice model' emphasises the committed act, the responsibility of the juvenile himself, the punishment related to the offence and the guarantees of due process. The Minister for Justice, in responding to the proposals from the Department of Health, is not advocating one or other of those models as being preferable to the other but, he considers that it would be useful for Government to be aware of the international experiences in this area. As far as the Minister for Justice is aware, it has been the experience in Europe – particularly in Holland and in Britain – that where 'welfare models' of criminal justice have been operating the countries concerned are reverting in varying degrees to the 'justice model'."

[60] In fact the programme for government *Building on Reality (1985-1987)* outlined that three separate bills dealing with child welfare and protection, adoption and juvenile justice were to be prepared.

Child Care Act, 1991

The *Child Care Act (1991)* introduced the statutory framework for child protection and welfare. It assigned responsibility for child protection and welfare to the Health Boards and sets out the legal mechanisms through which children can be placed in alternative care for their welfare or protection (Buckley, 2002; Buckley et al, 1997, 1999; Gilligan, 1992; Shannon, 2004b). However, following the original enactment of the legislation there were further delays in its implementation, a core cause of this delay were arguments between the Department of Health and the Health Boards concerning funding for social work posts to carry out the new duties specified in the Act (Buckley et al, 1997; Ferguson, 1994; Gilligan, 2009). It took a further five years for the Act to be fully implemented (Keenan, 1997).

Part of the impetus for the full implementation of the legislation came from an increased awareness of child abuse from the early 1990s onwards (Ferguson, 1994; Gilligan, 1992; Keenan, 1997; Tutt, 1997). This was witnessed in the inquiries into inter-familial abuse including the *Kilkenny Incest Case* (McGuinness, 1993), *The Kelly Fitzgerald Case* (Western Health Board, 1996) and the *West of Ireland Farmer Case* (North Western Health Board, 1998).[61] Attention was drawn in particular to the inadequate response of state agencies to child abuse (Buckley et al, 1999; Ferguson, 2004; Gilligan, 2009; Sgroi, 1999; Skehill et al, 1999).

The first of these inquiries, published as *The Report of the Kilkenny Incest Case* (McGuinness, 1993), highlighted a pattern of deficiencies in the child protection system. The report further recommended that the rights of children should be fore-grounded in any future legislation, but that this was likely to necessitate a Constitutional amendment. Under *Bunreacht na hÉireann (1937),* the Irish

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[61] The *Kilkenny Incest Case* involved the rape and abuse of a young woman by her father over a number of years. In a criminal trial in 1993, in which he was convicted of these offences, the young woman's father received what was perceived to be a relatively lenient custodial sentence. It also emerged that there had been social service contact with the family throughout the years but minimal intervention. The public outcry surrounding the case led to the establishment of an inquiry, which was chaired by Justice Catherine McGuinness (Buckley et al, 1997; Ferguson, 1994). Kelly Fitzgerald, a 15-year old died in London after returning from a visit to her parents in Co. Mayo. Kelly had been registered as a child 'at risk' with Social Services in London, but when she returned to Ireland, the Western Health Board failed to follow up the case (Keenan, 1996; Western Health Board, 1997). The *West of Ireland Farmer Case,* involved the repeated abuse of children in the McColgan family over a number of years, and despite coming to the attention of authorities the relevant authorities failed to intervene. The children's father was eventually sentenced to nine-years in prison for rape (the leniency of the sentence attracting further criticism) (McKay, 1998; Sgroi, 1999).

Constitution, the rights and entitlements of children where mentioned are subsumed into their role as members of the marital family (Kennedy, 2001; McGuinness, 1993; Shannon, 2004a).[62] The report found that because of the Constitutional privileging of the marital family's right to autonomy, the 'threshold' for intervention by the State was set too high.

Somewhat paradoxically, as this historical overview as outlined, the numbers of children in residential care had historically been high. However, it is evident that the children subject to such interventions were disproportionately drawn from poorer sections of society including 'illegitimate 'children for whom there was inadequate welfare provision (Kennedy, 2001; O'Sullivan 1998). The abuses that occurred within this institutional model were also highlighted in a series of cases throughout the 1990s, including the *Madonna House Inquiry* (Department of Health, 1996).[63]

Issues of institutional abuse were brought to a wide public audience in the three-part television documentary series *States of Fear* which was screened by *Radió Telefís Éireann (RTE)* the Irish state broadcaster, in May 1999 and which contained personal accounts of abuse and deprivation from people who had spent their childhoods in institutions in Ireland. A previous documentary *'Dear Daughter'*, which detailed the experience of one woman, had raised similar concerns and the cumulative effect of these public airings led to a heightened awareness and debate, most prominently in the media and in parliament on Ireland's historic treatment of children (Torode & O'Sullivan, 1999; Raftery & O'Sullivan, 1999; Brennan, 2007; Gilligan, 2009).

On 11th May 1999, the Taoiseach (Irish Prime Minister), Bertie Ahern issued an apology in the Irish parliament 'to the victims of childhood abuse for our collective failure to intervene, to detect their pain, to come to their rescue...'[64] Following from

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[62] This was further underscored by the principle of *subsidiarity, which* informs the Constitution (Kennedy, 2001) (See footnote 13).

[63] Investigations into the Madonna House residential unit were prompted by allegations of abuse. An inquiry team was established to investigate these allegations and the home was eventually closed in 1995 (Hanly, 2009). The full findings of the investigation were not published because of ongoing litigation. The *Report of the Commission to Inquire into Child Abuse (2009)* pays further attention to Madonna House. A former employee of the institution abducted and murdered a 9 year old who had been resident in the unit in 1977. This case was the subject of an internal and unpublished departmental inquiry. The incident subsequently gained wider prominence when the author, Brendan MacLaverty published *Lamb,* a story based on this case (O'Sullivan, 2009).

[64] *Commission to Inquire into Child Abuse (2009, Vol.1:1)*

this a *Commission to Inquire into Child Abuse Act* was passed in the Irish parliament on 26 April 2000 and the *Commission to Inquire into Child Abuse* was established on 23 May 2000 (Brennan, 2007).

The functions of the *Commission,* set out on a statutory basis were to inquire into the historic abuse of children in institutions; to provide a forum for the persons who suffered abuse to recount the abuse and make submissions and to publish a report setting out its findings and recommendations, including the steps to be taken to deal with the continuing effects of the abuse and to protect children in similar situations in the present and in the future.[65] In a related, but separate development, the Irish government also established a redress mechanism, the *Residential Institutions Redress Board,* to facilitate financial compensation for the victims of abuse.[66]

Juvenile Justice

Attention to the area of 'juvenile justice' was punctuated by some high profile crimes involving young people, including the death of two children in a 'joy-riding' incident in Dublin in the early 1980s. And while the decision to re-designate, Loughan House prison as a reformatory in 1978 was reflective of a 'justice' oriented perspective; 'law and order' responses to young people were not to the fore in policy-terms (Kilcommins et al, 2004). Given the unprecedented attention paid to the issue of child abuse in the 1990s, and the debates surrounding 'children's rights' it is arguable that the sphere of 'juvenile justice' was further overshadowed. The issue of departmental responsibility for the area of 'juvenile justice', and in particular the question of where responsibility lay for drafting the proposed 'juvenile justice bill' was a further cause of delay (O'Sullivan, 2009).

The Department of Justice argued that responsibility for this area laid with the Department of Health following the 1974 government decision to allocate responsibility for the area of 'child care' to this department. Notwithstanding its

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[65] The functions of the Commission were set out in the *Commission to Inquire into Child Abuse Act (2000)*. The original terms required the Commission to report within two years of establishment; however, this time limit was extended twice. Brennan (2007) provides a detailed overview of some of the process issues involved in the establishment and operation of the Commission, and notes that originally the operation of the Commission was extended for a period of three years, from 2002 to May 2005; it was then subsequently extended from October 2004, to May 2008. The final report: *Report of the Commission to Inquire into Child Abuse* was published May 2009.

[66] *Residential Institutions Redress Act (2002)*

previous attempt to draft a Bill encompassing both 'welfare' and 'justice' provisions in 1982, the Department of Health now argued that the 'public mood' had changed and a more 'justice orientated' response was necessary. In the 1990s, responsibility for drafting juvenile justice legislation that would also repeal the *Children Act (1908)* was assigned by government to the Department of Justice (O'Sullivan, 2009).

In June 1991 a Select Committee on Crime was established by *Dáil Éireann* to examine various aspects of existing legislation and the administration of criminal justice. The committee specifically directed its attention towards the problem of 'juvenile crime', arguing that it represented 'an important element of the overall crime problem' (1992:1). The report of the committee, *Juvenile Crime – Its Causes and its Remedies (1992),* set out a number of proposals for the reform of the juvenile justice system. This report was debated in the Dáil on 5th March 1993, where Willie O'Dea the Minister of State in the Department of Justice, outlined that the government had prepared a *Juvenile Justice Bill* that would adopt neither a 'justice' nor 'welfare' approach:

> Expectations for this legislation vary from those who see it as an opportunity to clamp down severely on young offenders — the justice approach that I have already mentioned — to those who see it as an opportunity to almost remove young persons altogether from the criminal justice system as we know it — the welfare approach. In fact the Bill will take neither approach.
>
> (O'Dea, Dáil Éireann - Volume 427 - 05 March, 1993)

However, the multiple changes in administration in this period impacted on the programme of legislative reform. In November 1992, the *Fianna Fáil /Progressive Democrats* coalition government led by Taoiseach Albert Reynolds collapsed and a new government was not established until January 1993 – a coalition of *Fianna Fáil* and *Labour*. This government was short-lived; *Labour* withdrew from the coalition in 1994 following revelations regarding the Attorney General's office's handling of the extradition request for the priest, Brendan Smyth, following charges of child sexual abuse. *Labour* subsequently entered into a coalition government with *Fine Gael* and

Democratic Left in what became known as the 'Rainbow Coalition' (Ferguson, 1995; Ferriter, 2004; Garry, 1995; Kirby, 1995; Smyth, 1995).[67]

In the midst of changes of government the provision of detention places continued as a high profile issue. In November 1993, questions were raised in the Dáil regarding the 'alleged abandonment of a young offender' outside the gates of Trinity House Detention School in Lusk because the unit was 'full'. The Minister for Education's response to this issue illustrated the inter-departmental schisms that continued to mar the area:

> We should note that £5 million has been spent in the area of child care since the publication of the Kilkenny report. This is a matter of concern, nobody can say the position is satisfactory, but funding is being made available, the health boards have responsibility in this area and are being asked to co-ordinate the existing systems. Three Departments are involved in dealing with the problem, the Departments of Education and Health and the Department of Equality and Law Reform also have a role to play.
>
> Bhreathnach, N. Dáil Éireann - Volume 436, 23/11/1993

Following the change of administration in 1994, a further draft bill was prepared and circulated to government and by 1996 the bill was approved.[68] However, the publication of the promised-bill was delayed for a further period following a number of challenges to the High Court regarding the Health Boards' provision of care to children. The judicial review proceedings were brought on behalf of young people who were not receiving appropriate care or accommodation under the terms set out in the *Child Care Act (1991)* (Durcan, 1997; Kenny, 2000; Shannon, 2004a). In their defence, the Health Boards argued that they had offered support to the children

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[67] This case concerned Fr Brendan Smyth, a member of the Norbertine Order who was convicted in 1994 of seventeen counts of sexual abuse (Ferguson, 1995). Smyth's order had been aware of allegations against him over a number of years and had failed to inform the authorities, resorting instead to move him to different parishes (Moore, 1995). Further controversy ensued when it emerged that the Office of the Attorney General in the Republic of Ireland had delayed the processing of Smyth's extradition papers for trial in Northern Ireland. Following the promotion by Fianna Fáil of Harry Whelehan, who as Attorney General had been responsible for the delays, the Labour party withdrew from the coalition, leading to the government's collapse in 1995. *(Irish Times: Nov 16, 1994; Dec 2, 1994; Jan 12, 1995)*

[68] Nora Owen, Minister for Justice, Dáil Éireann - Volume 451 - 04 April, 1995 Written Answers - Juvenile Justice Bill and Dáil Éireann - Volume 461 - 20 February, 1996 Written Answers. - Juvenile Offender Accommodation.

concerned, but they refused to stay in accommodation and the *Child Care Act, 1991* did not contain provisions allowing for children to be detained for their own care and protection (Durcan, 1997; Shannon, 2004a).

In one of the first of such cases *P.S. v Eastern Health Board*,[69] the court heard that P.S, a 14-year-old boy had been sleeping rough and using drugs. Whilst acknowledging that the Health Board under sections 3 and 5 of the 1991 Act, had an obligation to provide for this young person, Geoghegan J. ruled that the Health Board could not detain a young person for their own care and protection under the terms of this legislation. However, following further legal challenges the High Court issued its own order to allow the detention of children to vindicate their constitutional rights (with reference to Arts 42.5 and 40.3 of the Constitution).[70] In 1996, Austin Currie, Minister for Children informed the Dáil that the Bill was being redrafted to provide for: 'the civil detention of out of control children to enable them to receive appropriate care, education and treatment'. The Minister advised that he hoped to bring the Bill before the Dáil in the current term.[71] However, the coalition government collapsed in 1997 and the Bill was not brought before parliament before its dissolution.

Alongside a 'failure to reform' the juvenile justice system, the absence of provisions for secure care in the 'welfare' system was coming under further sustained critique (Durcan, 1997; Kenny, 2000; Shannon, 2004a). The High Court continued to exercise its inherent jurisdiction in constitutional matters and issued orders for the civil detention of young people. Justice Peter Kelly, a High Court judge involved in these proceedings was highly critical of the perceived tardiness of the government to legislate and to provide suitable facilities for young people in these situations. In a judgment delivered on 27th June 1997, he stated:

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[69] [P.S. v Eastern Health Board, unreported, High Court, Geoghegan J., July 27, 1994]

[70] The first case in which the court took this position was that of *F.N. v Minister for Education* in 1995 *[F.N. v Minister for Education [1995] 1 I.R. 409]*

[71] Dáil Éireann - Volume 469 - 26 September 1996. In a later response to a question on the matter Austin Currie advised that he had received representations from the *Irish Foster Care Association* regarding aspects of the Bill and that he was meeting with them to discuss these (unspecified issues) Dáil Éireann - Volume 473 - 22 January, 1997.

> This is yet another case in which the court is called upon to exercise an original constitutional jurisdiction with a view to protecting the interests and promoting the welfare of a minor. The application arises because of the failure of the State to provide an appropriate facility to cater for the needs of this applicant and others like him. It is common case that what is required to deal with his problem is a secure unit where he can be detained and looked after. No such unit exists in the State and even if one did, there is no statutory power given to the Court to direct the applicant's detention there. Such being the case, and in the absence of either legislation to deal with the matter or the facilities to cater for the applicant, I have in the short term to do the best I can with what is available to me.[72]

As a result of these High Court cases the State was required to establish separate residential facilities – High Support Units and Special Care Units, for young people deemed to be 'out of control' or requiring protection. There was initial (and continued) ambiguity regarding the specific purpose of these units (Durcan, 1997; Kenny, 2000; Laxton, 1998), the first facility – Newtown House opened in 1996. This residence, situated in Co. Wicklow had in fact previously been known as 'Trudder House', which had accommodated Traveller children from 1975 until the mid-nineties.[73] The delays in opening further units led to strong criticisms in the Courts. Eventually three secure units were built in Cork, Dublin and Limerick and two further purpose–built High Support Units were built in Dublin and Monaghan.

The *Children Bill (1996)* was restored to the Order Paper of the Dáil in February 1998. However, ultimately the *Fianna Fáil*-led government chose not to proceed with a Bill that had been prepared by its predecessors. John O'Donoghue, *Fianna Fáil* Minister for Justice, outlined that he had 'ordered a thorough re-appraisal of the 1996 Bill' and concluded that 'we would have ended up with somewhere in the region of 400 amendments'. One of the areas of divergence pertained to the age of criminal responsibility. The 1996 Bill proposed an increase in age of criminal responsibility from 7 years to 10, while O'Donoghue's government favoured raising the age to 12

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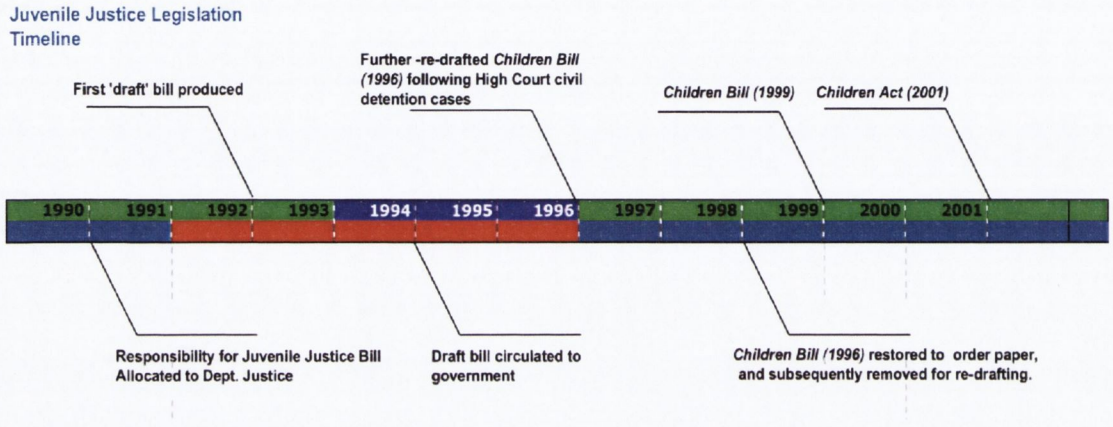
[72] Cited in the Supreme Court judgment: DG (A Minor suing by his Guardian Ad Litem, MR) v Eastern Health Board, Ireland and the Attorney-General [1997] 3 I.R. 511, p.519

[73] Trudder House had in fact closed following revelations of abuse in this institution. Serious allegations of sexual abuse were made against staff members in Trudder House; one prosecution ensued, which was subsequently quashed. One of the victims of the abuse, Anthony Cawley was later convicted of sexual offences as an adult and died in prison by suicide. Dáil Éireann - Volume 518 - 18 April, 2000 Adjournment Debate. - Prison Suicide.

years.[74] As a result, rather than progressing the 1996 Bill, the government formulated new legislation, the *Children Bill, 1999* which was finally presented to parliament in 2000. **Figure 7** below provides an overview of the timeline of the enactment of the legislation.

Figure 7: Juvenile justice legislation time-line



	Fianna Fáil
	Progressive Democrats
	Labour Party
	Fine Gael

[74] O'Donoghue, J. Dáil Éireann - Volume 517 - 29 March 2000, Children Bill, 1999: Second Stage. This assertion is disputed by opposition deputies who argued that there were few substantive differences between the *Children Bill, 1996* and the *1999 Bill:* "The Minister made various commitments to introduce the Bill over the past three years but in effect has shown total disinterest. He has always stated, as he did again this morning, that the Bill was being totally revamped, but the Bill now before the House is almost identical to that introduced by Deputy Currie in 1997, apart from some amendments. The Minister informed me in answer to a parliamentary question that the total number of changes in the Bill is 15. This is a minimal number of amendments in terms of impact given that the original Bill had 230 sections. The Minister has changed some of the original Bill and, while not changing the content, has increased the number of sections. The Bill before the House now has 272 sections." [Neville, D. (FG) Dáil Éireann - Volume 517 - 29 March 2000, Children Bill, 1999: Second Stage (Resumed)].

Children Act, 2001

This Bill was ultimately enacted in legislation as the *Children Act (2001).* The Act was the first major piece of legislation to deal with young people involved in the criminal justice system since the *Children Act (1908).* Described by one commentator as representing a 'fundamental revolution in juvenile justice' (Shannon (2005: vii), it contains thirteen parts providing for a range of juvenile justice measures. This includes the introduction of a range of community sanctions, the regularisation of the Garda Diversion Project and a change in sentencing provisions for detention of young people.[75]

The provisions in the Act have implications for a range of agencies. The Probation Service largely oversees the community-based sanctions while the Gardai operate the Garda Diversion Projects. The Garda Diversion Projects were initially established on a local level in urban areas and were intended to provide interventions with young people without formal processing through the criminal justice system (Bowden 2006; Sargent, 2009). Part 4 of the *Children Act, 2001*, sets out the legislation for the Diversion Programme and is essentially a regularisation of an ongoing practice within the Gardaí.

The community based sanctions set out in Part 9 of the 2001 Act provide for a range of community based disposals including a day-centre order; mentor (family support) order and probation orders with conditions of residence, training and/or intensive supervision. These orders represent a shift in focus away from custodial sanctions. In 2004, the Probation Service established a Young Person's Probation division to work specifically with young people and to administer these orders. Most pertinently in relation to this thesis, Part 10 of the Children Act, 2001 introduced *Children*

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[75] For example, under the terms of the *Children Act (1908),* a young person could only be detained in an Industrial or Reformatory School for a period of one-month, one-year or two-years. This in effect led to young people being detained for longer periods than adults for similar offences. Under the *Children Act (2001)* (as amended), there are greater sentencing options available to the courts, both in terms of the availability of community sanctions and shorter detention sentences (Kilkelly, 2003; 2006c; Seymour and Butler, 2008).

Detention Schools into legislation, replacing their previous designation as Industrial and Reformatory Schools.[76]

Into the present

The introduction of the *Children Act, 2001* represented the culmination of decades of debate that can be traced to the publication of the *Kennedy Report, 1970.* Following the introduction of the *Children Act, 2001,* the *National Children's Office* was established to oversee the Act's implementation and in 2000 the government published a ten-year *National Children's Strategy* (Government of Ireland, 2000). In 2005, the government established the *Office of the Minister for Children and Youth Affairs (OMCYA)* to centralise government policy and decision-making in respect of children and young people. This was pre-dated by the appointment of a Minister for Children in 1994, a junior ministerial post within the Department of Health and Children.[77] The government's stated commitment is that decision-making for children will be placed 'at the heart of government' (Government of Ireland, 2000).

By 2004, just four detention schools remained in the State with a total capacity for less than 100 children. The newly formed special care units provided for 30 young people. Of the 5,000 or so children in care, almost 90% are placed in foster care (PA Consulting, 2009). Within a period of thirty years, therefore the system of institutional care had retracted markedly.

The reversal of the previous gender patterning is also worthy of note. Historically within the Industrial School system the number of girls and young women detained remained markedly higher than that of young men (O'Sullivan, 1999; Torode and O'Sullivan, 1999), however, in the current system significantly more young men are detained in children detention schools (approximately 92% of the total children detention school population) (Department of Justice, Equality and Law Reform, 2006). This configuration is broadly consistent with youth justice facilities in other countries (Muncie and Goldson, 2006). By contrast, the situation within special care units is somewhat different with slightly more young women detained in these units

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[76] However, this section of the legislation was not fully enacted until 2007.

[77] Despite being officially a junior ministry, unlike other junior ministers, the Minister for Children attends Cabinet Meetings.

(Social Information Systems, 2008), again this is consistent with the profile of populations in other countries.

Conclusion

At one level therefore, the Irish system has undergone a marked re-ordering, with most of the large-scale institutions shutting their doors in the latter half of the twentieth century. However, alongside this phenomena new sites emerge where the institutional or carceral order, remains the template. These include re-designated institutions such as *Loughan House* prison and *Trudder House* and newly formed units such as the range of special care and high support units that were established in the 1990s and early 2000s. And alongside these new configurations the former reformatory and industrial schools continue to re-order as special schools, assessment units, remand units and latterly as 'children detention schools'.

In recent times issues regarding 'child welfare' and 'juvenile justice' have been a topical area in public discourse and policy. This has been prompted in part by the focus on abuse in the institutions, which formed the dominant mode of 'child care' provision from the mid-nineteenth to the mid-twentieth-century. Attention has also focussed on the historic 'state neglect' of this area, evidenced by its *laissez faire* approach to governance and policy development. However, as this chapter has outlined, despite sustained attention being directed towards this sphere since the 1970s, the pace of change and systemic re-ordering has been patently slow. It has been argued that this is due in part to the entrenchment of the institutional model (O'Sullivan, 2009). Others have suggested that it is reflective of a profound ambiguity within Irish society towards children and young people (Arnold, 2009; Keating, 2002), and in particular towards children whose concerns become 'public' (Gilligan, 2009).

Elsewhere, it has been noted that the development of a professional cadre, such as social work, whose role in this area may have underlined calls for 'reform' was also slow to emerge (Skehill, 2004). This has been similarly observed in relation to residential child care workers, whose emergence as a profession was enabled by the departure and displacement of religious orders and the establishment of the first professional training courses in the 1970s (Department of Health, 1980; Keenan, 1997; Gilligan, 1991; O'Sullivan, 2009).

While a great deal of attention has been paid to the State's dilatory approach in this area (e.g. Arnold, 2009; Keenan, 1997; Kilkelly, 2006a; 2007; McCullagh, 1996; 2002; Seymour, 2006; Shannon, 2005a), it is important to note that developments instigated by other actors have occurred across this broad sphere in the relevant period. One example of which was the establishment by the Gardaí of a diversionary scheme for young offenders, which operated from the 1960s without a legislative basis (Kilkelly, 2006a; McCullagh, 1996). This scheme, aimed at diverting young people from prosecution (now placed on a statutory basis under the *Children Act, 2001*), has resulted in a significant number of young people being diverted from the formal justice system (Bowden, 2008; O 'Dwyer, 2002; Sargent, 2009).

While there have been numerous overarching accounts of various phases of the child welfare and juvenile justice system, these narratives have tended to favour the 'late-development' model implicit (and explicit) in some of the accounts above. Put simply, most accounts decry the tardiness of progress but fail to critically interrogate the destination. Therefore tending to proceed on a progressivist narrative arc - a route of 'continuous progression' where each phase represents a new chapter of enlightenment - indeed in presenting this conventional account that is the format of this chapter.

Missing from this oeuvre, apart from some notable exceptions, (e.g. O'Sullivan, 1999; Skehill, 2000a; Sargent, 2009), is a more nuanced analysis involving a problematisation of the 'subject' and the proposed 'remedies'. In other words, seeking to move beyond description to critically explore the specification of the children and young people who come into public view and for whom the variety of 'remedies' described in this chapter – whether 'containment'; 'early intervention'; 'diversion', etc. have been proposed. The 'problematisation' of these domains is a core approach of this thesis and is described fully in Chapter 4. Given the history of institutional confinement within the Republic of Ireland of particular interest are the different shape or figures for whom the discredited institutional template remains the prescription.

Chapter Three – Theoretical Framework

Introduction

There are a number of perspectives from which the detention of children and young people can be considered. The topic of the institutionalisation of populations considered to be 'deviant' has been the subject of a broad range of scholarly attention. The formation of separate systems for children and young people predicated on a specification of 'special needs' has also been the subject of analytical concern as has the patterning of a range of social systems organised around the rubric of 'welfare' or 'justice'. Furthermore these issues have been analysed through a range of theoretical lenses. In tandem with a 'history of the present' methodological approach (which is described more fully in the subsequent chapter), this study adopts a *governmentality* perspective to consider the 'problem' of 'problem' children for whom containment is the specified 'remedy'.

From confinement to deinstitutionalization

The establishment of institutions for specific populations at the end of the eighteenth century and the beginning of the nineteenth century has been the subject of a broad range of scholarly interest (e.g. Cohen, 1985; Foucault, 1977a; Ignatieff, 1978). Foucault's *Discipline and Punish (1977a)* considers the strategies and rationales of the 'great confinement' of the nineteenth century, where sections of the population considered 'deviant' were placed in institutions, where they were subjected to a variety of strategies of control and reform.

In this work, Foucault (1977a) explores the similarities in regimes across a range of institutions. His analysis illustrates the move from pre-modern strategies of corporeal and visible forms of punishment, which served to reinforce the authority of the sovereign, to the strategies of the institution where the subject is removed from immediate view and the purpose becomes no less than the reform of the soul. Foucault (1977a) charts the process through which discipline is inculcated and notes that the apotheosis of this project is reached in the Reformatory at *Mettray.* Here he describes the regulation of young people by the 'technicians of behaviour' and 'the

orthopaedists of individuality' and characterises it as the 'completion of the carceral system' and the 'disciplinary form at its most extreme' (Foucault, 1977a: 293/294).

In a broader range of literature, a number of further trends are discerned, including increasing involvement of the State in the control of deviancy, the increased differentiation and classification of populations, the associated segregation of populations in different institutions and the move towards 'psychological' rehabilitation (Cohen, 1985; Foucault, 1977a; Ignatieff, 1978).

Cohen (1985) characterises the eventual move from confinement to decarceration as one of the 'master-shifts' of the twentieth century. He and others argue that where the institution formed the template of governance or social control, the decarceration project led to the dispersal and diffusion of control beyond the boundaries of the institution. Cohen (1985) uses the metaphor of the 'net' to describe the extension of these boundaries. The argument posited is that as institutions closed their doors their regimes of influence extended to the communities into which their former inhabitants were released.

Children and Young People – Differential Responses

In line with the practices of differentiation, classification and segregation of populations and prompted by campaigns of 'reform' in the mid-nineteenth century a range of separate institutional responses were developed for children and young people. This included the establishment of Industrial and Reformatory Schools (Clarke, 1975; Foucault, 1977a; May, 1973; O'Sullivan, 1999). The intentions and effects of these 'reforms' have been the subject of some critique (e.g. May, 1973; Platt, 1969; 1974; van Krieken, 1991), however, it is generally argued that they were predicated on an understanding of 'childhood' as a special state of differential maturity, vulnerability and responsibility (Goldson, 2002; Hill et al, 2007). A further underlying rationale is the belief that children or young people may be more amenable to change or reform and therefore require separate forms of intervention (Goldson, 2000; Hill et al, 2007; Rutherford, 1986; Shoemaker, 2005).

Because of these conceptions of young people's 'special status' a range of measures predicated on meeting 'need' have been developed both within and external to the criminal justice system. Broadly speaking, interventions which are based on meeting 'need' are characterised as 'welfarist' or 'welfare oriented', while approaches which are based on principles such as 'due process', 'just deserts', 'retribution' and 'punishment' are characterised as 'justice' orientated (Goldson, 1997; Hill et al, 2007; Muncie et al, 2002). As Goldson (1997:77) identifies:

> The constructs of 'welfare' and 'justice' have served to delineate the conceptual space within which policy and practice relating to juvenile crime has traditionally been located.

Arguments regarding on which part of this continuum policies and approaches to young people who come into contact with the criminal justice system should be positioned are a frequent source of debate both within the literature and in practice (e.g. Goldson, 1997; Kilkelly, 2007; Lappi-Seppala, 2006; McAra, 2006; Muncie et al, 2002; Scraton, 1997; Taylor et al, 2010; Whyte, 2009).

A review of the literature illustrates that such debates have characteristic temporal dimensions. For example, a range of studies focus on the shifts in orientations of systems over time. Goldson (1997; 2000) and Haydon and Scraton (2000), for example explore the changing dynamics of criminal justice policies towards young offenders in England in the context of the murder of James Bulger by two ten-year olds in 1993 and the election of a *'New Labour'* government in this period.[78] Similarly, McAra (2006) and Whyte (2009) in Scotland have documented a movement away from the 'welfarist' orientation a distinct characteristic of the 'Scottish Hearing System', towards more punitive approaches from the 1990s onwards.[79]

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[78] The murder of toddler James Bulger by two 10-year olds in Liverpool, UK and the subsequent prosecution and trial of the two perpetrators has been the subject of academic attention (e.g. Haydon and Scraton, 2000). In particular, the treatment of the two 10-year olds within the criminal justice system and the public spectacle of their trial has been the subject of extensive critique. The links between this high profile crime and an increased punitiveness in criminal justice policy towards young people in England and Wales has been explored (James and Jenks, 1996; Muncie, 2009).

[79] The *Scottish Hearing System* was put in place in 1971, following the recommendation of the *Kilbrandon Report (1964).* An underpinning philosophy of the system was that child abuse/ neglect and offending emanated from the same sources, and a minimum system of intervention was

A number of trends have been identified in broader youth justice policy, including the increase of the youth custodial population as part of a broader emphasis on *repenalisation* and *adulteration,* which Muncie and Goldson (2006) define as an erosion of the 'special status' afforded to young people within the criminal justice system.[80] The concept of 'repenalisation' aligns with Garland's (2001) 'culture of control' thesis, which broadly argues that criminal justice sanctions have become characterised by increased punitiveness fuelled by a 'perpetual sense of crisis', an increased emotiveness within criminal justice discourse and high rates of penal incarceration. Here, rather than control being 'dispersed' it is concentrated and directed towards certain populations. Looking at the North American example, this is demonstrated with reference to the high incarceration rates of minority ethnic communities (Beckett and Western, 2001; Simon, 2001).

While the applicability of Garland's (2001) thesis beyond his case studies of the United Kingdom and the United States has been subject to critique, so too has the 'repenalisation' thesis advanced in respect of young people and their interactions with the criminal justice system. It is evident that any trends towards 'repenalisation' or punitiveness are by no means uniform. For example, Muncie (2005; 2006b) highlights that the 'globalisation' of children's rights, demonstrated in the ratification of the United Nations Convention on the Rights of the Child (UNCRC) by 192 countries and the various international non-binding treaties pertaining to children involved in the criminal justice system based on this convention, provides something of a counter discourse.[81]

The broader literature in this area also highlights that this field is more accurately described as comprising of a 'complex agglomeration of competing and contradictory policies' (Muncie and Hughes, 2002); which includes aims of retribution,

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advocated based on the needs of the child – which were discerned via the hearing system (McAra, 2006; Mellon, 2003)

[80] "Through various measures of 'adulteration', young people are also now assumed to be more likely to find a decline in their special status as in need of care and protection and more in need of punishment through which they will be made responsible for their own actions." (Muncie and Goldson, 2006:1)

[81] The various relevant international human rights standards that specifically refer to juvenile justice include: *Beijing Rules (the UN Standard Minimum Rules for the Administration of Juvenile Justice)(1985);* the *Riyadh Guidelines (the UN Guidelines for the Prevention of Juvenile Delinquency) (1990)* and the *Rules for Protection of Juveniles Deprived of their Liberty (1990).*

rehabilitation, responsibilisation and rights (Muncie, 2005, 2006; Muncie and Goldson, 2006).

> The purpose of youth justice has become obscured as each new wave of reform has been accreted on the previous. What is clear is that traditional welfare vs justice or welfare vs punishment debates are particularly inadequate in unravelling how youth justice acts on an amalgam of rationalities, oscillating around, but also beyond, the caring ethos of social services, the neo-liberal legalistic ethos of responsibility and the neo-conservative ethos of coercion and punishment. (Muncie, 2006:771)

Some countries, such as New Zealand and Northern Ireland have incorporated restorative justice principles into their statutory systems (Doherty, 2010). And across jurisdictions practices and patterns differ markedly, not least because of differing ages of criminal responsibility (Bala et al, 2002; Harrikari, 2008; Muncie and Goldson, 2006). On the island of Ireland alone, there are two differing ages of criminal responsibility – 10 in Northern Ireland and 12 in the Republic of Ireland (Doherty, 2010; Kilkelly, 2007),[82] and across Europe ages of criminal responsibility vary from 10 in the United Kingdom to 18 in Belgium (Haydon and Scraton, 2000; Put and Walgrave, 2006).

Partly as a result of differential ages of criminal responsibility, the systems targeted towards young people who are deemed to require some sort of state intervention are equally disparate. For example, in Sweden, where the age of criminal responsibility is 15 years, a wide system exists for welfare intervention and secure containment on the basis of child or societal protection (Hollander and Tarnfalk, 2007; Janson, 2004). And where there are numerous debates regarding the *welfarist* or *justice* orientations of youth justice systems, the intersections of juvenile justice and child welfare and protection systems has also been the subject of some analytical concern (e.g. Buckley and O'Sullivan, 2007; Harris and Timms, 1993; Hill et al, 2007).

Furthermore, the utility of 'welfare' and 'justice' as explanatory constructs have been questioned by wider theoretical approaches. For example, Garland (1985) in an analysis of the historical perspective points to the mutuality of welfare and

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[82] The age of criminal responsibility in the Republic of Ireland was raised from 7 years to 12 in the Criminal Justice Act (2006). However, the age of responsibility remains at 10 for a small number of specified offences including murder and serious sexual offences (Kilkelly, 2007).

punishment responses. And a range of critical literature in this area largely emergent from the late 1960's onwards illustrates the potential similarities of putatively separate systems (e.g. Cohen, 1985, 2005; Donzelot, 1980; Platt, 1969; 1974). In work such as Cohen's (1985) the argument is advanced that in effect 'welfare' and 'justice' are flip-sides of the same coin. The aim of both, albeit in different guises, is the control of 'deviant' populations. Class-inflected analyses also point out that the targets of such strategies are disproportionately the children and families of the poor (e.g. Clarke, 1985; May, 1973; Platt, 1969). In line with such observations, various theoretical constructs have been advanced which address these wider themes, two of which are discussed here: 'social control' and 'governmentality'.

Social Control

Social control is a variously utilised as an explanatory construct to describe the variety of means through which society or behaviour is controlled or managed (Chunn and Gavigan, 2006; Cohen, 1985, 2005; Innes, 2003). The potential breadth of this definition has led some to question its meaningfulness including Cohen (1985), who has stated:

> The term 'social control' has lately become something of a Mickey Mouse concept. In sociology textbooks, it appears as a neutral term to cover all social processes to induce conformity ranging from infant socialization through to public execution. (Cohen, 1985:2)

This potential diffusion is partly a result of the various academic traditions that have developed and utilised the concept (Innes, 2003).[83] In an overview of the diverse literature in this area, Meier (1982) identifies three main domains of the application of social control: as a description of social processes, as a descriptor of mechanisms for ensuring compliance with norms or as a method by which to study and interpret social order. Again the question of the means through which social order is maintained, i.e. through coercive or non-coercive means, is a further point of consideration (Cohen, 1985; Garland, 1985; Innes, 2003).

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[83] These include: sociology, social and political philosophy. The earliest iteration of term (Ross, 1901 [1969]), describes a 'social psychological approach' to explain the reproduction of social order (Innes, 2003:16).

The influence of radical criminology, Marxist and feminist analyses are evident in the literature on social control from the 1960s and 1970s (Cohen, 1985; 2005; Innes, 2003; van Krieken, 1991). The argument that control leads to deviancy, not deviancy to control – a contribution of labelling theories in various iterations (Becker, 1963; Lemert, 1967) [84] has also influenced the nature of the explorations of State responses to 'social problems'. The conception of social control as 'organised repression' became the main focus of studies of the sociology of deviancy in this period,[85] evident for example in studies of penal systems (e.g. Melossi and Parvini, 1981), child welfare mechanisms (Platt, 1969; 1977) and psychiatry (Goffman, 1961, [1968]; Scull, 1979). Chunn and Gavigan (2006:13) characterise this shift in focus as a move from viewing social control as 'doing good' to a view that social control 'does bad'.

It is clear from all of the above that the utility of 'social control' as an explanatory concept has come under sustained criticism (Chunn and Gavigan, 2006; Innes, 2003; van Krieken, 1991). Apart from criticisms regarding a definitional lack of precision, a further major critique is that it fails to address the complexity of power, particularly in relation to the role of the State. Chunn and Gavigan (2006) note that in the binary conceptions of the term (social control as 'good' or social control as 'bad'), the State is variously conceived of as 'benign' or as a 'Leviathan', consequently:

> These monolithic formulations leave little room for resistance or self-determination – collective or individual – on the part of those that are controlled.
>
> (Chunn and Gavigan, 2006:14)

Viewed from this perspective, every political or ideological institution can be conceived of as an agency of social control, somewhat delimiting the analytical utility of the concept (Stedman Jones, 1977). One example of this vein of literature of particular relevance to this study is Platt's (1969, 1977) work on the emergence of the juvenile court in Chicago. Platt (1969, 1977) has argued that the result of 'child

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[84] Labelling theory explores criminality from the perspective of its specification (Becker, 1963). In other words, as Becker (1963:9) notes: "Deviance is not a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an offender." This perspective was later developed by Lemert (1967) an analysis of the inter-relationship between deviancy and social control.

[85] Cohen (1985: 3), defines the 'sociology of deviance' as: "...the organized ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way of another."

saving' campaigns orchestrated by nineteenth century 'reformers' for separate system for juvenile delinquents led to increased measures of social control of 'working class' youths. Platt (2009:193) has recently described the original thesis of *Child Savers*:[86]

> The argument of the book might be summarized as follows: The benevolent rhetoric of Progressive juvenile justice masked a class-based system of harsh punishment; the child savers created new categories of youthful crime (status offences), deprived urban youth of due process, and increased the role of the state in the daily lives of the working class; and while the child-saving movement drew its most active support from middle-class women's groups and professionals, their vision was shared by the ruling elites.

van Krieken (1991), who has considered the application of social control theory to analyses of the development of child welfare systems is critical of readings that he argues over-simplify class structures and deny the agency of the working classes (the so-called subjects). His central argument, made through a socio-historical analysis of child welfare in Australia is that the 'working classes' were also centrally involved in the development of these systems, and in fact exerted agency by using them to their own ends – the example of families arranging for their members to be placed in institutions is cited. van Krieken (1991) is therefore critical of Platt (1969, 1977); and others' views, namely that child welfare and juvenile justice apparatus are the projects of middle-class so-called 'reformers', who are trying to impose their values and mores on a duped working class. This analysis, he argues is too simplistic and in any event the evidence does not support it.[87]

Social Control therefore as a concept, many would argue is poorly defined and over-utilised. Secondly, the criticism that it presents an overly simplistic analysis of the State is persuasive. This criticism is also paralleled with critiques of the failure of 'social control' theses to adequately explain 'agency' or 'subjectivity'. This is illustrated in van Krieken's (1991) work, where he argues that bodies or whole classes of people are conceived of as 'dupes' in the grand social control schemata. The main

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[86] Platt (2009) has written a post-script to his original work (Platt, 1969; 1977) where he traces some of the original responses and critiques of the work.

[87] It is worth noting one exception to van Krieken's (1991) overall thesis – he argues that the treatment of Aborigine children through their forced removal from their families cannot be explained in these terms.

substances of these critiques and some of the questions that they raise are well illustrated by Chunn and Gavigan (2006:16):

> This denunciation of the state and all its works is not radical, however, because everything and therefore nothing can count as an instance of repressive social control. The controlled, then, are passive robots at the mercy of a carceral apparatus which expands almost daily. But to what extent do people voluntarily participate in their own subjugation? To what degree do they receive genuine assistance from the people who presumably control them? To what extent do individuals and groups resist efforts to repress them? These are questions that cannot be addressed within the constraints of a social control model.

Governmentality – as a theoretical perspective

In light of the above critiques it is argued that the concept of 'governmentality' offers a more nuanced and useful analytical construct. 'Governmentality' is a neologism coined by Foucault (1997:82), which broadly defined, involves an exploration of the 'techniques and procedures for directing human behaviour'. It provides a perspective from which to consider the various forms and characteristics of government in 'liberal' societies (Burchell et al, 1991; Miller and Rose, 2008; Rose et al, 2006).[88] One of the key theoretical contributions of governmentality literature is its consideration of the operation of power beyond the locus of the state (Burchell et al, 1991; Miller and Rose, 2008; Rose et al, 2006).

Governmentality centrally concerns the intersections of 'power', 'knowledge' and 'subjectivity'. In a range of literature Foucault (e.g. 1976a; 1976b; 1977a; 1978b; 1980; 1981) developed these core themes and argued that power and knowledge are inter-related (he used the term power-knowledge nexus), in that power proceeds from knowledge and the effects of knowledge are made manifest through power (Faubion, 2002). Most famously in *Discipline and Punish* (Foucault, 1977a), the techniques of power manifest in the institution (and perfected in the Reformatory at Mettray) are

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[88] Rose et al (2006:84) trace Foucault's analysis of 'government' from the political doctrinaire of the 'reason of the state' through to *Polizeiwissenshaft (the police science)* to a concern with the political problem of the 'population' and argue that in part Foucault's concern 'was to understand the birth of liberalism'. This shift from 'reason of the state' to 'liberalism' is significant because: "Liberalism differs from reason of state in that it starts from the assumption that human behaviour should be governed, not solely in the interests of strengthening the state, but in the interests of society understood as a realm external to the state."(Rose et al, 2006:84) In other words, liberalism signifies a distinction between state and society (Foucault, 1997; Rose et al, 2006).

understood as the manner through which power and knowledge intersect to 'produce' subjects.[89]

These subjects at once individualised and totalised through techniques of power and knowledge are ultimately governed. In an example of the intersection of power-knowledge necessary for the formation of discourse and the process of governing, Foucault (1976b) highlights how knowledge such as statistics -'the science of the state' – is key to the practice of 'bio-power.' The concepts of *biopower* or *biopolitics*, terms, which Foucault used interchangeably are essential to the manner in which the 'technologies of self' are devised to shape subjectivity. Foucault (1976b) describes *biopower* and *biopolitics* in the following terms:

> What does this new technology of power, this biopolitics, this biopower that is beginning to establish itself involve? ...a set of processes such as the ratio of births to deaths, the rate of reproduction, the fertility of a population, and so on.
>
> (Foucault, 1976b:243)

> Biopolitics' last domain is, finally - I am enumerating the main ones, ...control over relations between the human race, or human beings insofar as they are living beings, and their environment, the milieu in which they live. (Foucault, 1976b: 245)

It is through the accumulation of knowledge about whole populations that the 'normal' can be defined and those not fitting this norm can be identified (Hacking, 1991; Garland, 1997; Miller and Rose, 2008; Pasquino, 1986). In this manner the population can be both 'individualised' and 'totalised'. This is the theme of Foucault's lecture entitled *Omnes et Singulatim (All and Each),* where he elaborates that central to the practice of government in Western societies is this dual process of totalisation and individualisation (Foucault, 1981).

In the *Subject and Power,* Foucault (1983:221) stresses the importance of the *active subject,* as the means through which power is exercised, crucially he argues:

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[89] Foucault (1977a:293) completes *Discipline and Punish* with a description of the completion of the 'carceral system' a point he locates at the juvenile reformatory at Mettray, France. *"Why Mettray? Because it is the disciplinary form at its most extreme, the model in which are concentrated all the coercive technologies of behaviour. In it were to be found the 'cloister, prison, school, regiment'."*

> Power is exercised only over free subjects, and only insofar as they are free.

Further, power is not objectifying, it is subjectifying – it operates on the free subject and through the technologies of 'self' people are active in their own subjectification. As Garland (1997:359) has argued, governmentality:

> ... constructs individuals who are capable of choice and action, shapes them as active subjects, and seeks to align their choices with the objectives of governing authorities. This kind of power does not seize hold of the individual's body in a disciplinary grip or regiment individuals into conformity.

These understandings and articulations of power put forward by Foucault and various interlocutors who have developed these themes (e.g. Burchell et al, 1991; Miller and Rose, 2008; O'Malley, 1999; Pasquino, 1986; Rose et al, 2006) have also been the subject of critique. For example it has been argued that governmentality fails to adequately take account of the structural determinants in power-relations (Gray, 2009). In other words, with attention focused towards the micro-physics of power – that is power at its level of operation among individuals, the broader macro picture, such as class inequality is elided.[90] And while Foucault argues that 'power is everywhere' (Faubion, 2002) he is accused of failing to distinguish between benign and malign forms of power.

A second major strand of criticism is that the governmentality perspective precludes the possibility for individual freedom in that it fails to pay adequate attention to the agency of the subject (Ramazonoglu, 1993; Gane, 1986; Gray, 2009).[91] Again, the question of subjectivity is one which Foucault and others, notably Rose (1979, 1988, 1999), who have advanced the governmentality perspective, critically interrogate. Rose (1999) in a range of work on the 'psy disciplines' and 'psy expertise' (defined as the human sciences broadly and psychology in particular) has used a 'history of the present' approach to explore the 'genealogy of subjectivity'. Rose (1988; 1999)

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[90] It is important to observe that macro concepts or 'grand theories' of class such as those generated from Marxism, were themselves critiqued by Foucault as representing constructs based on a particular mode of rationality.

[91] Gordon (1991) argues that some of these criticisms of these perspectives on subjectivity are based on Foucault's earlier work. For example, Gordon (1991) notes that in later work, such as the *Subject and Power,* Foucault (1982) articulates a revised concept of power that stresses the importance of the *active subject,* as the means through which power is exercised. Where Foucault (19832:281) argues: 'Power is exercised only over free subjects, and only insofar as they are free.'

argues that the 'psy' disciplines have played a central role in the construction and understanding of subjectivity.

> That is to say, I suggest that 'psy' – the heterogeneous knowledges, forms of authority and practical techniques that constitute psychological expertise – has made it possible for human beings to conceive of themselves, judge themselves and conduct themselves in new ways. (Rose: 1999: vii)

Therefore, rather than ignoring the issue of human agency or 'subjectivity', it is proposed that governmentality provides a framework for understanding the construction of subjectivity as essential to the process of government (Foucault, 1976a; Rose, 1999).

Gordon (1991) and others have advocated the utility of governmentality as an analytical construct as the lens through which the subject of government can been considered in both a wide and narrow sense, in relation to the 'microphysics' and 'macrophysics' of power.

> Government as an activity could concern the relation between self and self, private interpersonal relations involving some form of control or guidance, relations with social institutions and communities and, finally, relations concerned with the exercise of political sovereignty. (Gordon, 1991:2)

A governmentality perspective has been applied across a range of spheres (Burchell et al, 1991; Rose et al, 2006). Miller and Rose (1990) for example, have explored the manner in which the knowledge on which economies are based enables techniques of liberal government. In a study of national economic planning in post-war France and England, they argue that governmentality has a 'programmatic form' – 'that it is inextricably bound to the invention and evaluation technologies that seek to give it effect' (Miller and Rose, 1990:1). In this specific example, the emergence of 'national accounting' and economic regulation mechanisms, specifically alter the role and mode of governance.[92] The authors argue that through the assemblage of various

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[92] "The shift is from a notion that the ruler need do no more than extract from his or her subjects whatever wealth they may produce, to a notion that a ruler should seek to renew and even augment such wealth." (Miller and Rose, 1990:12) Interestingly, the authors refer to the role of the OECD (Organisation for Economic Co-operation and Development), as a mechanism of governance, through the production of 'tabular comparisons of 'rates of growth' of the industrial nations, which could then be utilized for political arguments.' (Miller and Rose, 1990:15). The role of the OECD in Ireland's

techniques including language, expertise and intellectual technologies, the possibility 'emerged for the governing the economic life of the nation in consonant with liberal democratic ideals' (Miller and Rose, 1990:11). In later work Miller and Rose (1997) further argue that consumption and the 'consumer society' is a form through which the citizen has been reconstructed into a vital economic role as 'consumer', precisely through the rationalities of economic governance.

Miller and Rose (1990:23) also argue that the forms of political rationality evident in these new modes and operations of governance 'constituted the citizen as a social being whose powers and obligations were articulated in the language of social responsibilities and collective solidarities.' Here they point to the multiplicity of social programmes that developed in the post-war era in liberal democracies – e.g. social security, child welfare organisations, universal education, etc. whose aims were the 'conduct of conduct', and which articulated and projected a particular view of subjectivity. [93]

Rose's (1999) work on the role of the 'psy' disciplines in the construction of subjectivity has been referred to. As a development of this theme, Rose (1999) further argues that the particular manner in which subjectivity is constructed via the power-knowledge manifest in these disciplines, serves to make subjects governable. Here by making populations and individuals 'knowable', norms can be articulated and those perceived to be without these boundaries can be governed towards the ideal of 'normality' (Rose, 1988; Hacking, 1991). Rose (1988:191) for example describes the impact of Galton's (1883) formulation of the normal curve:

> ...through the argument that the simple act of comparison of the respective amount of a particular quality of attribute possessed by two members of a group enabled the mathematization of difference. This could be represented in a simple visual form once it was assumed that all qualities in a population varied according to a regular and predictable pattern, and that the characteristics of this pattern were those established

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economic development has been cited as a factor in instituting social, cultural and economic changes – i.e. in changing the forms and rationale of governance (see for example: Garvin, 2004 and Kennedy, 2001).

[93] Burchell (1993:267) provides this useful overview of Foucault's characterisation of *governmentality*: "Defining it in general as 'the conduct of conduct', Foucault presents government as a more or less methodical and rationally reflected 'way of doing things', or 'art', for acting on the actions of individuals, taken either singly or collectively, so as to shape, guide, correct and modify the ways in which they conduct themselves..."

> for the statistical laws of large numbers. Thus individual difference could be inscribed, and hence grasped in thought and managed in reality, by means of representing cumulative acts of comparison in the smooth outline of the 'normal' curve.

As Rose (1988) argues, the psychological sciences play their role here 'in providing the devices by which human capacities and mental processes can be turned into information about which calculations could be made:

> For a domain to be governable, one not only needs the terms in which to speak and think about it, one also needs to be able to assess its condition. (Rose, 1988:184)

Four significant features of liberalism or 'liberal forms of rule' have been identified (Miller and Rose, 2008). Firstly there is a new relation between government and knowledge, secondly a novel specification of the subjects of rule as active in their own government; thirdly there is an intrinsic relation of government with the authority of expertise and fourthly there is a continual questioning of the activity of rule.[94]

And crucially, where government attempts to manage or govern the way that life should be led on this basis, individuals are then led to place demands that their 'needs' be met. Foucault (1976c) describes this as the 'strategic reversibility' of power and points to the manner in which the conduct of conduct is frequently met with 'counter-conduct' (Gordon, 1991). Here again, we see the more nuanced interpretation of power, the view that people are not merely 'dupes' (O'Malley, 1999; van Krieken, 1991).

Shifting the locus of power

The concept of 'governmentality' does not solely locate power in the 'Leviathan' state; rather, power is ever-present and dispersed amongst individuals and in a multiplicity of sites. In this schemata power exists 'beyond the state', there is therefore no rigid demarcation between private and public spheres or between the

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[94] Gordon (1991:16) has also argued that the last of these is a key feature of liberalism: "Liberalism can thus be accurately characterised in Kantian terms as a *critique of state reason,* a doctrine of limitation and wise restraint, designed to mature and educate state reason by displaying to it the intrinsic bounds of its power to know. Liberalism undertakes to determine how government is possible, what it can do, and what ambitions it must needs renounce to be able to accomplish what lies within its powers."

state and 'civil society'. Garland (1997) argues that such a perspective does not deny the role of the State; rather it should not be viewed as the source and emanator of all power:

> So while the state is undoubtedly a nodal point from which emerge all sorts of projects of government, and a locale for the many "private" powers derive support for their authority, it is by no means the *fons et origo* of all governmental activity. (Garland, 1997:359)

Donzelot (1980) has therefore argued that the 'social' - understood as the space between the 'public' and the 'private' sphere - can be better understood as a site of governance, which becomes ever-more blurred as experts become involved in the 'policing of families'. The role of social workers as mediators in this space has been explored in a range of work (e.g. Donzelot, 1980; Parton, 1991; Stenson, 1999; Skehill, 2004). Social Workers as 'psy' experts draw on a range of knowledge that serve to give their disciplinary power its effect (Skehill, 2004).

McGillivray (1997) for example charts the influence of a range of theories such as Erikson's (1950, [1967]) developmental perspective or Bowlby's (1969) attachment theory on discursive representations of adequate families. Here, in particular Stenson (1999:51) has argued that through the intersection of discourses of 'citizenship', mothers become 'conduits of family socialization' – i.e. the means through which families are governed.[95] Stenson (1999) argues that the practice of *biopolitics,* associated with the governance of subjects through the rhetoric of citizenship is not just concerned with the individual; rather (and here he is specifically referring to Social Work practice), it concerns the larger subject of the family and in particular the mother-child relationship.[96]

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[95] Citizenship is a trope through which the individual can be conceived in the network of liberal government, both in a totalizing and individualizing sense. Stenson, (1999:51) elaborates: "An advantage in focusing on the mother as a conduit of family socialization has been the hope that, indirectly, it may have a restraining and civilizing influence on poor boys and men – still potentially the most recalcitrant and troublesome threats to a liberal social order."

[96] "...the appropriate *atomic* unit of citizenship in the biopolitical field, is not simply the individual. Rather, this citizen-subject is part of the larger *molecule* of the family, open as it is to a complex of surrounding social molecules, including the various regulative agencies and social images with which it comes into contact." (Stenson, 1999:50)

Adopting Foucault's (1976a) notion of the manner in which people shape their own subjectivities through the 'technologies of self', Donzelot (1980) argues that the role of expertise such as social work is to inculcate self-governance within the family through the 'tutelary complex.' In the main, therefore, most families do not require the intrusion of social work as their duties of socialisation have been successfully programmed through a diffuse range of fora – for example through public health messages, media, education, etc. For families who internalize the tutelary complex, therefore privacy is the reward (Donzelot, 1980; McGillivray, 1997; Rose, 1989).

> Through the promotion of subjectivities, the construction of pleasures and ambitions, and the activation of guilt, anxiety, envy and disappointment. The new relational technologies of the family are installed within us, establishing a particular psychological way of viewing our family lives and speaking about them, urging a constant scrutiny of our inherently difficult interactions with our children and each other, a constant judgment of their consequences for health, adjustment, development and intellect. (Rose, 1999:208)

Governmentality – Children and Young People

Childhood as a specific site of government and children and young people as subjects of techniques of government have been explored in a range of literature (e.g. Bloch et al, 2003; Harrikari, 2008; King, 1999; McGillivray, 1997; Rose, 1999; Valverde, 1991). Rose (1999) contends that childhood is one of the most governed sectors of personal life, not just because of a concern with childhood per se, but because of what childhood is seen to represent:

> In different ways, at different times, and by different routes varying from one section of society to another, the health, welfare, and rearing of children have been linked in thought and practice to the destiny of the nation and the responsibility of the state. (Rose, 1999:103)

The overlap between the discourses of 'childhood' and 'nationhood' has been noted elsewhere.[97] Valverde (1991) for example has documented the links between the

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[97] McGillivray (1997:13) for example notes: "...the relations of childhood and society – expert tutelage, the regulatory role of the complex of bodies and agencies which comprise the state, the 'problem' of childhood, moral regulation, and the constitution of race, class, sexual and gender relations – are conditioned by social structures, cultures, geographies and nationalist aspirations. Childhood 'is' nationhood."

'social purity' movement and early social work in Canada and the discourse regarding race. In Australia, the removal of Aboriginal children from their families as part of the project of nation-building has been explored by McGillivray (1997) among others. And in the Irish context, Crowley (2005) and Helleiner (2000) have applied this lens to the regulation of Irish Travellers and their children. Indeed Helleiner (2000) has argued that the project of government of Travellers has been exercised through the government of Traveller childhoods.

Folk devils, moral panics and governmentality

Adopting Foucault's (1976a), view on the productivity of discourse, we can view the paradigms of 'welfare' and 'justice' as providing the conditions of possibility through which particular subjects emerge – the young people referred to as 'troubled or troublesome' (Harris and Timms, 1993). These are then the constructs around which concerns are shaped (some would say projected), and modes of governance are directed.

The potency or productivity of this site is illustrated in a range of literature. Pearson's (1983) historic account of the figure of the 'hooligan' illustrates how discourses are formed and shaped around 'transgressive youths'. His central thesis is that while the names of the 'bogeymen' may change they still form the figures of 'respectable fears'. Elsewhere, the concept of 'moral panic' has been deployed to explain the societal reaction to 'folk devils' the figures who emerge from time to time and who are designated as particular targets of intervention (Ben-Yehuda, 2009; Cohen, 1973, 1980; Garland, 2008).[98]

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[98] The concept of 'moral panic', broadly defined as a media-inspired 'amplification of deviance' is derived from the work of Cohen (1973, 1980) and Young (1971) and can be linked to earlier symbolic interactionist theories such as 'labelling theory' (Becker, 1963). The term 'moral-panic' was first used in the literature in an ethnographic study by Young (1971) which explored the media reaction to drug use in Notting Hill, West London in the late 1960s. However, the term and conceptualisation was more fully defined in subsequent work by Stan Cohen (1973) most notably in his seminal study *'Folk Devils and Moral Panics'*, which provides a case-study of societal reaction to the Mods and Rockers in the UK in the 1970s (Ben-Yehuda, 2009). The manner in which the term 'moral panic' has entered into popular discourse is illustrated by the widespread use of the term (Ben-Yehuda, 2009; Garland, 2008). For example, Ben-Yehuda (2009:1) notes that: ' A contemporary Google search yields a third of a million websites under the entry 'moral panic' plus half that number under the title 'moral panics'.' The precise meaning of 'moral panic' within academic literature is not uncontested (e.g. Garland, 2008) and there have been various re-assessments and refinement of the concept (including by Cohen himself in a new introduction to subsequent later editions of his text (see: Cohen, 1980)

McGillivray (1997) further argues that a range of discourses have contributed to the intensification of childhood as a site of government, most notably discourses surrounding 'child abuse' and 'children's rights'. Child abuse or the social construction of child abuse is explored by Hacking (2003) who contends that the construct of 'child abuse' has altered our concept of children, and has therefore changed the manner in which children are governed.[99] Part of Hacking's (2003) contention is that the concern with 'child abuse', some would call it a moral panic (Ben-Yehuda, 2009; Cohen, 1973; Garland, 2008); that has become manifest in Western societies, has had the 'productive' effect of displacing discussions of wider social harms, for example, child poverty.[100] Similarly the discourse of 'children's rights' enables a further penetration of government into children's lives – as rights-bearers, whose rights must be secured the State and indeed civil society is legitimated in intervening towards this end (King, 1999; McGillivray, 1997).[101]

The relevance of 'risk'

It was noted at the outset of this chapter that various debates pertain as to the precise purpose and orientations of systems of intervention for young people within the criminal justice system. While observing trends towards increased punitiveness in the youth justice system in England and Wales, Muncie (2006c) also notes that this overall picture is somewhat obscured by often contradictory and competing ideologies and frameworks – the example of the appropriation of restorative justice approaches in the context of increased penalisation is given.

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[99] It is important to note that Hacking (2003) does not argue that child abuse does not exist, rather he has explored the manner in which it has emerged as a particular discourse associated with a medical model and an imagery of disgust and fear. He contrasts this with the previous discourse surrounding 'child cruelty' which he argues was considered a class-based phenomenon and which did not specifically address sexual abuse.

[100] Here Hacking (2003) notes that for all its horror child abuse kills far less children than child poverty.

[101] The question of children as independent bearers of rights is being played out in the Irish context currently, where there have been repeated calls for a 'Children's Rights Referendum' to insert an Article into the Irish Constitution that will specifically guarantee children's individual rights. The current Constitution has been interpreted as only affording limited rights to a child in her role as a constituent of a family (Shannon, 2004b). Those for and against an amendment have mobilised various arguments in their support – some for example criticise the possible encroachment of the State on the role of the family, others argue that children's rights should be protected independent of their family. In an echo of Hacking's (2003) assertion that the discourse on child abuse distracts from wider structural inequalities, it is notable that the question of children's social and economic rights are elided within this overall discussion (Nolan et al, 2009).

If one looks further afield, this picture becomes even more blurred (e.g. Bala et al, 2002; Hill et al, 2007; Muncie and Goldson, 2006).[102] Nonetheless, a recurrent theme within various analyses of systems of intervention, and this includes child welfare and protection systems, is the manner in which 'risk' has become a central organising principle (Garland, 2001; Gray, 2009; Harrikari and Satka, 2006; Kemshall, 2002; O'Malley, 1999; Muncie, 2006c; Parton, 1991; 1998; 2005).

The ascendancy of the concept of risk has been explored in a range of wider sociological literature (e.g. Beck, 1992; 1999; 2002; 2009; Giddens, 1991, 2001; 2009). Put simply, the broad thrust of these sociological perspectives is that in post or late-modernity, life in contemporary society has become more challenging and uncertain. In this context risk becomes individually focussed as people attempt to negotiate this uncertainty be framing their own individual life course or biographies (Giddens, 1991; 2009). The net effect is that risk becomes increasing individualised through strategies of responsibilisation – that is, the responsibility of individuals to make rational, informed choices regarding the direction of their own life (France, 2007; Furlong and Cartmel, 2007; Gray, 2009).

Various analyses have pointed to the alignment of risk discourse with wider political strategies, in particular in relation to 'neo-liberalism', manifest in a marketisation of the State and the erosion of welfarist principles such as universality (Gray, 2009; Kemshall, 2002; O'Malley, 1999). The strategies of responsibilisation inherent in the risk approach translate into social policy equating rights with responsibilities (e.g. Etzioni, 1993). These particular discourses have been examined in both the child welfare and juvenile justice spheres. Parton (1998; 1999; 2005), for example has charted the impact of risk and 'advanced liberalism' in child welfare, while Muncie (2006c) and colleagues have explored these issues from the perspective of the youth justice system. Beyond the UK sphere, similar trends have been discerned in societies traditionally associated with stronger welfarist orientations (e.g. Harrikari, 2008; Hollander and Tarnfalk, 2007; Put and Walgrave, 2006; Satka and Harrikari, 2008).

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[102] As Gray (2009:444) notes: "Globalization has not produced homogenous systems of youth justice across the world because as youth justice policies are translated into practice, widespread national, regional and local diversity remains under the influence of distinctive socio-political and cultural contexts."

Informed by particular techniques and strategies it is argued that risk has become a central organising principle and technique of governance. Within the youth justice arena in particular the concept of risk, associated with 'risk factor research' (e.g. Farrington, 1995; 2000; 2007), has become increasingly narrowly defined (Kemshall, 2002).[103] This can be well illustrated by the elision of the concept of 'need', which has become 'hybridised' with 'risk' – giving rise to the term 'criminogenic need', which in fact is a variant term for a 'dynamic risk factor' (Gray, 2009; Haines and Case, 2008; Ward and Maruna, 2007).

Overall, as Feeley and Simon (1992) have described, this 'actuarial' approach to justice is characterised by managerialist tendencies in which populations and individuals assessed as posing a risk are 'managed'. Here it is argued that strategies of rehabilitation, undermined by the 'collapse of the rehabilitative ideal' (Garland, 1996; 2001; Ward and Maruna, 2007), are sidelined in an overall schema of 'risk management'. Furthermore, in line with the increased emphasis on 'responsibilisation', an approach of bifurcation is described by Garland (1996) - that of the inclusionary criminology of the 'rational self' and the exclusionary criminology of the 'demonised other'.[104]

In real terms, Gray (2009) and others (e.g. Hannah-Moffat, 2005; Rigakos and Hadden, 2001), note that the logic of risk governance is not apolitical. The strategies and rationales adopted, such as prevention and early intervention target specific sections of the population. This has been a particular theme in the critique of the

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[103] Much of what is termed *risk factor research* or the *risk factor prevention paradigm* is underpinned by the findings of the longitudinal *Cambridge Study of Delinquent Development* (West & Farrington, 1973) and further work carried out by its authors (Farrington, 1989; 1995; 2000; 2007). Similar studies have since been undertaken in other areas – Australia (Homel, 2005); New Zealand (Fergusson et al, 1993); North America (Wikstrom & Loeber, 1998); Scandinavia (Wikstrom, 1998) and Scotland (Smith & McAra, 2004) and have led to the identification of a range of risk factors across four key domains: family, school; community; individual. Family characteristics such as a history of family involvement in criminal behaviour; parental attitudes that condone anti-social and criminal behaviour and poor parental supervision and discipline have been identified as risk factors for future involvement in offending (Farrington, 2007; YJB, 2005). Further contextual factors such as experience of family conflict, low income and poor housing have also been identified.

[104] In an analysis of contemporary crime policy, Garland (1996) identifies a range of inclusionary and exclusionary strategies. Inclusionary strategies include responsibilisation where the offender is conceived of as an autonomous, rational actor while exclusionary strategies of demonisation evoke folk devils in calls for ever more punitive responses.

evidence-base of the risk-factor prevention paradigm (Haines and Case, 2008). And the out-workings of such approaches in social policy terms, in which young people from poorer sections of the population are targeted, have been described (Goldson, 2000; Kemshall, 2002). A further notable characteristic identified in some of this literature is the merging of criminal justice and child welfare responses under the organising rubric of 'risk'.[105]

The risk of 'risk' being viewed as a grand or meta-narrative has been cautioned by governmentality theorists, and indeed a similar point is made in relation to some analyses of neo-liberalism (O'Malley, 2004; Rose et al, 2006).[106] Rather than risk being viewed as a meta-narrative as in the work of Beck and Giddens, from a governmentality perspective, risk is viewed as a technique of government. Rose et al (2006) note that the technologies of risk have become a central analytical focus of governmentality, from areas as diverse as insurance (Ewald, 1991; O'Malley, 1996) to psychiatry (Castel, 1991).

> ...risk is not regarded as intrinsically real, but as a particular way in which problems are viewed or imagined and dealt with. What is specific to risk...is that it is a probabilistic technique, whereby large numbers of events are sorted into a distribution, and the distribution in turn is used to as a means of making predictions to reduce harm. As such it is highly abstract, giving rise to a very wide array of specific forms and ensembles of government. (Rose et al, 2006:95)

Situating the Irish Context

Recent attention has focussed on the historic context of the system of 'child welfare' and 'justice' for children and young people, evident in the establishment of the *Commission to Inquire into Child Abuse* in 2000 and the publication of its final report in 2009. However, with the exception of a small number of studies the subject of the containment of children has received limited scholarly attention within the Republic

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[105] For example, prevention programmes for young people who have not offended being the means through which social services are delivered (Kemshall, 2002).

[106] Rose et al (2006) note that while the concept of *governmentality* was developed in the context of exploring government in liberal societies, the analytical framework of governmentality need not be tied to such a specific set of problems. Here these authors note that there has also been a tendency to view neo-liberalism as a master-narrative, rather than as 'a highly specific rationality' (Rose et al, 2006:97).

of Ireland.[107] Existing studies have explored various aspects of the history of the child welfare and juvenile justice system. Robins (1980) for example traces the emergence of specific institutions for children from the poor-law provisions of the early to late mid-nineteenth century. Barnes (1989) documents the early history of the Industrial Schools (1868-1908) and O'Sullivan (1999) explores the system of child welfare in the Republic of Ireland up until the mid-1990s.

Other relevant studies explore aspects of the wider system and social context. These include Arnold and Laskey's (1985) history of the 'Poor Clares', a religious denomination that operated a number of children's orphanages and Luddy's (1995) research on the role of women, including religious orders in philanthropic work. Broader histories of child welfare and protection such as Skehill's (2000a) study of the positioning of social work within this sphere also contribute to knowledge within the overall area.

While documenting a number of key themes, including the extensive network of institutions, the high numbers of children detained over time and the role that religious orders played in their operation, overall these accounts focus on discrete aspects of the system and are largely descriptive in nature. With the exception of O'Sullivan (1999), Skehill (2000a) and a recent study on the history of the youth justice system by Sargent (2009), these analyses tend to adopt a progressivist lens to their subject. In other words the narrative proceeds along a route of progressive enlightenment with each new phase being presented as an improvement on previous formulations.

Somewhat paradoxically given the recent attention focussed on the history of containment following the publication of the *Report of the Commission to Inquire into Child Abuse (2009),* the current contours of the system and the relevance of the

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[107]Following from a number of reports of child abuse in institutions in particular in the Reformatory and Industrial schools the Irish government established a *Commission to Inquire into Child Abuse* on 23 May 2000. The statutory commission was tasked with inquiring into the historic abuse of children in institutions; providing a forum for the persons who suffered abuse to recount the abuse and make submissions and to publish a report setting out its findings and recommendations, including the steps to be taken to deal with the continuing effects of the abuse and to protect children in similar situations in the present and in the future (*Commission to Inquire into Child Abuse Act, 2000).* In a related, but separate development, the Irish government also established a redress mechanism, the *Residential Institutions Redress Board,* to facilitate financial compensation for the victims of abuse. The Commission published its final (five volume) report in May 2009.

historical context to its operation has received very limited analytical attention. Existing accounts have again tended to be descriptive in nature and are predominantly situated within a socio-legal discourse, evident in a range of literature exploring the impact of the introduction of new legislation (e.g.: Kilkelly, 2006a; 2006b; 2007; 2008; O 'Dwyer, 2002; Seymour, 2006; Shannon, 2004b; Walsh, 2005). These include analyses on the compliance of legislation and operations with international children's rights standards (e.g. Kilkelly, 2005).[108]

The relatively small numbers of existing empirical studies on the 'subjects' of the youth justice, child protection and welfare system (and in particular at sites of containment), have tended to be strongly positivistic in orientation describing characteristics of individual young people (e.g.: Barnes and O'Gorman, 1978a; 1978b; Brierley, 2010; Hart, 196; Hart and McQuaid 1974; Hayes and O'Reilly, 2007; O'Gorman and Barnes, 1991). The overall dearth of empirical studies in the broad area of state responses to children, including the youth justice and child welfare and protection systems has also been noted (e.g. Buckley, 2002; Buckley and O'Sullivan, 2007; Gilligan, 2009; O'Sullivan, 1998; Seymour, 2006). This is compounded by frequent criticisms of the inadequacy of data (both publicly available and otherwise), on all aspects of the system (Kelleher et al, 2000; Gilligan, 2009; Mayock et al, 2008).

Conclusion

It can be argued therefore that in the Irish context, the situation pertains where the system and its subjects are at one level 'public', yet strangely 'invisible', a point noted by Gilligan (2009) in his critical review of this area. Secondly, with the exception of a small number of studies, this area has been subject to limited theoretical attention. This thesis therefore aims to address these areas.

However, further to this, it is also argued that an analysis of the Irish context of containment and in particular the retraction of the institutional template and the consequent attempts made to reconfigure and recalibrate the system can provide a useful insight into the central domains with which this thesis is concerned, namely the

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[108] Most notably the youth justice system's compliance with the *United Nations Convention on the Rights of the Child (UNCRC),* and the various non-binding treaties relevant to juvenile justice.

continued productivity of discourses regarding 'problematised' subjects and the recourse to institutional measures as technique of government.

Chapter Four – Methodology and Theoretical Approach

> We quickly grow used to the way things are. Today more than ever, it is easy to live in the immediacy of the present and lose all sense of the historical processes out of which our current arrangements emerged. (Garland, 2001: 1)

Introduction

The research employed a 'history of the present' method (Foucault, 1977). At its simplest, this method is concerned with the relevance of history to the present. This involves an exploration of the conditions that have led to the formulation or understanding of an event, a problem or a subject in a particular way. It includes an analysis of the contingencies, the discourses and the complex interplay of knowledge and power that have produced such understandings (Dean, 1994; Foucault, 1976). The approach therefore involves a disavowal of 'taken for granted' understandings through the 'problematisation' of a given subject, (Castel, 1994; Dean, 1994; Foucault, 1977).

Particular modes of enquiry are associated with the 'history of the present' method, specifically *archaeology* and *genealogy* which are techniques used to analyse the archive (Dean, 1994; Foucault, 1970; 1972; 1977a, 1977b; 1981a). *Discourse* is defined as a practice (or practices) specified within the archive, where the archive is understood as '...the general system of the formation and transformation of statements.' (Foucault, 1972:30). Through use of the techniques of *archaeology* and *genealogy,* the study of discourse is concerned with the effects of *power* and *knowledge* that delimit the known, the sayable and the doable (Foucault, 1976d).

There are three central themes in Foucault's work over time from which this methodological approach developed and was directed towards: the analysis of discursive practices in the human sciences; the analysis of the relations, strategies and techniques of power and the forms and modalities of the relation of the individual to the self (or selves) (Dean, 1994; Rabinow, 1991; 2000). This chapter attempts to elucidate some of these themes with reference to their application to the study of the

discourse and practice of child detention in the Republic of Ireland from 1970 to the present.

In this thesis analytical attention is directed towards the following: who are children for whom institutionalisation (or the carceral order) continues to be the specified form of government? The question or problem posed in the present is why such a practice, albeit now marginal in numeric terms, remains a productive sphere? In other words, in the context of wide-scale de-institutionalisation, described by Cohen (1985) as one of the 'master shifts' in the history of social control, why do sites of containment continue to emerge, and who are the subjects for whom this form of government is specified?

It is important to note that while the methodological approach is quite clearly influenced by the work of Michel Foucault it has also been informed by various interlocutors of Foucault's work (e.g. Dean, 1994; Castel, 1994; Rose, 1999). The material presented is based on my readings of Foucault's work as and the various interpretations referenced. Some of the difficulties in the application of a method, which some have described as 'anti-method' are outlined (Shiner, 1982).[109] Other studies that have applied a 'history of the present' approach will be discussed (e.g. Donzelot, 1980; Garland, 1985; 1992; 2001; O'Sullivan, 1999; Parton, 1991; Rose, 1999; Skehill, 2000a, 2004; Worrall, 1990).

It is argued that this method is particular apposite in a study which focusses on the manner in which the behaviour of young people is problematised and solutions are affected - in this case the discourse that is mobilised to rationalise or indeed critique the practice of child detention.

'History of the Present'

Foucault's approach to the historical study of a range of social concerns – most prominently, madness, penality and sexuality has been placed under the broad rubric 'history of the present'. This specific term is derived from Foucault's work *Discipline and Punish (1977a)* where he addresses the objective of his study:

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[109] Dean (1994), for example likens it to the following: '...to speak of following 'Foucault's methods' is as paradoxical as speaking of ascending stairs or cascading waterfalls in the graphic work of M.C. Escher. (Dean, 1994:2)

> I would like to write the history of this prison, with all the political investments of the body that it gathers together in its closed architecture. Why? Simply because I am interested in the past? No, if that means by that writing a history of the past in terms of the present. Yes if one means writing a history of the present. (Foucault, 1977a: 30-31)

Further elucidation of some of the key principles of the 'history of the present' are provided in a range of work which address issues of 'method', most notably: *The Archaeology of Knowledge (1972); The Order of Things (1970)*[110]; in shorter essays (e.g. '*Nietzsche, genealogy and history'* 1977b); in lecture series[111] and in interviews (e.g. 'Questions of Method', 1981a). However, as Dean (1994) and others note, Foucault did not set out an explicit 'methodological toolkit'; rather he outlined some key elements of a broad approach (some of which changed over time) and which have been subject to various interpretations.[112]

It is important to underline that the 'history of the present' is situated within a broader intellectual concern involving a challenge towards progressivist interpretative approaches and a critique of what might otherwise be seen as 'taken for granted' epistemological assumptions.[113] It also centrally concerns an exploration of the interrelationships between knowledge, power and subjectivity (Dean, 1994; Foucault, 1991a; Macey, 1994; Rabinow, 1991; 2000).

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[110] This text was first published in French as *Les Mots et les choses* in 1966 and was translated into English in 1970.

[111] In his position as Chair in the History of Systems of Thought at the College de France, Foucault delivered a series of public lectures where he set out the focus of his study and his programme of research. These lectures published in various forms also provide insight into methodological approaches and the theoretical basis of Foucault's work. My main source of reference for these lectures has been Macey (2003) *Society Must be Defended* – which collates all of the (available) 1976 lectures in one edition; Faubion's (2002) reader entitled *Michel Foucault Power – Essential works of Foucault 1954-1974 (vol. 3)* and Rabinow's (2000) reader entitled: *Michel Foucault Ethics – Essential Works of Foucault, 1954-1974 (vol.1).*

[112] The essay on Nietzsche can be given as one example, while Nietzsche clearly influenced Foucault's approach, not least in his use of the term 'genealogy', Dean (1994) cautions against over-interpretation of Foucault's essay on Nietzsche's methods, arguing that some have erroneously interpreted this as an essay on Foucault's own approach. Dean (1994:19) "I would suggest that Foucault's turn to Nietzsche is not for a model of methodology to follow but for a kind of incitement that would force the conceptualisation of the relation of historiography to its present outside the rarefied positivism of archaeology."

[113] Foucault (1991) specifically critiques the *Cartesian* mode of thinking and rationality to the Enlightenment, and a particular mode of 'Western' thought (Rabinow, 1991).

Knowledge, Power and Subjectivity

Foucault (1977a) argues that it is the mutual interaction of power and knowledge that brings *subjects* to light and new forms to *subjects* – hence the interrelationship between knowledge, power and subjectivity. This is demonstrated in work where the visible forms of the asylum and the prison are seen both as manifestations and productive of social practices which engender and are engendered by forms of knowledges (Foucault, 1967; 1977a). Such practices are also the products of power.

> My aim will be to show you how social practices may engender domains of knowledge that not only bring new objects, new concepts, and new techniques to light, but also give rise to totally new forms of subjects and subjects of knowledge. The subject of knowledge itself has a history; the relation of the subject to the object; or more clearly, truth itself has a history. (Foucault, 1973; in Faubion, 2002:2)[114]

Both *power* and *knowledge* are viewed as 'productive' and are seen as being constituted and made manifest through discourse. According to this understanding, power is not essentially 'repressive', it also operates through resistance; it is not 'possessed' - rather it is produced and it produces.[115]

> Power must, I think, be analyzed as something that circulates, or rather as something that functions only when it is part of a chain. It is never localised here or there, it is never in the hands of some, and it is never appropriated in the way that wealth or a commodity can be appropriated. Power functions. Power is exercised through networks; and individuals do not simply circulate in those networks; they are in a position to submit and to exercise this power. They are never the inert or consenting targets of power; they are always its relays. In other words, power passes through individuals. It is not applied to them. (Foucault, 1976d: 15)

Viewed through this lens, the question therefore shifts from 'who possesses power?' to 'how is power practiced?' The metaphor of 'capillaries' is used to capture the

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[114] This quote is from one of a collected series of five lectures delivered by Foucault at the Pontifical Catholic University of Rio de Janeiro in May 1973. The lecture series was published as a chapter entitled: *Truth and Juridical Forms* in Faubion (Ed) 2002.

[115] Hunt and Wickham (1994:83) observe: "Power and resistance are together the governance machine of society, but only in the sense that together they contribute to the truism that 'things never quite work', not in the conspiratorial sense that resistance serves to make power work perfectly."

vitality and circulatory qualities of power.[116] It also reflects the manner in which power is viewed as acting through subjects rather than being an entity that is possessed by them and by this same token power is viewed as 'producing' subjectivity (Foucault, 1976d).

One of the central concerns in Foucault's overall body of work, is what he characterises as the shift from *sovereign power* (denoted by the figure of the king) to *disciplinary power,* a type of power exercised through surveillance, codification and classification. In both conceptions knowledge is intrinsic to the articulation and operation of power. Juridical-political knowledge is conceived of as both a mechanism of power and as providing legitimation to the power of the monarch (Foucault, 1976e).[117] Through his range of work on what he described as the 'operation of power at the extremities' (Foucault, 1976e),[118] Foucault (1976, 1977a) critically argues that the shift to the mode of disciplinary power, is exemplified and enabled by a different form of knowledge – 'clinical knowledge' (Foucault, 1976b) or 'psy' knowledge (Foucault, 1977a; Rose, 1999) and the associated disciplines (such as medicine, psychiatry, psychology) that give this knowledge effect.[119] This mutuality of power and knowledge is referred to as the *power-knowledge nexus* (Faubion, 2002).

Subjectivity is a further key analytical concern. Foucault (1977a, 1982) argues that subjectivity is formed at the intersection of knowledge and power. This particular theme is illustrated through his interrogation of the 'psy' knowledges, perhaps most

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[116] Wahidin (2002:30) offers further explanation on the capillary as metaphor: "...A biological metaphor in fact, used to denote a kind of power that reaches into every part of the 'body' of society. Capillaries (literally) are a multitude of intersecting fibrous channels...through which blood circulates, and this idea is meant to shift our attention away from large-scale centralized power of the state towards the less visible operation of decentralized networks."

[117] The elaboration of juridical knowledge has centred on the role of the monarch, on the organisation and limits of royal power, and even following the move from monarchical to other forms of rule, it is the basis on which the limits and prerogatives of power continued to be articulated. (Foucault, 14th January 1976 (Foucault, 1976e).

[118] Again, the metaphor of the capillary is apposite. Foucault (14th January, 1976e [2004:27]) argues that the operation of power at the peripheries, at 'the outer limits where it becomes capillary' offers the most illuminating sites of analyses and the points of transformation from juridical to disciplinary knowledge.

[119] It is important to note that the move from sovereign to disciplinary forms of power was not viewed as one of completion. Foucault (1976e) famously declared that we had failed to 'cut off the head of the king'.

vividly at the site of the clinic, where it is argued that the subject is brought to knowledge through a range of techniques including observation, recording, investigation, division, classification and verification (Foucault, 1977a, 1982). At once the subject is individualised and totalised by being measured against the norm (the average of the multiple processes of individualisation). The subject is formed at this site of productivity. In later work, the process of *subjectification,* i.e. the manner in which the subject is self-produced and regulated is further explored (Rabinow, 2000).

> Knowledge, power and subjectivity are made manifest through discourse, where discourses are understood as 'rule-governed systems for the production of thought' (Dean, 1994:14).

Discursive practices are characterised by the demarcation of a field of objects, by the definition of a legitimate perspective for a subject of knowledge, by the setting of norms for elaborating concepts and theories. Hence, each of them presupposes a play of prescriptions that govern exclusions and selections. (Dean, 1994:11)

Techniques for the analysis of discourse are central to understanding the 'history of the present' approach (Foucault, 1973). Discourse is not understood in unitary terms; rather it is seen as a space of 'differentiated positions'. Therefore part of the process of analysis concerns an interrogation of the multiplicity of discourse to explore the manner in which power and knowledge give subjectivity effect.[120]

Problematisation and eventalisation

Problematisation and *eventalisation* are two further key concepts in the history of the present method. Problematisation involves the questioning of the 'representation of a pre-existing object' (Castel, 1994) through the exploration of the discursive and non-discursive practices that brings the 'object' into existence. The starting point of such an analysis is the 'present situation'. This means considering the history of a *problem* in terms of how we see it in the present (Castel, 1994; Foucault, 1977a; Skehill, 2004). Here Castel (1994:238) articulates the following understanding:

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[120] "Discourse is not a place into which subjectivity irrupts; it is a space of differential subject-positions and subject-functions." (Foucault, 1991b:58)

> Analyzing a contemporary practice means viewing it from the standpoint of the historical basis out of which it emerges; it means grounding our understanding of its current structure or the series of its previous transformations. The past does not repeat itself in the present, but the present is played out, and innovates, utilizing the legacy of the past. (Castel, 1994:238)

Key to the application of this approach is to locate the formation of the 'problem' at a given point. The discourse through which problems emerge reflects themes and patterns of continuity and discontinuity (Castel, 1994; Skehill, 2003; 2007). To conceive of this in spatial terms, these are sites or spaces of analytical concern.

On a more temporal level - *eventalisation* – the analysis of an event through the multiple processes that constitute it is also necessary. This involves a breaching of self-evidence, in other words, challenging progressivist narratives or taken-for-granted assumptions, through a perspective that understands that '...things weren't as necessary as all that.' (Foucault, 1981a in Faubion, 2002:226).[121] However, a note of caution is voiced, the rationale for using such an approach should be adequately set out, for it otherwise risks tautology. It is not a methodology that should be applied arbitrarily nor is it a licence to write 'sloppy history' (Castel, 1994).[122]

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[121] "It means making visible a *singularity* at places where there is a temptation to invoke a historical constant... to show that things weren't as necessary as all that." (Foucault, 1981a in Faubion, 2002:226) As a means of explanation, it is useful to cite an example that Foucault provided in one of a series of lectures in his role of Chair in the History of Systems of Thought at the College de France on 14th January 1976. Here he described some assumptions read from the analysis of history inspired by Marxist orientations - that the mad (and other populations) were detained because they were surplus to the means of production, or that 'infantile sexuality' was subject to control and regulation because it was not a 'productive force'. While he states that: "Such deductions are always possible; they are both true and false. They are essentially too facile, because we can say precisely the opposite.' (Foucault, 1976c [2004:31]) Foucault therefore argues that grand theories that locate explanations at the site of the domination of the bourgeoisie, do not adequately explain the manner or the mechanisms through which power operates. What is therefore called for are techniques which firstly problematise such explanations (not withstanding their explanatory utility) and further set to interrogate the 'microphysics of power'.

[122] Critiques of this method, usually drawn from the ranks of historians, although this quote is from a sociologist/criminologist, argue that the 'history of the present' is little more than 'sloppy history', a point to which this chapter returns: "Sociologists of Foucaultian persuasion defend sloppy historical research of the sort Foucault himself did, ignoring accessible primary sources, because they claim they are doing a history of the present rather than the past! " (Braithwaite, 2005: 348)

Archaeology, Genealogy and Discourse

> This philosophical attitude has to be translated into the labor of diverse inquiries. These inquires have their methodological coherence in the at once archaeological and genealogical study of practices envisaged simultaneously as a technological type of rationality and as strategic games of liberties; they have as their theoretical coherence in definition of the historically unique forms in which the generalities of our relations to things, to others, to ourselves have been problematized. They have their practical coherence in the care brought to the process of putting historico-critical reflection to the test of concrete practices. (Foucault, 1991a:50)

The previous section has set out some of the understanding and principles underpinning the 'history of the present' as an orientation. There are two key approaches set out by Foucault - *archaeology* and *genealogy* - that aim to give this orientation effect. Both methods are utilised in the study of *discourse.*

The concept of 'discourse' is a key term in understanding Foucault's work (Castel, 1994; Dean, 1994; Hall, 1997 [2004]). For Foucault, discourses were historically variable ways of specifying knowledge and truth, in other words, what is possible to speak of at a given moment. He specifically identified discourses as: '...practices specified in the element of the archive', where the archive was '...the general system of the formation and transformation of statements' (Foucault, 1972:30-31). As 'practices' discourses are productive and function as sets of rules, they allow the production of statements that can be viewed as either true or false. In the application of this method in a study of the discourse of child protection, Parton (1991) states the following:

> Discourses are structures of knowledge through which we understand, explain and decide things...They are historical and political frameworks of social organisation that make some social actions possible while precluding others. (Parton, 1991:3)

The term 'discourse' is also used as an adjective: discourses exist in 'discursive fields' and give rise to 'discursive formations' (Foucault, 1991b). A 'discursive formation' is understood to refer to patterns of discourse supporting a common understanding or strategy for dealing with an object of concern – the 'this' or 'that way' of dealing with a problem (Hall, 1997 [2004]). The term *episteme* is used to describe 'systemic understanding' (Rabinow, 1994), or the 'characteristic of the way

of thinking or the state of knowledge at any one time' (Hall, 1997 [2004:73]). Discourses produce and are products of 'regimes of truth, these regimes denote limitations and prescriptions (Foucault, 1981a). They specify what is to be done (effects of jurisdiction) and what is to be known (effects of veridiction).[123]

The use of these various definitions and terms point to the possible breadth and depth of any analysis; Foucault was clear to distinguish his method and understanding of 'discourse analysis' from more traditional forms of linguistic analyses whose focus was primarily on the mechanics or syntax and construction of language (Wetherell, 2004; Wodak and Krzyzanowski, 2008).[124] For Foucault (1991b), the point is not where discourses come from, or what interest they represent, but rather what are their 'conditions of possibility' and what effects of 'power and knowledge' they create. For him there is no all-powerful subject who manipulates discourse, rather there are 'discoursing subjects', subjects who deploy discourse. One of the challenges therefore, is how one analyses the various levels of discourse, the condition of possibility of these formations and the effects that they produce; for this two techniques are specified: *archaeology* and *genealogy*.

Archaeology and Genealogy

The archaeological method is described as the analysis of the statement as it occurs in the archive (Foucault, 1972). This involves exploring networks of what is said, describing regularities and differences or patterns of continuity and discontinuity. Points of 'discontinuity' are places where objects are specified, designated and acted

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[123] "Then, it seems, the moment came to consider these facts of discourse no longer simply in their linguistic dimension, but in a sense ...as games, strategic games of action and inaction, question and answer, domination and evasion, as well as struggle. On one level, discourse is a regular set of linguistic facts, while on another level it is an ordered set of polemical and strategic facts. This analysis of discourse as a strategic and polemical game is, in my judgment, a second line of research to pursue." (Foucault, 1973 in Faubion, 2002:2-3).

[124] Although it is worth observing that more recently the genre of discourse analysis has been significantly broadened (see: Wetherell et al, 2004; Wodak and Krzyzanowski, 2008)."The notions of *text* and *discourse* have been subject to a hugely proliferating number of usages in the social sciences...discourse means anything from a historical monument, a *lieu de mémoire,* a policy, a political strategy, narratives in a restricted or broad sense of the term, text, talk, a speech, topic-related conversations, to language *per se.* We find notions such as racist discourse, populist discourse, gendered discourse, discourses of the past, and many more – thus stretching the meaning of *discourse* from a genre or register or style, from a building to a political programme. This causes and must cause confusion – which leads to much criticism and many misunderstandings." (Wodak and Krzyzanowski 2008:1)

upon but they are 'never anything more than to register a problem that needs to be solved' Foucault (1981a: 226). Patterns of continuity are equally fruitful as here implicit understandings, ways of knowing and acting can be discerned (Faubion, 2002).

The archaeological method is 'non-interpretative' and 'non-anthropological' (Dean, 1994). By non-interpretative it is meant that the aim should be to avoid judgment while seeking 'deeper meaning' (Kendall and Wickham, 1999; Skehill, 2007). By 'non-anthropological' it is meant that its concern is not with the author of the statement but with the statement itself. This is congruent with Foucault's disavowal of traditional historical methods that focus on epochs and great figures of history.

Archaeology involves description of the institutions that acquire authority and provide the limits within which discursive objects may act or exist. It is important, to note however, that the target of analysis is not *institutions* per se, but the *practices* that make them possible (Foucault, 1981a).[125] Possibilities include the architectural arrangements, disciplinary knowledges, the scientific propositions and the regulations that prescribe activity (Castel, 1994).

Foucault developed his methodological orientation in later works, using the term *genealogy* to describe this approach.[126] In explaining the use of this method in *Discipline and Punish (1977a),* Foucault later described his desire to reactivate the 'project of a "genealogy of morals" (Foucault, 1981a: 224)[127], elsewhere he described the genealogical approach as an attempt to account for power (Foucault, 1984a). In common with the archaeological method, lines of transformation form key analytic

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[125] "...the hypothesis being that these types of practice are not just governed by institutions, prescribed by ideologies, guided by pragmatic circumstances – whatever role that these elements might play – but, up to a point, possess their own specific regularities, logic, strategy, self-evidence, and "reason". It is a question of analyzing a "regime of practices" – practices being understood here as places where what is said and what is done, rules imposed and reasons given, the planned and the taken-for-granted meet and interconnect." (Foucault, 1981a:225)

[126] The term 'genealogy' references Nietzsche's text: *Genealogy of Morals* (1887), (Macey, 1994; Dean, 1994).

[127] Nietzsche's *Genealogy of Morals (1887)* is centrally concerned with evolution of moral concepts – such as 'good' and 'evil'. One of the work's central theses highlights how the utility of a concept or entity should not be equated with is origin. Nietzsche (1887) further discerns that the basis for all human actions is a 'will to power' – a basic instinct towards domination underlying all human behaviour (Janaway, 2007).

foci. For example in *Discipline and Punish (1977a)*, the question posed is - 'why did the prison become the primary site of punishment?' (Foucault, 1981a).

Such explorations necessitate an approach which problematises the concept under consideration (e.g. punishment, prisons) and then seeks to explore the exercise of power that created knowledge and similarly the knowledge that produces the effects of power (Ramazonoglu, 1993).

> So I was aiming to write a history not of the prison as an institution, but of the *practice of imprisonment*: to show how this way of doing things – ancient enough in itself – was capable of being accepted at a certain moment as a principal component of the penal system, thus coming to seem an altogether natural, self-evident, and indispensable part of it. (Foucault, 1981a:225)

Using the *genealogical method* in *Discipline and Punish (1977a),* Foucault illustrated how the prison as a form of visibility (a visible thing) produces statements about criminality, while statements about criminality produce forms of visibility, which reinforce the prison. These are further supported by wider discursivities concerning for example, the appropriate manner in which to discipline sovereign subjects (e.g. through the education system or via the military). The key distinction of the genealogical approach is this concern with wider discursivities.

> If I were to characterise it in two terms, then 'archaeology' would be the appropriate methodology of this analysis of local discursivities and 'genealogy' would be the tactics whereby, on the basis of descriptions these local discursivities, the subjected knowledges which were thus released would be brought fully into play. (Foucault, 1981b:85)

Gane (1986) characterises the difference as a distinction between 'formation' and 'regulation'. Skehill (2007), who has used a 'history of the present' method in her research on the history of social work in the Republic of Ireland describes archaeology as 'the way in which a discourse is constructed in its own right' and genealogy as 'the surrounding conditions of possibility…which create the spaces for the discourse to be accepted as 'true' (Skehill, 2007:458).

Using the example of how social work came to occupy a central role in the sphere of child protection, Skehill (2007) describes her archaeological analysis as attempting to

set out the ideas, theories, practices and beliefs that underpin social work in its 'particular social and temporal context', while at the genealogical level the central role that social work came to occupy vis a vis child protection is situated within wider discursive practices (Skehill, 2007:458). Foucault (1980:85) makes the following distinction:

> Where archaeology provides us with a snapshot, a slice through the discursive nexus, genealogy pays attention to the processal aspects of the web of discourse, its ongoing character.

At one level, therefore, the distinctions lie in the parameters of analysis, the difference between a 'snapshot' and a 'web'. The potential multiplier-effect of such a process is acknowledged:

> In concrete terms: the more one analyses the process or "carceralization" of penal practice down to its smallest details, the more one is led to relate them to such practices as schooling, military discipline, and so on. The internal analysis of processes goes hand in hand with a multiplication of analytical "salients". (Foucault, 1981a:227)

As Castel (1994) therefore observes there is a tension between an exhaustive treatment of archive material and the process of selection. One of the challenges presented in the use of this method is when to stop mining the archive, or as Skehill (2007) puts it: 'how far back does one go?' In attempting to answer this question, she states:

> Most simply put, one goes back to the moment which helps to address the problem in the present; the point which marks the forerunner to the question as it is currently formulated. (Skehill, 2007:455)

A further important dimension is the 'ongoing character of the 'discursive nexus' (Foucault, 1981b:70). So while one may be engaged in researching a 'history of the present' of a particular subject, such a project is necessarily incomplete. This emphasises a necessary move away from 'presentism', that is the sense in historical terms that we have arrived at a point of logic and no other destination was possible (Skehill, 2007). For if nothing else the application of these methods underline the

contingent nature of understanding and thereby provide a point of illumination from the standpoint that holds that 'things weren't as necessary as all that'.

Interpretations and critiques

> Foucault carved numerous turns of phrase into ice-sculptures, which had, for a moment, sharp contours. Then he walked away from them, insouciant, and let them melt, for he no longer needed them. (Hacking, 1998:85)

There are several critiques of the 'history of the present' approach.[128] These tend to form around two main strands – criticisms of the theoretical basis of the method, principally regarding the underpinning conception of knowledge, power and subjectivity and their interrelationships; and secondly criticisms regarding the utility of the methods. Braithwaite's (2005) accusation that the 'history of the present' is merely 'sloppy history' typifies the latter type of critiques. Given that the method is clearly bound to the theoretical understanding, both forms of critique are addressed.

Foucault's unique conception of power was based on an understanding of the productive characteristics of power; he argued that 'power is everywhere' and that it passes through subjects rather than being simply possessed by them. Here critiques of this view argue that it fails to adequately address the structural determinants (such as class, race and gender) of power relations (Gane, 1986; Ramazonoglu, 1993). Foucault's (1976e) response to such challenges was to state that his focus of interest lay in the *practice* of power rather that in the question of who *'possesses'* power. Furthermore, some structural understandings of power (in particular Marxism) are based on the concept of the sovereign power and are therefore underpinned by juridical-political forms of knowledge. Foucault's (1976e) argument is that 'disciplinary' forms of power/knowledge more adequately explain the manner in which power is exercised and operates in 'liberal' societies (Burchell et al, 1991).

Relatedly, Foucault (1976e) describes power from a different vantage point than the meta-narratives of Marxism or other grand theories. He is concerned with power from below and power at the peripheries, at the far reaches of the capillaries, the microphysics of power. Hence the analytical focus at the level of the institution and

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[128] Indeed the literature in this area is broad (Faubion, 2002; Hacking, 2004). This section of the chapter provides an overview of some of the key themes discerned in the literature that are relevant to this study.

the manner in which power is exercised on problematised populations. Given the subject of this thesis, the discourse and practice of child detention in the Republic of Ireland, it is my contention that this methodological approach fits with the subject of my concern. For as I will demonstrate, the detention of children is indeed something that occurs more and more at the peripheries of a system that articulates the view that it should be used as a 'measure of last resort'. Indeed a central of the aim of this thesis is to examine the continued productivity of this practice in light of such discourses.

Another criticism of Foucault in this respect is that he fails to pay adequate attention to the agency of the subject; that is the possible manner in which the subject acts and influences their environment (Ramazonoglu, 1993; Gane, 1986). Foucault adopted the position that the power/knowledge nexus acts to 'produce' the subject and hence subjectivity. Although as Hall (1997 [2004]), notes, Foucault's later work paid closer attention to the manner in which subjectivity is also self-produced (albeit within these constraints). In the *Subject and Power,* Foucault (1982) articulates a revised concept of power that stresses the importance of the *active subject,* as the means through which power is exercised. As described in the previous chapter, this theme is further developed in later work on *governmentality* (Gordon, 1991).

Nevertheless within this method it is clear that the identity of the 'speaker', or the originator of the discourse is given limited attention (Foucault, 1991b); the central concern is the 'conditions of possibility' that enable a subject to be conceived of and spoken about in a particular way. Methodologically, it therefore follows that the 'speaker' is of limited relevance. This position has subsequently been challenged on a number of fronts, not least in the field of what has been termed 'critical discourse analysis' (van Dijk, 2008), where one of the key foci of analysis in the relationship between discourse and power is the power status of the 'speaker'.[129] From a feminist perspective, Ransom (1993) also argues that we do not 'disappear from our theories' and therefore it does matter *who* is speaking when we speak of power.

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[129] This field of research has been particularly productive in analysing discourses of racism, van Dijk (2008) for example has employed this methodology to analyse parliamentary debates to explore how nationalist discourse can be mobilised in a manner that invokes racism.

Bearing these issues in mind, it is not without the bounds of the methodology to focus on how particular forms of knowledge enable certain speakers or discourses to gain dominance while others are viewed as marginal. For example, one of the core arguments made in relation to the operation of 'disciplinary' power is that it is enabled by the ascendancy of the 'psy' disciplines (Foucault, 1977a). It therefore stands that a psychiatrist speaking from the authority derived from the power/knowledge of that discipline, for example, will be afforded a different status than the 'patient' or subject of which she speaks. Whether the personal biography of the speaker is relevant is a moot point.

Given the particular focus and understanding of discourse posited in this approach, can it be said that anything exists outside of discourse? (Hacking, 2003). Latour (1987) thoroughly rejects this perspective arguing that the 'facts of material phenomenon' follow discourse, not the other way around; and Soper (1993:32) argues that both Foucault and his interpreters employ the concept of a 'discursive construction' in ways that are 'too facilely anti-naturalist':

> For it is one thing to argue that we do not have experience of the body other than as symbolically and culturally mediated; it is quite another to suggest that bodies are 'constructed' out of cultural forces in the same manner that, say, telephones are put together. One crucial difference here is that the body exists as a physical entity prior to any cultural work of production in a way that telephones do not. (Soper, 1993:32)

Soper (1993) therefore argues that while Foucault's emphasis on discursive formations are invaluable to understanding our corporeal existence, this ceases to be productive if taken to the point where bodies are said to exist only as discursive formations. The question therefore arises as to the status of the non-discursive or pre-discursive reality in Foucault's work. Kendall and Wickham (1999) point out that despite the emphasis placed on the productive effects of discourse, Foucault does not suggest that everything is discourse.

In this thesis the question of the subject is considered from the perspective of the productivity of discourse. The manner in which problematised subjectivities in particular are constructed through the power-knowledge nexus is of central concern. While subjectivity is explored from the perspective of such formations, of further analytic concern is the manner in which strategies of inclusion and exclusion are

deployed to govern subjectivities. Critically it is argued that viewed through the governmentality lens, the range of complex and oscillating rationales through which such subjectivities are targeted can be more usefully explored.

In addition to questions regarding the theoretical underpinning of this approach, a further persistent criticism is that the methods are not sufficiently robust (Castel, 1994, Dean, 1994). In other words to employ the approach is to risk historical selectivity or inaccuracies (Donnelly, 1986; Castel, 1994; Braithwaite, 2005). For example, Grimshaw (1993) argues that Foucault's later writings on 'ethics', based on an analysis of Greek morality regarding the 'care of self', fails to contextualise the elitist and male-dominated society from which this concept of ethics arose. In *Discipline and Punish (1977a);* Donnelly (1986:24) points that the *panopticon* is described in 'highly rarefied terms', because it is describing a template that was never actualised.[130] Donnelly (1986) therefore argues that the argument that Foucault (1977a) develops; that 'discipline' becomes a generalised form of *panopticism* thus only works on the level of analogies, thereby undermining both the analytical approach and the central argument.

In one sense, the critique of Foucault's methods by some historians can be viewed as symptomatic of the challenge that his work presented to the *'pouvoir-savoir'* of history. If any subject was implicated in Foucault's critiques it was 'history' and the progressivist and continuous narratives that are so integral to its articulation. In the 'history of the present' the concern is not 'historical chronology', but the 'shifts in strategies' through which different discourses emerge (Castel, 1994). And while techniques such as 'problematisation' provide a 'powerful interpretative grid', it is not suggested that this is the only form of interpretation (Castel, 1994). Nonetheless,

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[130] Jeremy Bentham's blueprint of the *panopticon* a term meaning 'all-seeing' is described by Foucault (1977a: 200): "Bentham's *Panopticon* is the architectural figure of this composition. We know the principle on which it is based: at the periphery, an annular building; at the centre a tower; this tower is pierced with wide windows that open onto the inner side of the ring; the peripheric building is divided into cells, each of which extends the whole width of the building; they have two windows, one on the inside, corresponding to the windows of the tower; the other on the outside, allows the light to cross the cell from one end to the other. All that is needed, then, is to place the supervisor in a central tower and to shut up in each cell a madman, a patient, a condemned man, a worker or a schoolboy...He is seen, but he does not see; he is the object of information, never a subject of communication." Foucault (1977a:201) "Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power."

Garland (2001: ix) argues that problematising taken-for-granted understandings yield a 'productive effect in stimulating further empirical studies and an energetic critical response'.

By way of example it is illuminating to look at how Foucault's work invites its own 'problematisation'. Garland (1992), for instance critiques Foucault's (1977a: 226) characterisation of criminology, (primarily iterated in *Discipline and Punish*)[131], as a *' garrulous discourse'* posturing as a branch of academia which exists mainly to legitimise penal power. Garland (1992) argues that this conceptualisation of criminology fails to adequately depict the range and breadth of the criminological discipline in the twentieth century. One of the reasons for this is that the focus of analysis in *Discipline and Punish* (Foucault, 1977a) was the 'rationality underpinning the modern prison'; therefore the prism through which 'criminology' is viewed is refracted and skews the interpretation.[132]

> Foucault's analysis of criminology should be viewed not as a history of criminology but instead as a genealogy of one of its elements. (Garland, 1992:411)

Garland's (1992) critique illustrates that other genealogies are *possible* and necessary, and cautions against over-generalisations, a point to be borne in mind when attempting to apply this methodology.

It seems clear that Foucault (1981a) viewed his own approaches as 'game openings': suggestions rather than prescriptions:

> My work takes place between unfinished abutments and anticipatory strings of dots. I like to open up a space of research, try it out, and then if it doesn't work, try again somewhere else. On many points – I am thinking especially of the relations between

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[131] In addition to *Discipline and Punish (1977a),* Foucault also set out his critique of criminology in other work, including *I Pierre Riviere, having slaughtered my mother, my sister and my brother...(*Foucault, 1975); and in the interviews: *'About the concept of the 'Dangerous Individual' in nineteenth century legal psychiatry' (1978); 'What is called punishing?' (1984b)* and *Prison Talk (1988b).* The first two of these interviews are reproduced in Faubion's (2002) edited collection entitled: *Michel Foucault, Power. Essential Works of Foucault 1954-1984.* The interview *Prison Talk* is contained in the collection edited by Gordon (1988) entitled: *Power/Knowledge: Selected Interviews and Other Writings 1972-1977.*

[132] ... a serious problem occurs when he presents the genealogical account as a history of criminology, rather than one strand (albeit a fundamental one) in the more complex and more eclectic field of criminological discourse. (Garland, 1992:407)

> dialectics, genealogy and strategy – I am still working and don't yet know whether I am going to get anywhere. What I say ought to be taken as "propositions", "game openings" where those who may be interested are invited to join in - they are not meant as dogmatic assertions that have to be taken or left en bloc. (Foucault, 1981a :223-224)[133]

However, the danger identified by some lies in the tendency of interpreters to seek to simplify and unify these internal inconsistencies (Ramazonoglu, 1993; Kendall and Wickham, 1999).[134] It is necessary therefore when using elements of Foucault's approach to elucidate the purpose and rationale for adopting these methods. Congruence between theory and method is key. The following section of this chapter provides some examples of studies where these methods are used before outlining the specific approach taken in this study.

Applications of Foucault's methodology

A range of work within the social sciences has explored the manner in which particular objects emerge as 'problems' to be targeted through specific programmes of intervention – the 'this or that way' of dealing with a problem (Miller and Rose, 2008). Both objects and interventions emerge and are specified through discourse. Given that such targets are the *sine qua non* of disciplines such as social work, psychiatry or criminology and that these 'psy disciplines' are central to the disciplinary power-knowledge nexus, it is not surprising that it is here we see some of the most productive application of these methods.

The 'history of the present' method has been applied in a range of studies in social work, particularly in relation to interventions with children and families (Donzelot,

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[133] This version of the interview is published in Faubion (2002) and is entitled: "Questions of Method". The original interview took place in 1978 and was published in 1980 under the title: "Round Table of 20 May 1978". Faubion (2002) notes that when French editors published this interview the questions posed by the various interlocutors were 'condensed' so that the interview reads as Foucault's response to the 'collective historian'. (Faubion, 2002:238)

[134] A point related to this is that Foucault's work frequently elided disciplinary categorisation, this is captured well in Dean's (1994) discussion concerning the position of history in sociology – making the argument for the application of 'critical and effective history' in sociological studies, Dean (1994:8) argues that sociology has 'bracketed- out the complexities and difficulties that effective historical analysis most pose for explanatory generalisation'. This is linked to the conceptualisation of sociology as a subject or product of modernity. Further Foucault frequently resisted any attempt by commentators to align him with particular theorists or schools – rejecting classifications of himself as a Marxist, a Freudian, a Nietszchean, a structuralist, a post-structuralist or a post-modernist thinker (Gane, 1986; Dean, 1994; Faubion, 2002).

1980; Harrikarri & Satka, 2006; Parton, 1991; Skehill, 2000a, 2004). One of the earliest examples of these is Donzelot's (1980)[135] *The Policing of Families,* where the genealogical method is used to:

> ... question social work regarding what it actually does, study the system of its transformations in relation to the designation of its effective targets. (Donzelot, 1980:99)

Here Donzelot (1980) uses the genealogical approach to trace the 'history of the social' as the site between the private sphere of the family and the public sphere of society. He argues that it is within the space of the 'social', that social work intervenes to inculcate the norms of society on the 'maladjusted'.[136] The designation of 'maladjustment' and other pathologies are to be found in the authority of the 'psy' disciplines from which social work draws its power-knowledge status. Donzelot (1980) uses the term *tutelary complex* to explain the inculcation of specified norms, and makes the argument that for families who self-govern, the reward is privacy.

Taking the implementation of the *Children Act, 1989,* in England and Wales as his starting point, Parton (1991) adopts a similar approach in order to explore the genealogy of the government of families. Here he contends that the passage of this legislation represents a realignment in the relations of government between children, families and the state, a fluid space in which social work must mediate.

In the Irish context, Skehill (2000a, 2003) employs a 'history of the present' method to critically examine the nature and position of child protection social work in the Republic of Ireland. She identifies that social workers came to dominate the space of 'child-protection' from 1970 onwards 'with the development of a liberal modern and secular welfare state' (Skehill, 2003:150) and because of the limited attention paid to

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[135] *Le Police de Families* was first published in 1977, the English translation, was first published in 1980 as *The Policing of Families – Welfare versus the State.* The title of the publication references Foucault's (1982) understanding of the police (emerging in the seventeenth and eighteenth centuries) not firstly as agents of the criminal justice system but as signifiers of 'a program of government rationality'.

[136] "The family climate, the social context that causes a particular child to become a "risk", will be thoroughly studied. The catalogue of these indications make it possible to encompass all forms of maladjustment, so as to construct a second circle of prevention."(Donzelot, 1980:97)

this area in an otherwise medically dominated health and welfare system.[137] Nonetheless she argues that the position of social work (up until the 1990s, with the emergence of a number of high profile child abuse enquiries) was marginal and was characterised by 'powerlessness' rather than 'inherent recognized psy expertise within a power-knowledge spiral' (Skehill, 2003:150).

O'Sullivan's (1999) study of the history of child welfare in the Republic of Ireland from 1750-1995, uses the history of the present approach to explore the context of the 'institutional template' in Ireland. His analysis illustrates the productivity of sites of regulation across time and following Cohen (1985) he argues that decarceration has led to a 'dispersal of discipline', illustrated in the increasing regulation of the sphere of child welfare. Here again, the role of social work is key.

Following *Discipline and Punish (1977a),* the sphere of criminal justice and penality has also been a site in which these methods have been applied. Worrall's (1990) study of women involved in the criminal justice system, explores the construction of discourses regarding 'female lawbreakers'. Here she identifies *domesticity, sexuality* and *pathology* as the three dominant discourses through which women are constructed when they appear before the courts. Her analysis further outlines that discourses are formed by the *judicial, medical* and *welfare* personnel, whose role as experts or semi-experts (knowledge) provides the necessary authority (power) to construct the subject (female lawbreaker) in the context of the criminal justice system.

Garland's trilogy of work adopts a 'history of the present' method to analyse trends in crime and punishment (Garland, 1985, 1990, 2001). Commenting on the use of this approach, he states:

> By comparing the field of present-day practices to the set of institutions and ideas that existed up until 1970, it is possible to identify a series of shared characteristics that help explain the dynamics of change and the strategic principles underpinning contemporary arrangements. (Garland, 2001: x)

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[137] The passage of the *Health Act* in 1970 is identified as a critical moment, because it changed the governance structures for the provision of local health and welfare services (including social work services) (Skehill, 2004).

The first of Garland's (1985) trilogy, *Punishment and Welfare,* explores the relationship between punishment and social structure. The relationships between theory and practice and knowledge and power with reference to a specific historic event: the transformation of British penality which took place at the beginning of the nineteenth century is explored. Using the 'history of the present' approach and focussing on this particular historical moment, Garland (1985) illuminates the formation and development of these and subsequent penal strategies. The central argument made here is that the system of penality that evolved and currently operates (and here he is specifically referring to Britain) is intimately and symbiotically linked to the system of welfare. The term 'penal-welfare complex' is used to denote this relationship.[138]

In his subsequent work, *Punishment and Modern Society* (Garland, 1990), the cultural and political elements of penal institutions are explored. In *The Culture of Control* (2001) he undertakes a comparative analysis of crime control in the United Kingdom and the United States and identifies a number of broad trends (or indices), which he argues indicate represent a shift from penal-welfarism towards more punitive and coercive approaches.[139] It is worth noting, however, that the applicability of Garland's (2001) overall thesis beyond the Anglo-American sphere has been questioned. Kilcommins et al (2004) for example argue that it has limited applicability in the Irish context, and point to the need for more localised analyses.

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[138] "Suffice it here to say that the penal-welfare institutions have operated as an important intermediary between the integrating mechanisms of 'welfare' and the coercive thrust of penality, as well as lending a positive legitimacy to punishment within a state based on an ideology of welfarism."(Garland, 1985:33)

[139] Garland (2001:xii) argues: "The roots of today's crime control arrangements lie in the character of contemporary social organization and the political and cultural choices that have been made in relation to it. And the new world of crime control provides, in its turn, important sources of legitimation for an anti-welfare politics and for the conception of the poor as an undeserving underclass. The mutually supportive character of today's penal and welfare policies – based on principles that are quite different from than those described in *Punishment and Welfare* – is indicated by an analysis of the discursive tropes and administrative strategies that run through both of those institutional domains." He identifies the following indices as signifiers of the 'culture of control': 1. The decline of the rehabilitative ideal; 2. The re-emergence of punitive sanctions and expressive justice; 3. Changes in the emotional tone of crime policy; 4. The return of the victim; 5. Protection of the public; 6. Politicisation and new populism; 7. The re-invention of the prison; 8. The transformation of criminological thought; 9. Expansion of the infrastructure of crime prevention and community safety; 10. The commercialisation of crime control; 11. New management style and working practices; 12. A perpetual sense of crisis.

While Foucault (1981a) stated that he was interested in reactivating the genealogy of morals, others have followed by exploring the 'genealogy of subjectivity'. In range of work on the 'psy disciplines' and 'psy expertise', Nikolas Rose (1979, 1988, 1990, 1999) has used a 'history of the present' approach to do precisely this. Central to Rose's work is the thesis that these 'psy' disciplines have played a pivotal role in the construction and understanding of subjectivity:

> That is to say, I suggest that 'psy' – the heterogeneous knowledges, forms of authority and practical techniques that constitute psychological expertise – has made it possible for human beings to conceive of themselves, judge themselves and conduct themselves in new ways. (Rose: 1999: vii)

As a further development of this theme, Rose (1999) argues that the 'psy' disciplines are not only central in the construction of subjectivity but also play a key role in the construction of 'governable subjects'. Deleuze (1980) suggests that the study in the processes and variation of subjectification was one of the tasks left by Foucault for others to follow in his wake, and in this sense Rose (1999) and others (e.g. Burchell, Gordon and Miller, 1991) have moved the study of subjectification beyond the 'private' realm of 'ethics' – set out most clearly by Foucault in his work on the history of sexuality (Rabinow, 2000), to the intersection of ethics and government; an area that Foucault (1978b) began to chart by problematising the concept of government.[140] (The relevance of this theme to the theoretical approach adopted in this thesis has been set out in the previous chapter).

Overall these studies briefly described point to the utility of the 'history of the present' method in challenging taken-for-granted assumptions and opening new spheres of understanding. It is argued that one of the most important underlying rationales for using the method is that it provides an analytical focus for the study of the intersection of knowledge, power and subjectivity (Dean, 1994; Kendall and Wickham, 1999). The examples of application of this approach demonstrate its utility in studies of the 'psy' disciplines or 'human sciences'. Skehill (2007) points to the utility of a 'history of the present' approach in the study of social work in that it

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[140] Foucault gave a lecture on the theme of *governmentality* at the Collége de France in 1978; it was originally published in Italian in that year and was subsequently published in English in 1991 in a collected edition entitled *The Foucault Effect - Studies in Governmentality* edited by Burchell, Gordon and Miller.

necessitates a move from oppositional positions regarding reform versus social control, to different problematisations (a point also noted by Donzelot (1980)). Changing the nature of the questions posed potentially opens up further fertile grounds for inquiry and research. The following section of this chapter will outline the range of archival material accessed for the purpose of this study of the practice of child detention in the Republic of Ireland.

Application of the method to this study

This thesis aims to explore the discourse and practice of child detention in the Republic of Ireland from 1970 to the present. 1970 is taken as a starting point because it was the year in which the *Report of the Commission to Inquire into Reformatory and Industrial School,* otherwise known as *The Kennedy Report* was published. The publication of this report, variously described as a 'watershed' or representing a 'new dawn' in approaches to children in care (a point that this thesis critically interrogates), can be viewed as a point of transformation and therefore a vantage point through which the problems of the present can be viewed.

1970 was also the year of the introduction of the *Health Act (1970).* This legislation provided the framework for the institutional apparatus and the structures for the local organisation of health and welfare services (Skehill, 2004). This thesis will explore the manner in which the children who become the 'objects of concern' through which the discourses of detention are legitimated and mobilised, often traverse 'welfare' and 'justice' boundaries, the significant reordering and configuration of these structures via the enactment of this legislation is therefore important.

From this starting point, the thesis aims to explore the archive relating to the discourses and practices of child detention. It will highlight that the project of decarceration and the 'dispersal of control', one of the 'master-shifts' that Cohen (1985) describes, was in fact well in train before the 1970s, but that its legitimation was articulated in the discourse of documents such as the *Kennedy Report.*[141] It will be highlighted that the practice of child detention in the sphere of both the criminal

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[141] Cohen (1985); Foucault (1977), Garland (1981); Ignatieff, (1978) among others have discerned three broad trends in the structuring and patterning of social regulation: 1) The decline of punishment aimed at inflicting physical pain; 2) the emergence of the institution as the pre-eminent mode of dealing with problem populations and 3) the gradual movement away from the institution (decarceration) and henceforth the 'dispersal of control'.

justice and welfare system is a marginal practice in terms of overall numbers of children detained. Today there are approximately 100 young people under the age of 16 detained in secure facilities in the Republic of Ireland. However, as Harris and Timms (1993) argue in their study of secure provision in the UK, the practice of detaining young people in 'secure facilities', while marginal, points to the manner in which problematised subjectivities are constructed and are specified as targets of a specific form of government.

In order to carry out this analysis using the 'history of the present' method my starting point is the problematisation of the practice and indeed orthodoxy that there are some young people who 'need' or 'deserve' to be detained. By analysing what Foucault (1976) would characterise as a practice operating at the margins, I hope to explore why institutionalisation (or the carceral order) continues to be the specified form of government for some children. The question or problem posed in the present is why such a practice, albeit now marginal in numeric terms, remains a productive sphere

Throughout the study continuities and discontinuities in discourses are sites of analytical concern. For example, the continued identification of particular 'visible' targets such as young people who are 'street homeless' is noted (O'Sullivan & Mayock, 2008). The productivity of discourse is illuminated through sites of emergence such as the establishment of new secure facilities in the 1990s and 2000s. In order to carry out this analysis a range of archival material, both at the level of the institutions and within the wider sphere of discourse has been accessed. This material is set out in the following section and is included as an appendix (Appendix One).

Archival material

The main source of data for this study are the individual case files of young people who have been detained in three of the five remaining children detention schools (formerly Industrial and Reformatory schools) in the Republic of Ireland.[142] The three

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[142] At the time that the fieldwork commenced in 2006, there were five remaining schools: Oberstown Boys School, Oberstown Girls School and Trinity House School (all situated in Lusk, Co. Dublin), Finglas Child and Adolescent Centre (situated in North Dublin) and St Joseph's Ferryhouse, Clonmel (situated in Co. Tipperary). These schools were still legally classified as Industrial and Reformatory Schools as the relevant section of the *Children Act, 2001,* which would change their designation to 'Children Detention Schools' had not yet been implemented, although this term was by then in common use to describe the schools. Following a review of the 'youth justice system' conducted by the Department of Justice, Equality and Law Reform published in 2006, an executive agency, the *Irish Youth Justice*

schools where I accessed archival case records were: Oberstown Boys School, Trinity House School and Finglas Child and Adolescent Centre. All of these schools hold the archives of individual case files of all the young people who have ever been detained there. The grounds for detention, a subject discussed in detail in Chapter Six included remands and committals for criminal proceedings typically ordered by District Courts. Young people were also placed in units under the provision of the *Child Care Act, 1991,* (i.e. under child welfare and protection legislation) to allow for an assessment. In addition a further practice which began in the 1990s, was the placement of children in detention schools on the basis of High Court Orders, in order to 'vindicate their constitutional rights', this particular practice is identified as a surface of emergence and is explored more fully in Chapter Seven.

Oberstown Boys School opened in 1991, therefore the case files I accessed totalling (542) related from a 15-year period.[143] Trinity House School opened in 1983, and young people who had at the time been resident in Loughan Prison were transferred there. I read 678 files in Trinity House School spanning a 24- year period.[144] Finglas Child and Adolescent Centre, the oldest of the facilities opened in 1972 and therefore the records from here span the longest period (1972-2008). In total, 749 files were read in Finglas. It is important to observe that there was significant movement between the schools, and that a high proportion of young people that were subject to detention in Oberstown and Trinity House Schools, at some point underwent an assessment in Finglas (again this process forms the basis of a substantive chapter).

In total therefore 1,969 individual case files were accessed spanning the period 1972 - 2008. While 'stock' figures of the total population detained in the children detention schools are available from official sources such as the annual reports from the Department of Education and Science, there are acknowledged deficits in this information (O'Donnell et al, 2005). While an attempt was made to read all of the case files available in the institutions, this was not always possible. In some cases files

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Service (IYJS), was formed in this Department. Administrative responsibility for four of the five schools was transferred from the Department of Education and Science to Justice, a move which was effected on 1st March, 2007. The remaining school, St Joseph's Ferryhouse, Clonmel was transferred to the management of the *Health Services Executive (HSE),* and was officially designated as a 'children's residential centre'.

[143] I conducted fieldwork in Oberstown in 2006.

[144] Fieldwork in Trinity House School was conducted in 2007.

could not be found, or had been removed (for example where the case was subject to an investigation by the Redress Board).[145] Latterly, after several months spent inhaling dust in isolated back rooms of the schools and having immersed myself in the data until key themes emerged I am satisfied that there is sufficient depth and breadth of coverage of this large archive, the range of which has never previously been accessed or researched.

As with any research, there are limitations, some of which have been described already. The most significant limitation, in my view, is the fact that all of the individual case records that I accessed pertained to males who had been detained in the schools. There is one remaining children detention school for young women, Oberstown Girls School, and the number of young women detained in the relevant period is significantly lower than young men (the population of young women detained constitutes on average 8% of the total detention population).[146] This in itself is noteworthy, not least given the historical accounts of the patterns of 'coercive confinement' within the Republic of Ireland, which have highlighted the gendered nature of institutionalisation over time (O'Sullivan, 1988; O'Sullivan and O'Donnell, 2007; Torode and O'Sullivan, 1999).

Despite the omission of case file data on young women (in the end this came down to the length of time involved in negotiating access), gendered aspects of detention are by no means ignored in this thesis. This aspect of the detention of young males is explored, as are the discourses at policy level, in which arguments for the detention of this or that group of young people are mobilised. This thesis explores the gendered nature of these discourses. Further, within the case files references are made to young people's parents, and here mothers are frequently implicated in the problematisations voiced. Thus, it can be said that gender is approached in this thesis on a number of levels, if not directly from case file data.

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[145] The *Residential Institutions Redress Board* was established in legislation by the Irish government in 2002 'to make fair and reasonable awards to persons who, as children, were abused while resident in industrial schools and reformatories and other institutions subject to state regulation or inspection.

[146] Irish Youth Justice Service (IYJS) (2006) *The Report on the Youth Justice Review.* Dublin: Department of Justice, Equality and Law Reform

Another important issue requiring explanation is the issue of access to case file information and ethical consents. Permission to access the case files was requested from the individual detention school managers. The issue of obtaining individual consent from each young person (many of them now adults), on whom records were held was discussed with the gatekeepers (the school managers). Given the importance of gaining informed consent as a principle of ethical research this issue was given serious consideration (Bryman, 2001; Butler, 2002). However, a number of factors precluded obtaining consent from each former resident of the detention schools.

Firstly, there was the question of the large numbers of people involved (almost 2,000). Secondly, in the vast majority of cases current contact details were not available. The possibility of writing to the last known address of the young person (who in many cases would be now an adult) outlining the purpose of the project and requesting consent was considered. However, this was decided against for a number of reasons, firstly the addresses were not likely to be current. Secondly, this act in itself may have breached confidentiality and caused embarrassment and/or distress. In line with precedents in other projects, where similar ethical issues were debated (e.g. Hayes and Devaney, 2005) and weighing up the possible benefits and harm of such an approach, this course of action was decided against.

Other strategies of obtaining the information was discussed, including the possibility of a member of the school's administrative staff anonymising the information on file before I received it or a member of staff obtaining the information that I required from the files. Given that almost every page of sometimes-voluminous files contained identifying information and the fact that the research was looking at aspects of discourse, both of these strategies were considered unworkable.

Having given these issues consideration it was agreed that I could access the files under the following conditions. Firstly, all files were to be accessed on site (i.e. in the archives of the detention school), a record was kept of each file that I accessed and no file or any part of a file was to be removed from the premises. Secondly, no information on the file would be copied and any information obtained from the files recorded in the form of field-notes would be anonymised. To this end, when I recorded field notes, I assigned each case a unique code and my notes did not record information on names, place-names or other identifying information. Notwithstanding

the fact that data was collected in an anonymised form all the information that I recorded in the form of my field notes was securely stored on computer in an encrypted and password protected file. Further, a commitment was given by me that no identifying personal information would be used in any subsequent publication or dissemination of the material.

In line with research governance and good practice, ethical approval was obtained from the School's University Research Ethics Committee. Access was formally negotiated with gatekeepers, i.e. the Children Detention Schools Managers, who also sought approval to allow access to the files from their Board of Management.[147] During the course of project the *Irish Youth Justice Service* was formed and I subsequently met with representatives this agency to inform them about the project. While issues of access can be difficult (Hayes, 2005), in this situation my role as an employee of a government agency with responsibility for policy in this area was certainly a facilitative factor. [148]

It is important to note that for me the process of access and ethical consideration of the issues concerned was an ongoing process in which I was engaged throughout the research. The decision to use what can be characterised as a theoretically informed methodological approach does not and cannot elide these considerations. I am also conscious of the point which Hall (1997 [2009]) succinctly describes in his overview of the Foucladian approach to the study of discourse, namely that as a 'subject' situated within a particular historical moment and episteme, my reflections, the way that I think about what I write and what I write are all constrained by the discourse which constitutes me and of which I am part. I hope, however, that I have engaged critically and reflexively with the material that I was fortunate enough to be able to access.

In addition to verbatim written notes (minus the identifying information), I also collected information on any recommendations made by the schools in regard to how

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[147] In 2006 this project was discussed at the research ethics committee in the School of Social Work and Social Policy in Trinity College Dublin, and subject to the gatekeeper's consent, i.e. the school managers, this approach was agreed.

[148] I actually subsequently took a career break from this post during the course of the project to work as a part-time researcher and to undertake the fieldwork for this study. Nonetheless, from my former job I knew most of the managers and a fair proportion of staff within the service, and this certainly helped secure access.

the young person's 'case' should be disposed.[149] The purpose of recording such information was again to examine patterns for the rationales put forward over time. This information was cross-referenced with information on the young person's length of stay and any categorisation based on ethnicity.[150]

Part of the rationale for this approach, was an initial aim to explore whether there was any differential aspects in placement in detention based on ethnicity, with a particular focus on the numbers of Traveller young people who had been detained over time. I therefore read each file to see the cases in which the young person was categorised as a Traveller. After a short period of time, it became clear that there were a number of gaps in information on files that would preclude such an analysis; for example, the files did not contain details on all of the young person's offences.[151] My focus therefore shifted to the manner in which young people, both Traveller and non-Traveller were described, and the discourses through which 'problematised subjectivities' emerged.

The content of the case files varied from institution and the length and breadth of information recorded was typically influenced by the young person's length of stay. Case files usually contained a 'front-sheet' recording basic information on the young person including name, date of birth, home address, originating court and

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[149] Typically such recommendations were made to the Court following a period of assessment in the schools. The process of assessment is discussed in detail in Chapter 6.

[150] Part of the original impetus for me for undertaking this project was to explore the numbers of Irish Travellers detained over time and to examine whether there were differential aspects to their detention – both in terms of the proportion of population and any differential processing within the criminal justice or child welfare system. As there was no overall 'census' available where this information was recorded (the schools or the government departments do not require this information), I therefore read each file to see the cases in which the young person was categorised as a Traveller.

[151] For example, the 'warrant sheet' the legal document issued by the court stating the grounds for and authorising a young person's detention contains details of a charge or charges for which the young person is being remanded/committed. The warrants are proforma documents where the presenting charge is hand-written by the court clerk or judge. It was not uncommon for a young person to appear in court on twenty charges and for only one charge to appear on the warrant. At times, as multiple reading of the files and cross-checking with staff revealed, this was not even necessarily the most serious charge. It was clear therefore that the places of detention often did not have all of the information on the charges for which the young person was detained (particularly in short remands or where the young person had multiple court appearances in different court districts, again a not uncommon event). While the quality of information has improved somewhat, the court service introduced a computerised system in 2002, there are still major deficits and there is no central agency which collects all the information on a young person (a point of criticism referred to in several government reports and almost every empirical study on aspects of the 'youth justice system').

parent/guardian contact details. Sometimes a passport photograph of the young person was appended to these front-sheets. In other instances the front sheet contained physical descriptors of the young person, recording the young person's height, build, hair-colour, complexion and if he had any markings such as tattoos.

Case files also contained warrant sheets or court orders authorising the young person's detention. Although, as previously highlighted the information provided in these legal documents was minimal. For example charges were typically hand-written by the court clerk and at times were illegible. Nonetheless these warrants enabled me to situate the time-frame of the young person's stay in the institution.

Most case files contained an assessment report that had usually been compiled in the Finglas Detention School, although assessments also took place in the other two schools. Where a child had been assessed in Finglas and subsequently remanded to another school the full assessment report was copied and forwarded to the receiving school. The content of the assessment reports varied somewhat over time, however, most included a psychiatric and or psychological assessment, an educational assessment and a key-worker assessment and latterly a social work assessment. In some instances professionals who had had contact with the young person prior to their admission to the children detention school sent through copies of their previous reports.[152] At the end of the assessment period a composite report was prepared including the main points of the respective assessment and an overall assessment and recommendation to the court or health board. The full portfolio of assessment was presented to the courts with the composite report as the front report.[153]

The case files were analysed using both archaeological and genealogical approaches. Here the manner in which subjects were brought to light or made visible at the level of the institution was a key focus. In particular, descriptors of identity (whether Traveller or non-Traveller) or other forms of 'classification' and what I describe as the location of the subject within space are key elements of the discourse that serves

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[152] The changes in the nature of assessments over time and the type of information recorded is discussed more fully in Chapter 6.

[153] In addition to this information on file, some files contained diary sheets recording the activity and behaviour of the young person during their stay. However, in most instances these diary sheets pertained to short stays (i.e. one or two days), because if a child stayed longer a separate log-book was created to record their daily activities. These log-books were stored separately from the case-file and were not analysed as part of this study.

to legitimise calls for this, or that form of intervention in young people's lives (this is a topic that is discussed in detail in Chapter Six). At this level also the archaeological approach included a focus on surfaces of emergence, new problems or categories of concern that are produced at this 'site of manifestation' (Foucault, date, [1994])

Here I approached the data by reading through each case file in a meticulous manner, this literally involved reading through each page of the files. After a period of reading, I began to note patterns of themes in the discourse. I recorded these themes in my field-notes noting what appeared to be dominant and more marginal themes. I transcribed excerpts from the reports verbatim (minus identifying information such as names of people or place names). Initially I did this on a case-by-case basis, i.e. the themes from each file and then after time I began to note thematic patterns. Taking care to avoid over-interpretation in line with the archaeological approach, some of the themes I discerned were what I called 'origins' (this included descriptors of where the young person came from) and 'location in space' - again this included descriptors and referred to the manner in which at the start of most reports, an attempt was made to 'spatially locate' the young person. For example, a consistent theme in a number of reports was references to the place of residence of the young person and descriptors of their environs.

Having originally approached the data in this manner I later began to look at the case file data from a wider perspective. This was influenced in part by the archival material I was reading elsewhere, for example the files held in the *National Archives.* Later through the application of the genealogical approach, I explored the relationship of the case file data with wider discursivities. This was in some instances prompted by the material in the case files themselves. For example, in a number of cases there were newspaper clippings held on individual case files relating to the young person's case. In some instances these newspaper cuttings were maintained long after the young person had left the institution.

This genealogical approach was used to further analyse the wider discursivities of the operation of the 'sites of containment'. A range of official policy documents, such as the *Kennedy Report* and other government sponsored commissions, including the *Task Force on Child Care Services (1974, 1980);* the *Interdepartmental Committee on Mentally Ill and Maladjusted Persons (1974 a, b)* the *Dáil Select Committee on*

Crime (1991) and the *Report of the Kilkenny Incest Investigation (1993),* are analysed using the genealogical method. In addition to these sources primary legislation, specifically, the *Child Care Act, 1991,* which broadly concerns child protection and welfare, the *Children Act, 2001,* which mainly deals with juvenile justice, and the secondary legislation (statutory instruments) that give these legislation effect are analysed. This is further contextualised with reference to previous statutes, most notably the *Children Act, 1908.* The process of legislative enactment is by no means linear, and various iterations reflecting a range of discourses in the form of *Bills* are also explored. This is done with reference to the parliamentary archive, which contains a record of the various stages of passage of legislation and the ensuing parliamentary debate.[154]

Information held at the National Archives, the central repository of government records in the Republic of Ireland was also accessed. However, the information available here was limited for a number of reasons. Firstly, the *National Archives Act (1986)* stipulates that government records will only be made available after a thirty-year period (and in some cases where there are public interest or personal concerns certifications can be obtained to withhold the material for longer).[155] When this phase of fieldwork was conducted, the latest information available pertained to 1977.[156] Secondly, not all of the material relating to the Industrial and Reformatory schools, the main form of institutional provision under consideration was available because it had been sequestered for the purpose of the ongoing inquiries of the *Commission to Inquire into Child Abuse,* which published the report of its findings in 2009.

The files that I accessed within the National Archive were records from the Department of the Taoiseach. These are files that directly relate to matters dealt with

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[154] The entire archive of Irish parliamentary debates from 21st January 1919 (the first debates are in the Irish language), are now available online via: 'Historical Debates, Oireachtas' (http://historical-debates.oireachtas.ie/). More recent parliamentary debates (from 2004 onwards) are available on the main parliamentary website.

[155] National Archives Act (1986) (8) (1) "Departmental records which are more than 30 years old and in relation to which a certificate granted under this section is not in force shall, subject to section 7, be transferred by the Department of State in which they were made (or, if they are held in another such Department, by that other Department) to the National Archives, where they shall be made available for inspection by the public."

[156] This particular phase of the fieldwork was in fact conducted in 2008, and further attempts were made to check the records in 2009. However, in addition to the legislative rule, administrative and staffing issues at the National Archives means that there are further delays in making the records available. Government records from 1968 to 1977 were accessed.

by the Office of the Taoiseach and contain details of topics raised at cabinet level involving input from the Taoiseach's office – typically those that involve a government decision. Examples of this are a discussion at cabinet level on the merits or otherwise of publishing the interim report of the *Task Force on Child Care Services (1975).*[157] Also contained are correspondence directly to the Taoiseach and queries raised by his office with other government departments and the responses received. One example of this type of information is correspondence between the Taoiseach, Sean Lemass and Archbishop Paul McQuaid, concerning the status of proposed plans to open a new place of detention for young offenders in Finglas, Co. Dublin.[158]

The difficulties in accessing material from other departmental files from the National Archives was somewhat offset by the fact that I was afforded the opportunity of proof-reading the background chapter on the historical context of 'residential child welfare' in Ireland from 1965 to 2008 prepared by O'Sullivan (2009) for the *Report of the Commission to Inquire into Child Abuse (2009).*[159] This chapter was based on archive material, which I was unable to access for the reasons mentioned and therefore formed an important secondary source, particularly in relation to contextualising the information that I had obtained from primary sources and

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[157] Memorandum to government (06/11/75) on file explaining the Minister for Health's desire for the publication of the *Interim Task Force's Report:* "The Minister considers it advisable that the Interim Report should be published as a matter of urgency for the following reasons: (a) Many of the recommendations contained in the Report are related to identified gaps in existing services which require to be filled as a matter of urgency; (b) The Minister is under strong pressure from many sources dealing with the problems of Child Care to have the Report published. Department of the Taoiseach files: NA reference number: 2005/151/92

[158] Letter from Archbishop McQuaid to Sean Lemass (11/06/66):"I am grateful for your note informing me of the position regarding the new Remand Home at Finglas. The delay is easily understood by me. But if I stress that I initiated this project at least nineteen years ago with the Department of Justice, you will kindly realise my desire to save so many lives that could be saved. When I see such vast sums being expended on the roads of Dublin and neighbouring counties, I may be pardoned in wishing that something could have been spent on straightening the crooked souls of very many youths in the past two decades." Department of the Taoiseach files: NA reference number: 98/6/156

[159] O'Sullivan, E. (2009) 'Residential child welfare in Ireland, 1965-2008.' *Commission to Inquire into Child Abuse, Vol. (IV).* The Commission to Inquire into Child Abuse was established in legislation by the Irish government in 2000 to investigate the abuse of children in institutions in Ireland over the previous decades. Incidents of historic abuse were brought to a wide public audience when the three-part television documentary series *States of Fear* was screened by *Radió Telefís Éireann (RTE)* the Irish state broadcaster, in May 1999. The series contained personal accounts of abuse and deprivation from people who had spent their childhoods in institutions in Ireland. A previous documentary *'Dear Daughter'*, which detailed the experience of one woman, had raised similar concerns (Torode & O'Sullivan, 1999; Raftery & O'Sullivan, 2001; Brennan, 2007; Gilligan, 2009).

informing my understanding of the 'conditions of possibility' that served to legitimate certain discourses and courses of action in this area.

A further important source of archive material was pamphlets and literature published by organisations that variously campaigned for changes in provision of services for young people. Chief among these was 'CARE', a campaign group established in the wake of the publication of the *Kennedy Report,* 'for the care of deprived children'. This group published a range of materials throughout the 1970s and into the early 1980s. Other material included pamphlets published by *Focus Ireland* (a homeless charity), the *Children's Legal Centre* [160] and *Barnardos*.[161]

Media reports available from the archives of the *Irish Times* also provided a useful source of contextual material.[162] These archives were searched on the basis of themes identified from the primary archival sources. This sometimes involved searches using specific keywords, for example, the names of the institutions under consideration or terms such as 'special care' (a new form of secure care provision introduced in the 1990s). This archive provided an important lens on the public discourse on these issues. For example, the search results yielded letters to the editor from individuals on subjects such as 'care for deprived children', the 'scourge of young offenders' etc.

Conclusion

The range of archival material accessed for this study supports the application of the chosen method. In line with the archaeological and genealogical approaches, discourses relating to child detention are analysed at a range of levels. The concepts of power, knowledge and subjectivity as articulated by Foucault and subsequent interlocutors are a key element of the interpretative framework of this thesis. The manner in which subjects are made visible and visibility is brought to subjects is explored at the micro-level of the institution using the archaeological and genealogical approach, while the genealogical method is also used to look at the wider discursivites or 'conditions of possibility' that serve to legitimate or discredit

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[160] The *Children's Legal Centre* was an organisation formed in the 1990s and its members included legal professionals and children's rights campaigners

[161] A full catalogue of material accessed is included in Appendix One

[162] The full archive of media reports from the Irish Times from 1859 to the present is available in digitised format from the Trinity College Dublin library.

particular approaches – the 'this or that way' of dealing with young people who are viewed as transgressive.

This chapter began with a quote from Garland (2001) regarding the relevance of 'history to the present'. In the Irish context it seems ironic to suggest that adequate attention is not paid to history given the fact that much of the focus on child detention in recent time has been through the prism of history and revelations of 'historic abuse' as documented by the *Report of the Commission to Inquire into Child Abuse (2009).* And herein lies a paradox, for although recent attention has undoubtedly been viewed through the prism of history the relevance of this history of the present is often elided.

Chapter Five – Programmatics of Government

Introduction

This chapter explores the manner in which objects are made manifest through discourse. Using the genealogical method I will seek to illuminate how specific concepts are mobilised in order to bring visibility to subjects and to suggest the strategies through which these subjects should be governed. Miller and Rose's (1990) concept of the 'programmatic' – the 'invariably' optimistic 'this way' or 'that way' of dealing with the problem, is also used as an analytical lens to explore the way in which the past is re-framed and current policy (whatever that may be) are invariably presented in a progessivist light. In line with the genealogical approach, throughout attention is paid to the surrounding conditions of possibility, the matrices of power and knowledge through which discourse is made possible.

The particular focus of analysis in this chapter is the programmatic of government as articulated in the archive of government policy documents, reports and legislation. The chapter begins with an articulation of the 'problem' and programmatic in the present. It then proceeds to explore the 'emergence' of the figure of the 'deprived child' from the institutions of the Reformatory and Industrial School and the strategies of government that simultaneously emerge to govern this subject. In particular the chapter notes that movement from the institution legitimated an extension of the range and techniques of government into a wider sphere and is representative of a changed relationship between children, families and the state.

The problem and programmatic in the present

On 13th December 2005, the government announced the establishment of the Office of the Minister for Children and a range of 'youth justice reforms' that had been approved by government. In his address to the media Brian Lenihan, T.D., Minister for Children described the establishment of the office as 'historic':[163]

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[163] All the quotes from the Minister's speech in this section are from a speech delivered on Tuesday 13th December 2005, a written copy of which was obtained from the Minister's office on request. The speech is accompanied by an official press release from the Minister's Office announcing details of the 'Youth Justice Reforms', entitled: 'Lenihan announces new measures to respond to youth offending and anti-social behaviour.' The details of the measures are included as an appendix to the

> I am here today to announce an historic policy development in respect of children's services. It is "historic", and I do not use the word lightly, in the sense that it places the development of policies for children at the heart of government.

In his description of the rationale for the establishment of the Office of the Minister for Children,[164] the Minister repeatedly referred to the need to bring 'greater coherence' to policy making for children, to provide 'joined-up' government; 'strategic linkage'; 'unitary services' and 'integrated national policy'. The aim, he stated, was to place policies for *all* children at the centre of government and one of the means to achieve this was through the implementation of the *National Children's Strategy – Our Children, Their Lives* (2000), a ten-year plan with three over-arching goals:[165]

1. Children will have a voice in matters which affect them and their views will be given due weight in accordance with their age and maturity;
2. Children's lives will be better understood; their lives will benefit from evaluation, research and information on their needs, rights and the effectiveness of services;
3. Children will receive quality supports and services to promote all aspects of their development.

National Children's Strategy (2000:1)

The remit of the office as stated by the Minister was no less than 'all aspects of children and young people's lives'. And success would be measured through the 'impact of policies and the development of services on children's wellbeing'. In order

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press release. On the same date, the Department of Health and Children issued a press-release announcing the establishment of the Office of the Minister for Children it is entitled: "Minister Lenihan announces new Office of the Minister for Children – Historic development which places children at the heart of government."

[164] In 2008, this office was subsequently renamed the Office of the Minister for Children and Youth Affairs (OMCYA).

[165] The *National Children's Strategy (2000)* was developed by an inter-departmental group, supported by a working group from the four key government departments: Education, Health, Justice and Family Affairs (Boyle, 2000). The strategy envisages the following vision with regard to children, family and society: "...an Ireland where children are respected as young citizens with a valued contribution to make and a voice of their own; where all children are cherished and supported by family and the wider society; where they enjoy a fulfilling childhood and realise their potential." (Government of Ireland, 2000:4). The strategy adopts what is described as a 'whole child' perspective, which is defined by one of the authors of the strategy as a refection informed by 'an understanding of contemporary childhood which recognises that all children are rounded individuals who shape their own lives as they grow and develop, just as much as they are shaped and supported by the world around them.' (Pinkerton, 2001:120)

to measure such, the government had commissioned the first National Longitudinal Study of Children in Ireland in 2006 at a final total estimated cost of €23 million. The Longitudinal Study had been a central recommendation of the National Children's Strategy, and its purpose is to 'create a bank of data on the whole child' (Government of Ireland, 2000:39).[166]

The range of the programme of government articulated by the Minister for Children in December 2005, included a number of specific policy areas and specific categories of children, indicating that while the stated aims was to understand and govern 'all aspects of children and young people's lives', the actual range of governance was somewhat less ambitious. The following specific policy areas are mentioned:

- Equal opportunities childcare programme (increasing affordability and supports for the first year of a child's life)
- Families who receive payment for the Department of Social and Family Affairs
- Child Welfare and Protection
- Adoption legislation
- Guardianship for long-term foster carers
- Special Care and High Support Units
- National Play Policy
- Youth Homeless

Read from this list the overriding emphasis in policy terms were on children who for some reason were, deemed to require intervention such as care and protection – in particular homeless young people,[167] those placed in forms of alternative care, such as foster care or in specialist residential units such as special care and high support units.

At the end of this long list of policy priorities, the Minister came to the other nub of his announcement: the range of 'youth justice reforms' for 'offending children'. The

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[166] The study is monitoring the development of more than 18,000 children – an infant cohort of 10,000 and a nine-year-old cohort of over 8,500 children. A recommendation for a similar study had been made over twenty years previously by the *Task Force on Child Care Services (1980),* who referred to the need for a 'national child development study' stating: "We consider that such a research project would be most useful, given the present scarcity of information concerning (i) the development of normal children in this country, (ii) children experiencing mental, physical, emotional or social problems and (iii) the efficiency of existing children's services." (DoH, 1980:42)

[167] The *Youth Homeless Strategy (2001)* was formulated on foot of a recommendation of the National Children's Strategy, which had identified 'youth homelessness as a 'priority issue'. One of the functions of the OMCYA was to oversee the implementation of the strategy. The Strategy outlines that a review would take place within two years – i.e. 2003. This has not yet been undertaken.

central plank of these reforms was the establishment of 'a new Youth Justice Service' as an executive office of the Department of Justice, Equality and Law Reform. While youth justice was therefore situated firmly within the ambit of the Justice Department, the Minister stated that 'for strategic purposes, and to ensure that youth justice is developed within a broad framework of policy for children' the Youth Justice Service would be 'located' within his office. Whatever the departmental alignments or priorities, the offices dealing with 'offending children' and 'all aspects of children and young people's lives' were to be spatially aligned. [168]

The specifics of the 'Youth Justice Reforms' announced by the Minister in 2005 were subsequently set out in a policy document entitled the *Youth Justice Review (DJELR, 2006).*[169] Alongside the establishment of a separate Youth Justice Service, the Minister also announced 'new detention arrangements for all offending children under 18'; changes to the age of criminal responsibility; the 'introduction of the concept of anti-social behaviour orders (ASBOs) for young persons between 12-18 years' and the allocation of 'an extra €1.2 million to the 'highly successful' National Garda Youth Diversion Projects.

Within the rubric of this stated 'programmatic of governance', Miller and Rose's (1990: 4) concept of 'proposing this or that scheme for dealing with the problem', it is clear that the concepts of 'joining up', 'integrating' and forming 'strategic linkages' – particular managerialist phrases, are viewed as the mode through which the problem of 'troubled and troublesome children'[170] will be 'managed' (Muncie, 2006c; O'Malley, 1999). The 'programmatic', as Miller and Rose (1990:4), identify, is invariably optimistic - hence previous failures are always linked to new ways of doing

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[168] In fact at the time of writing (2010), the co-location of the Youth Justice Service and the Office of the Minister for Children and Youth Affairs had not yet occurred.

[169] The review had been undertaken by civil servants in the Department of Justice, Equality and Law Reform under the leadership of Sean Aylward, the Director General of the Department, who had formerly held the position of Director of the Prison Services. The specific aims of the review were set out as follows: Conduct an overarching analytical review and scoping exercise, both nationally and internationally; Consult with the relevant Government Departments/agencies with responsibilities in the area of youth justice, and with relevant non- governmental experts and other interested parties; Bring forward recommendations by Summer 2005, as appropriate, for any institutional reform necessary to give effect to the principles of the 2001 Act. *(Youth Justice Review, 2006:3)*

[170] This is the specific term used in the *Youth Justice Review (2006:3).*

things better, and here the framing of the announcement as 'historic' underlines this. The Minister concludes his announcement:

> We will work with the reformed structures and services to create the means by which, the needs, interests and welfare of children can be better protected and advanced. The intention now is to do things in a different way. This is the start of a new strategic approach for children.

The Relevance of History to the Present

The commitment made by government and articulated in the *National Children's Strategy (2000),* was that the 'lives of children would be better understood'. The object of the government's intervention in this new policy environment is no less than 'all children and young people'. But nonetheless it is evident that in policy terms, priority will be focused on children and young people whose 'conduct must be conducted' in some way, those children considered 'public' (Gilligan, 2009).[171] This programmatic particularly in relation to those 'troubled and troublesome' children who are both within and without the Office of the Minister for Children (subsequently renamed the Office of the Minister for Children and Youth Affairs in 2008), is the particular focus of this thesis. But it is clear that at various time these children and the names that they are given change – the objects of government therefore change. As Foucault observed (1972 [2001]: 36) in his analysis of the change of descriptors used to describe psychopathology: 'we are not dealing with the same madmen'. Over time, different figures emerge, some of which, as Rose (1988:185) notes, 'seem marginal to contemporary eyes', and to which he adds an illustrative list:

> ...masturbating children and hysterical women, feeble-minded schoolchildren and defective recruits to the armed forces, workers suffering fatigue or industrial accidents, unstable or shell-shocked soldiers, lying, bed-wetting or naughty children.

Previous chapters have outlined that discourse has been defined by Foucault (1972:31) as 'the practices specified in the element of the archive', the archive being the 'general system of the formation and transformation of statements' (Foucault, 1972:30). The understanding that discourses are productive is a key tenet of this

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[171] The term 'public child' is used by Gilligan (2009:265) in his critical analysis of the Irish State's response to 'a child whose private has in some sense become public business, attracting attention because concern has been aroused for his or her care or safety."

approach, in other words discourses serve to produce the objects of which they speak. While the archaeological approach specified by Foucault (1981a), serves to chart the relationship between the sayable and the visible, to explore networks of what is said and what can be seen. The genealogical approach involves an exploration of the 'surrounding conditions of possibility'. These 'surrounding conditions of possibility' include an exploration of the 'subjected knowledges which were thus released and brought into play' (Foucault, 1980:85), the matrices of knowledge and power through which discourse is made possible.

In the sphere of contemporary government, having established the object, bringing it into the field of visibility within the framework of which we speak – i.e. within the realm of the social sciences (Hacking, 2003) or the 'psy disciplines' (Rose, 1999), necessitates action, precisely because, as Hacking (2003:131) notes:

> Many of the kinds that have emerged in social science are kinds of deviance, typically of interest because it is undesirable for the person to be of that kind.

Certainly, discourse creates desirable kinds also but here we are only concerned with these as the mirror onto which undesirability can be reflected and found short. The 'kinds' necessitate a form of control or guidance which if not possible through self-regulation will be undertaken by others (Gordon, 1991). This 'conduct of conduct' is the governmentality perspective through which these interventions, projects, strategies will be explored.

Discourse formation can be viewed along a range of levels, the formation of: objects, concepts and strategies – and it is argued that it is through these domains subjectification occurs. An example provided by Hacking (2003) is illustrative – the abused child is formed in discourse as an object of concern. One of the concepts that inform this is the medical 'discovery' of the 'battered baby' syndrome (Kempe et al, 1962); the strategy that emerges is a range of assessments to identify the 'abused child'. The role of expertise is also implicated here, forming part of the 'programmatic of governance' – the 'experts' (having colonised a space) are deployed armed with the knowledge of this syndrome, and are tasked with the project of identification and intervention. Thus the productivity of discourse can be viewed across these multiple domains.

The site at which discourses are formed open up the space for government, but these are not progressive narratives, there are multiple temporalities. Yes there may be 'key moments', there are 'surrounding conditions of possibility' but there are also ruptures, continuities, and discontinuities in this mix (Castel, 1994; Dean, 1994). The objects that are formed, the 'troubled and the troublesome' that are deemed to require detention or some form of containment are the focus of concern – but as Foucault (1972 [2006]) notes, we may not be talking about the same madmen. The objects that come into view, the concepts and strategies that bring them into focus and the suggested manner in which they should be remedied, i.e. the programmatic of government are explored here.

Miller and Rose's (1990) concept of the 'programmatic' – the 'invariably' optimistic 'this way' or 'that way' of dealing with the problem, is used as an analytical lens to explore the way in which the past is re-framed and current policy is presented in a progessivist light. In line with the genealogical approach, throughout the thesis attention is paid to the surrounding conditions of possibility, the matrices of power and knowledge through which discourse is made possible.

One of the key challenges in using a 'history of the present' approach is the question of how to apply it. Castel (1994) for example, cautions against breaking history into definable periods. Rather it is appropriate to search for 'key moments' in which the question posed in the present can be better understood (Hunt and Wickham, 1994; Skehill, 2004). Here therefore the current formation of the system of child detention is explored through a range of 'key moments' identified through a reading of the archive to explore the manner in which the 'problem' of child detention specifically and the regulation of children more broadly can be better understood.

Choosing 1970 and the publication of the *Report of the Commission to Inquire into the Reformatory and Industrial School System (The Kennedy Report),* as a starting point is consistent with a number of existing analyses (Keenan, 1997; McCarthy, 1996; O'Sullivan, 1999; 2009; Sargent, 2009; Shannon, 2004b; Skehill, 2004), which highlight that the publication of this report marked a point of discontinuity with the past. Here through the genealogical method it is discerned that the 'emergence' of the figure of the 'deprived' child from the site of the institution provides the rationale for an extension in the sphere of government. This is evidenced in the government

decision in 1974 to form a *Task Force on Child Care Services* to consider services and legislative reform in this broader area. The work of the *Task Force,* the discourse of campaign groups and subsequent government reports are analysed here.

Report of the Commission to Inquire into the Reformatory and Industrial School System (The Kennedy Report)

The *Kennedy Report (1970)* begins with a short history of the Reformatory and Industrial School system. It notes that this current system of 'child care' in Ireland 'has evolved from various systems of aid to the poor'.[172] Tracing the provision of this assistance from the workhouses to Reformatory and Industrial Schools, established because of changing attitudes towards children in the mid-nineteenth century, the story progresses to the role that the religious orders played in the system's administration. In the *Kennedy Report's (1970)* account of the system in the absence of local authority supports, religious orders undertook the work.

At the system's peak in 1898 there were seventy-one schools on the island of Ireland catering for ''youthful offenders' and 'neglected, orphaned and abandoned children.'[173] The fall off in the numbers of schools and the reduction in the numbers of young people detained (from a high of 8,000 in 1898 to just over 2,000 in 1969), is attributed by Kennedy to the 'overall decline in population, improvements in living standards, improved social services' and an increase in the use of adoption and boarding-out (fostering). Thus the changes in the system are presented in a progessivist light, an unfolding narrative of improvement and enlightenment[174]. So what then of the children that remained in the institutions in 1969?

Objects of concern

The child that comes into focus in the *Kennedy Report (1970)* is made visible through the population census of the Schools administered in 1969 and the survey designed and conducted by the Department of Psychology, University College Dublin (UCD) at

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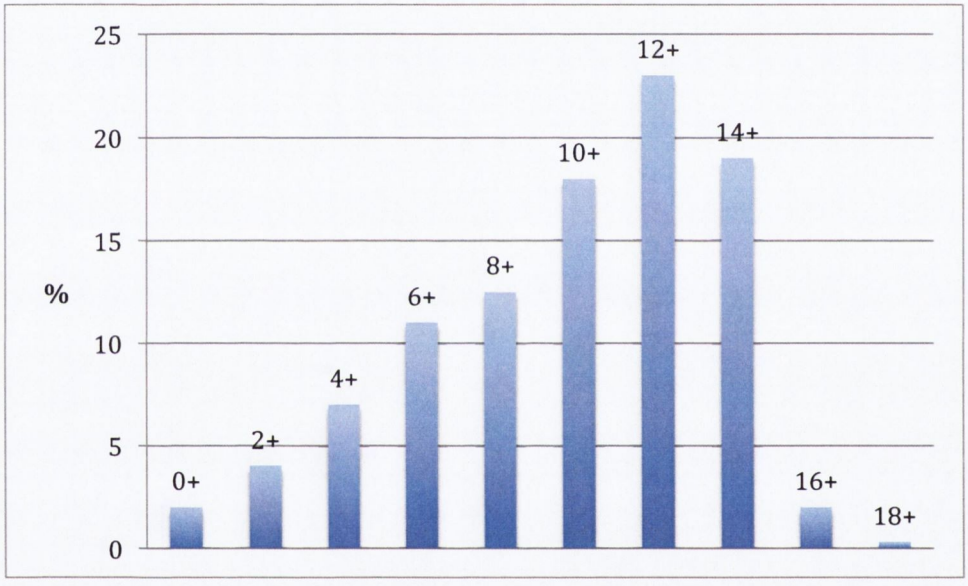
[172] Government of Ireland (1970:1)

[173] 61 in what was later to become the Republic of Ireland.

[174] An example of this discourse is given here: "While the 1908 Act was at the time a new charter for children, the many advances over the years in the field of child care and in the attitudes of the public made it imperative that the whole concept of child care be examined afresh. "(*Kennedy Report,* 1970:3-4)

the request of the Committee. The census of the population of the schools undertaken on 30th September 1969 documents that there were over 2,000 children in three Reformatory Schools and twenty-nine industrial schools in the country. The majority of the schools were certified for girls – two of the three reformatories and twenty-one of the industrial schools - and of the 2,014 children detained on that date, 1340 or two-thirds of the population were female. The majority of young people in the schools were aged between 8 and 14 years, however some were less than one year old when admitted. **Figure 8** provides an overview of the age of the population.

Figure 8 - Age profile of children resident in industrial and reformatory schools in 1969



The report notes the three 'routes' through which young people were placed in the Schools – via committal from a Court under the provisions of the *Children Act, 1908;* under the terms of the *Health Act (1953)*[175] or as a 'voluntary' admission. The vast majority of children were placed in institutions via Committal Orders made under the *Children Act, 1908* (70%), almost a quarter were admitted under the *Health Act (1953)* and just over 5% of young people were admitted on a 'voluntary' basis. By 'voluntary' it is meant that young people were admitted on the request of relatives, clergy or Health Authorities, there was therefore no court order for the young person's detention.[176] The main grounds for committal of girls was for 'lack of proper

[175] Children were so detained under Section 55 of the *Health Act (1953).*

[176] The committee was critical of such 'voluntary' arrangements: "This method of voluntary arrangement for placement can be criticised on a number of grounds. It is a haphazard system, its legal validity is doubtful and the girls admitted in this irregular way and not being aware of their rights

guardianship' while for boys the main grounds for committal was conviction for an 'indictable' offence (although over one third of boys were also committed on the basis of 'lack of proper guardianship').

Of the children in Industrial Schools, 19% were categorised as 'illegitimate' and in 51% of cases the schools responded that they 'did not know whether one or both parents were alive or dead'. The main grounds for the committal of children to Reformatory Schools were for the following offences – 'Larceny and Receiving', 'Housebreaking' or under the aggregate category 'miscellaneous'.[177] As regards to the social background of the children in both types of institutions as derived from the census, the report outlines:

> It is known that in over 80% of cases in the Industrial Schools and in over 50% of the cases in the Reformatory Schools there is some known element of deprivation such as bereavement, separation or illegitimacy. (Government of Ireland, 1970:11)

Where children had come from backgrounds characterised by deprivation the *Kennedy Report (1970)* also highlights the deprivations of the institutions.

> Deprivation may result in many handicaps, which affect the child's full development. Research has shown that a most important factor in childhood and later development is the quality and quantity of personal relationships available to the child. (Government of Ireland, 1970:11)

The Psychology Department of UCD's survey of children in the Industrial and Reformatory schools was conducted on stratified samples based on school-type, age and gender. The intelligence, perceptual ability, verbal reasoning, reading and arithmetic ability of the young people was tested using standarised measures. The results of the tests led the report authors to conclude that overall the children in the schools were 'generally backward' (Government of Ireland, 1970:11). However this 'backwardness' in ability is couched in the context of the backgrounds of 'general deprivation' from which the young people originated.

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may remain for long periods and become, in the process, unfit for re-emergence into society. In the past, many girls have been taken into these convents and remained there all their lives. A girl going into one of these institutions may find herself in the company of older, more experienced and more depraved women who are likely to have a corrupting influence on her." (Government of Ireland, 1970:39)

[177] The following are given as examples of 'miscellaneous' offences: malicious damage and assaults.

Proposed strategy

Having set out some of the difficulties in with the current system, taking care not to cause offence to the custodians, the religious orders:

> ...indeed, we are very much aware that if it were not for the dedicated work of many of our religious bodies the position would be a great deal worse than it is now. (Government of Ireland, 1970:13).

And having brought into view the objects of that system – the 'deprived and delinquent' child, who appeared visible through the survey that had been distributed to staff to complete, observation on visits to the schools, from the material of verbal reports and case histories as 'generally backward' – the causes and remedies are then brought to light. Both the problematic and the 'remedies' are clearly influenced by a confluence of knowledge –a discourse of familisation (Skehill, 2004) influenced by theories of maternal deprivation (Bowlby, 1969), child development theory (Erikson, 1950 [1967]) and an overall critique of 'institutionalisation'. The *Kennedy Report (1970)* authoritatively declares that children require relationships in order to develop and that these relationships cannot be fostered within large institutions.

Having identified that children needed 'quality relationships' in order to overcome or avoid 'deprivation', a model or strategy of delivery is recommended. This involved the recommended establishment of separate apparatus for children who were 'deprived' in the form of small group homes in the community. Further the importance of professionally qualified staff both in residential care and social work is set out. The recognition of the emotional needs of the 'deprived child' means that task of intervention is more complex than originally thought. A particular programmatic, that of 'casework' is identified as the mode through which young people, now resident in the community will be governed. A publication on residential child care entitled *Casework in Child Care* (Kastel, 1962) is referenced in the report which outlines the following:[178]

> Casework is the assessment of a need and the organisation of ways to help meet that need. It is a process through which professional help can be given to someone who is

[178] These quotes are directly from Kastel's (1962) work, the quotes do not appear in the *Kennedy Report,* but the work and themes are referenced.

> not able to function in society without help; and to whom the ordinary paths of help through love and friendship have failed. (Kastel, 1962: 16)

Casework according to Kastel (1962:18) involves a therapeutic relationship between the caseworker and the client, and part of the rationale for the client to enter into the relationship is 'because there is something in his life that he is unhappy about, or about which he feels guilty or ashamed.'[179] On placing the child in care – the orientation must be towards the future, not a reengagement or retrenchment in the past:

> The answers are never known. It is only possible to weigh up the present situation as fully as possible, and to make what seems to be the best decision at that time. And the child care officer herself must learn to accept that decision once it is made, and all that it is going to mean for the child. For life is an irreversible process and mental energy must be directed from the past to the present and towards the future. (Kastel, 1962: 25)

Furthermore, a failure to engage in this future-oriented project is a failure of optimism:

> It is a general disease particularly in social work fields at the present time that in people's drive to understand each other and themselves, that do not always expect enough of other people or themselves. This is found in courts, especially juvenile courts, and foster homes, and indeed in all branches of child care. (Kastel, 1962:25)

> In sympathizing with his deprivation it can be that too little demand is made of him to learn to accept what has happened to him. And yet the child must not have too much expected of him before he has the capacity to meet the expectations. (Kastel, 1962:25)

Theories regarding personality development, most prominently the work of Erikson (1950, [1967]) influence the strategies articulated in Kastel's (1962) publication and clearly inform the recommendations made in the *Kennedy Report (1970).* [180] Allied to

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[179] "And one of the skills of casework lies in creating the kind of permissive atmosphere in which the client can feel free to talk, so that he can begin to understand his own difficulties and learn to make the most of himself and his environment." (Kastel, 1962:16)

[180] "The development of personality is a dynamic concept; it is a growth process and something that implies constant changes as the individual learns to meet new situations, new faces and ideas throughout life. People either move forwards to meet life, or backwards away from it; but there are

the concept of personality development is a discussion on behaviour as a signifier of emotional distress or disturbance. Here Kastel (1962) discusses that a child's 'problematic' behaviour may be a function of unresolved disturbances, a legacy of abandonment, shame, and trauma.

The strategy therefore proposed is that work is undertaken with children and their families in order to prevent entry into care, and if and when received into care therapeutic work should be undertaken. The *Kennedy Report (1970)* emphasises the importance of relationships with the 'case worker' the key mediator in this space. Further, in order for such work to be undertaken, it is essential that the subject is 'knowable'. Proper assessment is therefore identified as a core requirement of the new regimes in order to make the child 'knowable' to the centre in which he/she will live but also to guide the intervention that will take place to remediate the background from which the child has come – to make them suitable citizens at the point where they will enter back into society:

> This means that his problems, his needs, his talents and his background should be reasonably well known to those in whose care he is placed. It should, therefore be possible at that stage to initiate a plan for his rehabilitation. With this in mind his education should be directed towards making him a good citizen. (Government of Ireland, 1970: 56)

Without the benefit of assessment, the young person is dangerously unknowable; here the possible consequences of such are set out in the report:

> As the system operates at present a child is often admitted or committed to the care of a school manager who knows little or anything about the child's background. This can lead to great difficulties particularly in the cases of delinquent children or those with delinquent or anti-social tendencies. The child may be retarded, suicidal, homicidal or homosexual but the School Authorities have no way of knowing this and by the time they learn it much damage may be done. (Government of Ireland, 1970:21)

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elements in the life of each individual that give feelings of security and stability, albeit something akin to dynamic equilibrium." (Kastel: 1962:28).

Deprivation or Delinquency?

Making the subject knowable is therefore a key requirement of the governance of the system, both for the 'deprived' and the 'delinquent' child. In truth, there is frequent overlap within the *Kennedy Report (1970)* in relation to these categories of children – reflective of the blurred institutional boundaries – however, there is also an attempt made to demarcate the boundaries, to segregate and classify the deprived from the delinquent child.[181] While there is an acknowledgement that delinquent children may have experienced deprivation, the report also observes that based on the experiences of other countries, an assuagement in the circumstances of material deprivation will not necessarily be sufficient to address the 'causes' of delinquency.

The identification of the period of 'Adolescence' is an explanation for some forms of behaviour that conflict with authority. But social change is also cited as a factor- the loosening of parental authority, increased choice for young people, urbanisation, and the absence of fathers from homes. Having diagnosed the problem through the elucidation of the causes, the remedies come into focus. Delinquency should not be 'considered completely apart from the general approach to young people' (Government of Ireland, 36:1970). It can be prevented through the avoidance of school dropout, increased amenities and the provision of social welfare services. Nevertheless, it is recognised that there are still young people who are beyond this new form of government, who will therefore require an institutional response.

Strategy of Reform (atory)

Notwithstanding the difficulties identified within the report with the institutional approach, recommendations are put forward for a recalibration of the reformatory system. The difficulties of the previous approach are framed in the manner of their evolution - in a 'haphazard and amateurish' way. The remedy? A suggested programmatic – professionalization. Further, the report specifies the categories of

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[181] The blurred boundaries between the schools is evident in the categories for admission, for example children were placed in reformatories under the Health Act (1953) legislation – i.e. on the grounds that there was 'lack of proper guardianship' and children were placed in Industrial Schools on the basis of criminal convictions. Letterfrack Industrial School is cited as one example it had become a de facto reformatory for younger boys. Various historical accounts of the system (e.g. Barnes, 1989; O'Sullivan, 1999 and Robins, 1980) and the recent *Report of the Commission to Inquire into Child Abuse (2009),* also note the fact that the system was not clearly demarcated, evident also in the fact that some reformatories re-applied for registration as Industrial Schools.

children who will not be governable in an open space.[182] **Figure 9** provides an overview of the categories of young people who are deemed to require an institutional response:

Figure 9 - Kennedy Report recommendations for juvenile justice facilities

Category	Type of Facility	Specification	Number
Teenage girls involved in prostitution	Closed psychiatric home		Not specified
Boys 12-15	Special Schools 'The term reformatory should be abolished. We consider that...children in these schools should be treated as handicapped, the term Special School would be the most appropriate title for them.' (41)	Two junior special schools – open units – with a 'small closed wing for difficult cases'.	80 (a minimum)
Boys 16-17		Two senior special schools to be established to cater for them	70
Girls 12-15		Two junior special schools	120 in total
Girls 15-17		Two senior special schools	

[182] The report also recommended the provision of an assessment unit. It noted that the plans to build such a facility in Finglas, Co. Dublin to be operated by the De la Salle religious orders were in train and that the unit was due to be open by the summer or autumn of 1970.

Conditions of Possibility

The *Kennedy Report (1970)* occupies an almost canonical space in historical narratives of Irish child care. The report is credited with the demise of the institutional model and heralding the introduction of 'modern child care practices' (McCarthy, 1996; Shannon, 2004b).[183] More recent accounts, such as the *Report of the Commission to Inquire into Child Abuse (2009)* have described the report as an epitaph rather than a death knell for the Industrial and Reformatory schools. Concerns pertaining to the schools had been raised in a number of quarters prior to the establishment of the Kennedy commission. Skehill (2004) highlights that prior to discursive space being afforded to an extensive critique of the system such as that voiced in the *Kennedy Report (1970);* the two Departmental Inspectors for Boarded out Children had raised numerous concerns over the years. In 1966 an OECD Report on Investment in Education was critical of the system and in the same year the report published by *Tuaraim* on residential care for 'deprived children' highlighted further deficits. A notable feature of both of these reports is that they had audiences external to Ireland, a fact that caused some consternation within the government.

A further noteworthy factor is the introduction of adoption legislation in 1952, which allowed for the adoption of children of unmarried mothers had depleted the numbers of children entering into institutions. Indeed based on the census information contained in the *Kennedy Report,* itself, we see that more than half of the children within the 'system' were already placed outside of Reformatory and Industrial Schools.[184]

It appears then that this confluence of factors created the 'conditions of possibility' for the subject of the 'deprived child' and her 'psychological needs' to be brought to light. One means of doing this was the deployment of the 'psy' disciplines to make the populations knowable, by bringing visibility to both the individuality and totality through the census and survey of their characteristics – enabling the authority of the

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[183] Reflecting on the impact of the *Kennedy Report* twenty-five years following its publication, McCarthy (1996:9) credited the *Kennedy Report,* with the introduction of a 'developmental model of childcare'.

[184] In addition to the two thousand plus children that were in Industrial and Reformatory Schools a further 1,300 children resided in 'institutions approved by the Minister for Health' and in 'Voluntary Homes which have not been subject to approval'. A further 1,357 children were 'boarded out and at nurse'.

descriptors – 'generally backward'; 'deprived'; 'illegitimate'; 'unsocialised'. So that the young person was projected onto a 'normal curve' and then when found wanting, governed from without the bound to within the space of normality (Rose, 1988; Hacking, 1991; Foucault, 1977a).[185]

> For a domain to be governable, one not only needs the terms in which to speak and think about it, one also needs to be able to assess its condition. (Rose, 1988:184)

As Rose (1988) has identified, the psychological sciences play their role here 'in providing the devices by which human capacities and mental processes could be turned into information about which calculations could be made.' The *Kennedy Report (1970)* provides a representation of the subject of the 'deprived child' in descriptions and diagrammatic (the report contains an appendix with graphical representations of the results of the various psychometric tests administered). Presented to us is an organisation of material that provides the rationale for the development of a system, not on the 'haphazard and amateurish' lines of the predecessors - who bear no blame, how could they, they did not have the necessary knowledge? - But on the basis of the 'newly developed knowledges' of human development, and through the programmatics of assessment and casework through which the inner-lives of their subjects will be transformed. Furthermore, these technologies will enable distinctions to be made between the individual constituents of these populations - between the deprived, the backward, the deviant, the retarded, suicidal, homicidal or homosexual. Through these devices the system can be recalibrated.

Conceiving of the child in these terms is also made possible by the deployment of certain knowledges such as theories of child development and attachment. In particular the child development model fore-grounded in the report provides a framework of understanding and a model for government. McGillivray (1997) for

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[185] Rose (1988:191) describes the impact of Galton's (1883) formulation of the normal curve: '...through the argument that the simple act of comparison of the respective amount of a particular quality of attribute possessed by two members of a group enabled the mathematization of difference. This could be represented in a simple visual form once it was assumed that all qualities in a population varied according to a regular and predictable pattern, and that the characteristics of this pattern were those established for the statistical laws of large numbers. Thus individual difference could be inscribed, and hence grasped in thought and managed in reality, by means of representing cumulative acts of comparison in the smooth outline of the 'normal' curve.'

example has argued that such theories serve to link the project of the child and childhood with the fate of the society in which they are part. Erikson's (1950, [1967]) developmental stages highlight the dangers of a passage through childhood at too fast a pace, the 'exploited childhood' or at too slow a pace 'emotional immaturity'. Childhood and indeed personhood must be temporally governed (McGillivray, 1997; Rose, 1999).

These knowledges therefore provide the legitimation for intervention in the lives of children and families at an earlier stage under the rubric of 'prevention'. Yet despite the fact that on the whole institutions were deemed to be potentially damaging to child development, they were deemed necessary for certain categories of young people, those whose childhood has been corrupted (e.g. 'teenage girls involved in prostitution') and who are therefore beyond the bounds of more benign forms of government.

Expanding the sphere of government

The *Kennedy Report's (1970)* specific remit was to report on the Industrial and Reformatory School system. Following its publication an interdepartmental working group was established in 1974 to 'review the extent to which the Kennedy Report has been implemented and to indicate the areas which still await implementation' and to further recommend any legislative action required 'in regard to improvements in the field of child care'.[186] It is evident that what had started as an inquiry into the Industrial and Reformatory School system had led to the opening of a sphere of wider attention described by the interdepartmental group as 'the field of child care'. [187]

However, the fact that this recommendation was made four years following the publication of the report provides an indication that the issue of 'deprived children' had yet to receive discursive space at the government level. This view is lent support by the fact that the *Kennedy Report* was not debated in either houses of the

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[186]Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

[187] There was some complaint voiced within government, that the Committee had in fact over-stepped its original remit by looking beyond the Industrial and Reformatory School System (CICA, 2009).

Oireachtas until 1973.[188] This was also the view of CARE (Campaign for Deprived Children), an organisation formed following the publication of the *Kennedy Report (1970),* who in a letter to government outlined the following:

> The publication of the Report on the Reformatory and Industrial School Systems in October 1970 was only the immediate stimulus which led to the formation of the association; a number of considerations had already been exercising the minds of those who took the initiative. It seemed to be widely held among persons working in services for "juvenile offenders", children without families, children with personality problems and children in depressed areas that the attention, care and treatment that these children were getting was less than what could be regarded as in our community to-day. This opinion had been voiced on many occasions, and good recommendations for improvements and reform had often been made, but there has been very little real change. If change were to be effected now the impetus would not come, as it had not come in the past, from the persons requiring attention and care, because their problems are not highly visible, their numerical strength is not great, their voice is not strong. This is an area of community responsibility and social service. The community must be convinced of its responsibility and become committed to making improvement. An independent authoritative body could have an important role in this. (Letter sent to Jack Lynch, Taoiseach by CARE, 01/02/1971)[189]

Throughout the 1970s and into the beginning of the 1980s, CARE produced a range of policy documents on the subject of the 'deprived child' and various aspects of child care services. The organisation's first publication: *Children Deprived. The CARE Memorandum on Deprived Children and Children's Services in Ireland (1972),* provides the following definitions of the 'deprived child' and indicates the potential productivity of this category:

> Children in families under stress; children who never had a family (this includes children of unmarried mothers); children whose families breakdown and children in trouble with the law and other deprived children (battered babies, juvenile drug

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[188] The report was debated for the first time in the Seanad on 15th November, 1973 (CICA, 2009) The time-lag between the Kennedy Report's publication and the establishment of the Task Force was defended by the government, who argued that its attention had been directed towards the implementation of the *Health Act (1970)* and making preparations for Ireland's entry into the European Economic Community (EEC) (Dail Debates 31/05/72 – Cols. 866-868).

[189] Department of Taoiseach Files – 'Children General': N/A: 2003/16/133

> addicts, schoolgirl mothers are problem groups – and there are many more- which attract attention from time to time. (1972:14).

Having defined the objects of their concern, the organisation along with others campaigned for the implementation of the recommendations of the *Kennedy Report (1970).*[190] In a letter to government containing a copy of the organisation's memorandum and co-signed by a range of other organisations, CARE stated the following:[191]

> Although you and your Government have many preoccupations at the present time we feel that our Memorandum merits urgent attention and decision. The future welfare of Irish people depends on social policy decisions of this kind as much as on decisions in other areas of policy. (Letter to Jack Lynch, Taoiseach from CARE 06/12/72)

Interdepartmental Working Party on the Kennedy Report

In April, 1974 the 'interdepartmental working group' proposed to government the establishment of a group with access to 'outside experts' to consider the following:

1. The identification of children at risk and the requirements by way of preventative measures;
2. The assessment of children at risk;
3. The court system and adequacy of methods of disposition (including boarding-out or fosterage and residential care);
4. Standards of child care in regard to education, trained staff, specialist services, buildings and equipment, etc.;
5. Provisions as to after-care, employment, etc.[192]

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[190] The Department of the Taoiseach files contains correspondence from other organisations regarding similar themes, including: *The Catholic Women's Federation (23/03/72); The Civics Institute of Ireland (08/06/72); The National Youth Council of Ireland (09/10/72)*

[191] The letter was co-signed by representatives from the Irish National Teachers Organisation (INTO); the Irish Association of Social Workers (IASW); the Irish Society for the Protection of Cruelty for Children (ISPCC); the Irish Medical Association (IMA); the Psychological Society of Ireland (PSI); the National Youth Council of Ireland (NYCI) and various individuals including Fr Eamonn Casey (a prominent clergy figure, who was later to become Bishop of Kerry) (Department of Taoiseach Files – 'Children General': N/A: 2003/16/133) Perhaps hopeful of a more receptive audience, the Departmental file also notes that a copy of the memorandum was sent separately to the Taoiseach's wife.

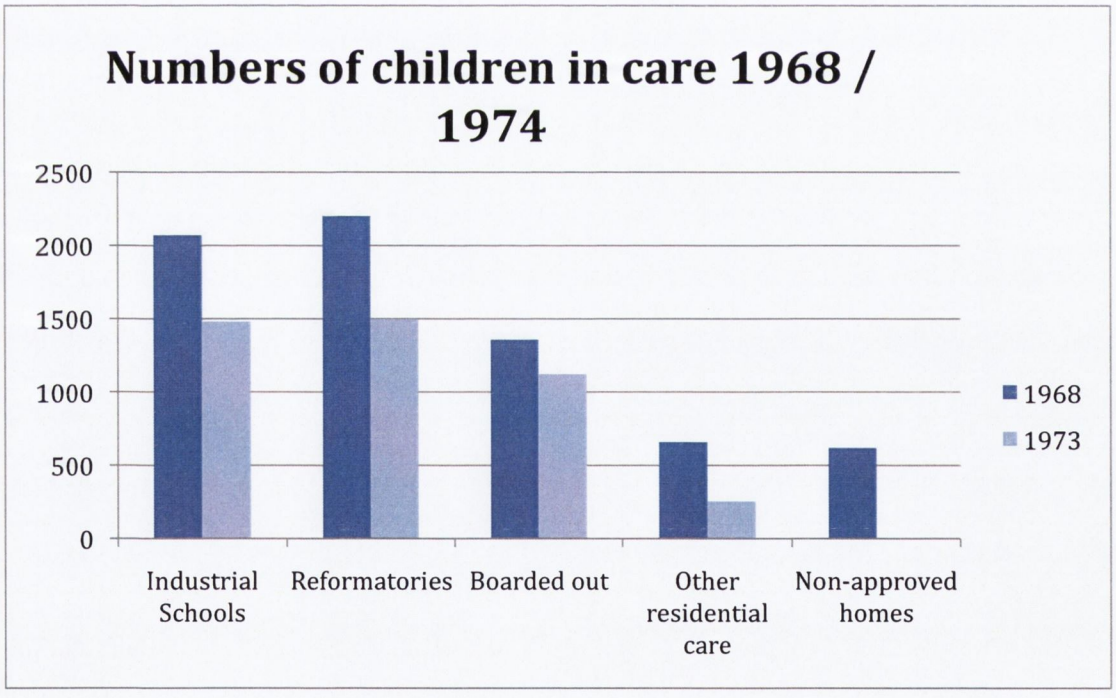
[192] Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

The memo to government composed by the working party and signed by the Attorney General and Secretary Generals of the Departments of Education, Health and Justice, further stated:

> These areas should be viewed as being closely interrelated and as forming together, a comprehensive whole. In this context, the question of centralising responsibility for policy, planning and administration of child care services should be considered.[193]

The extent to which government within this sphere had already been extended in the years immediately following the publication of the *Kennedy Report* is documented in the memo to government outlining the progress made in addressing the report's recommendations. Here a number of issues are worth noting. Firstly as the graph below based on information from the government memo demonstrates, the overall numbers of children in care continued to decline.[194]

Figure 10 - Comparison between numbers of children in care in 1968 and 1973



[193] ibid

[194] "These figures are not entirely accurate: "Information is not to hand however of numbers of children in these institutions other than those placed by the health authorities nor of numbers of children in the voluntary homes which have not applied for approval. This makes it impossible on available data to state the present over-all positions in relation to numbers of children in residential care. It is thought, however, that there is a corresponding decline in total numbers in these last two types of residential institutions." Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

The departmental officials attribute this decline, including the reduction in the numbers of children being boarded out, to a number of factors:

> This may be due to increased utlisation of adoption and a reduction, because of higher living standards and improved services, in the numbers of families who are inadequate to the point where arrangements away from the family home have to be made for the children.[195]

The development of 'preventative measures' including the expansion of social work services is noted. In 1974 there were 110 social workers employed in the Republic.[196] Through the implementation of the *Health Act (1970),* plans to increase the numbers of social workers and 'home helps' is outlined:

> The Minister for Health has stated his desire to have the numbers of professionally trained social workers engaged in community work substantially increased and to this end he has arranged with the two Dublin university colleges to provide 27 places this year on professional social work courses for sponsorship by health boards. This arrangement will continue each year until the numbers of social workers with the health boards has substantially increased. [197]

Further, the expansion of the Garda Juvenile Liaison Officer diversionary scheme and the numbers working for the Probation and Welfare Service is noted. All of which points to the extension of a governmental sphere of influence facilitated by the programmatic of 'prevention' and the continued retraction of the institutional framework.

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[195] Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General. (Legal adoption was introduced into Ireland following the passage of the *Adoption Act (1952).* Prior to the introduction of the Act, informal adoption existed on a small scale and was primarily arranged via private charities affiliated with the Catholic Church. The 1952 Act, led to the establishment of *An Bórd Uchtála (The Adoption Board),* which has the powers to make adoption orders. Further amendments to adoption legislation were introduced in Acts in 1964, 1974, 1976, 1988 and 1991.) Kennedy (2001:44) notes that: 'Illegitimacy was central to adoption' and it 'provided a mechanism for absorbing non-martial children into traditional families' (Kennedy, 2001:21). However, following the introduction of the *Unmarried Mother's Allowance* in 1973, the numbers of 'illegitimate' children being placed for adoption declined (Kennedy, 2001).

[196] Of this number, 50 worked for the health boards, which had been set up under the *Health Act, 1970,* the remaining 60 social workers worked for voluntary agencies who provided services to the health boards

[197] ibid.

Retraction and Recalibrations

Alongside the retraction there are recalibrations. Marlborough House and Daingean Reformatory, both extensively criticised in the *Kennedy Report* closed in 1972 and 1973 respectively and in the same period two new facilities opened. *Finglas Children's Centre* 'a newly built complex' with 'full provision for social psychological, psychiatric and educational assessment' opened in 1972 [198], and *Scoil Ard Mhuire* in Lusk 'an entirely new special school with modern facilities' in 1973. Problems persisted, however, in achieving the precise calibrations to match the productive site that is the increasing range of complexity.

Read from these archives the difficulties are two-fold, material in terms of the buildings, resourcing, infrastructure etc. required to re-calibrate the system and one of perceived increased complexity of need made manifest through the productivity of discourse regarding particular categories of children who are deemed to require more specialist provision. The following excerpts from the Working Group's memo to government provide an illustration of how these difficulties were framed discursively. Beginning with reference to the *Kennedy Report's* recommendations it states:

> The general tenor of the report appears to envisage the present system of large institutional buildings being replaced by self-contained units for 7 to 9 children each, these units to be conducted by houseparents and approximating as closely as possible to the normal family unit. This would seem to entail a radical reorganisation of the residential care system, as it appears to imply numbers of small, independent units. It is difficult to see how the present administration of homes by religious orders could be adapted to this form of organisation and, in consequence, the setting up and administration of a type of system largely new in our context would have to be devised.[199]
>
> There appears to be a small minority of sociopathic offenders who cannot be contained in a special school and who require treatment in a closed psychiatric unit. Proposals are at present being examined in the Department of Health for such a unit

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[198] "Marlborough House was replaced by Finglas Children's Centre conducted by the De La Salle Order on behalf of the Department of Education. The centre is a newly-built complex which opened in January 1972, although the Remand Unit proper did not open until August, 1972." (ibid).

[199] This comment is in response to the recommendation made in the *Kennedy Report* regarding the abolition of the 'institutional system of residential care' to be replaced where necessary by small group homes.

> in Dundrum.[200] It is possible that the presence of this small but destructive group and that fact that suitable provision has not has yet been made for them is influencing attitudes in relation to some secure provision in the special schools. If adequate special arrangements were made for this sociopathic group, it would help clarify this latter issue and it is possible that this would indicate that secure provision at the special schools would be needed for persistent absconders.

Reference to a particular category, in this case 'sociopathic offenders' requiring specialist provision provides impetus for the rationales put forward for new forms of containment. These categories emerge within a range of discourses, for example as part of the psy-child discourse typified by the *Kennedy Report* and supported by disciplinary knowledge such as psychiatry and psychology. Evident also from this, is the view that there are particular groups of young people, who if removed from the 'mainstream' system (whatever that may be), will enable the system to function better.

In the same period that attention was being directed towards the area of child care, and in particular towards these problematic children, the government had also established the *Interdepartmental Committee on Mentally Ill and Maladjusted Persons.*[201] The committee was broadly concerned with psychiatric service provision and included in its remit was services for children and adolescents. It produced two reports specifically on this subject in 1974 and reference is made to the work of this committee in the Department of the Taoiseach's General Childcare files. The two reports entitled *Assessment Services for the Courts in Respect of Juveniles (1974a)* and *The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders (1974b),* provide details of the 'diagnostic categories' of young people deemed to require specialist interventions including containment.

Examples of the discursive categories are set out in the reports and include the following:

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[200] Dundrum refers to the location of the State's 'Central Mental Hospital'.

[201] The committee was established by the Minister for Justice in January 1972 under the following terms of reference: "To examine and report on the provisions, legislative, administrative and otherwise, which the Committee considers to be necessary or desirable in relation to the persons (including drug abusers, psychopaths and emotionally disturbed and maladjusted children and adolescents) who have come, or appear likely to come, in conflict with the law and who may be in need of psychiatric treatment."

Illiterates – This group consists of persons who, for one reason or another, have not benefitted adequately from our educational system. As regards intelligence, they are often on the borderline of mental handicap and usually belong to the lowest socio-economic group.

Cultural Delinquents – Essentially these are youngsters of normal personality who may be expected to adjust spontaneously to normal life of society as they grow older...they generally live in socially disadvantaged areas where they are largely influenced by their local environment. Their misdeeds tend to be condoned by their relatives and friends.

Character-disordered delinquents (these are further subdivided into 'inadequate' and 'neurotic': The 'neurotic' are usually solitary offenders. There is frequently an element of compulsion in their behaviour, which leads in turn to a reduction in emotional tension. The seemingly irrational nature of the neurotic offender evokes a feeling of perplexity in the observer. Such offenders share with the non-offending neurotic child many of the symptoms of emotional disturbance e.g. nail biting, night fears, enuresis, stammering. Examples of their offences are arson, sexual offences and certain types of pilfering.

Aggressive sociopaths – Represent the most extreme form of socially dangerous disorder of personality. These people are totally egocentric isolates further characterised by callousness and dangerousness.[202]

These figures of juvenile offender (and potential offenders) emerge through psychiatric diagnostic categories and call to mind Rose's (1988:185) figures who may 'seem marginal to contemporary eyes'. They are deemed to require a range of interventions based on the gradations of their characteristics. In the main, assessment and treatment in the community is recommended aside from for the most 'disturbed and disturbing' – the character-disordered neurotic delinquent and the aggressive sociopaths, for whom 'long-term, medically-oriented custodial treatment' is deemed necessary. The decision as regards to diagnosis and treatment options is in all cases to be preceded by 'professional assessment'.

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[202] Government of Ireland, 1974 (b) The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders.

Following the identification of these categories the committee made the following recommendations for service provision:

Figure 11 - Facilities recommended for young people by the Committee on Mentally Ill and Maladjusted Persons

Category	Intervention	Department
Illiterates	School Attendance Officers, Welfare Service and Department of Education School's Health Service	Department of Education
Cultural Delinquents	Day attendance centres for 20 juveniles at any one time.	Department of Education
Character Disordered Delinquents (Inadequate)	As per cultural delinquents	Department of Education
Character Disordered Delinquents (neurotic)	Specialist psychiatric services in day-child psychiatric clinics; residential placement in a range of facilities – including open and closed hospital based units; residential homes and special schools	Department of Health / Department of Education
Aggressive sociopaths	A secure centre for approximately 15 juvenile sociopaths under 16.	Department of Health, Justice and Education

In addition to the above, the interdepartmental committee also recommended that a fourth residential school be established; a closed unit for young male offenders and a special residential school for girls thereby extending the range of provision in the face of the retraction of the system.

Resistance at sites of containment

However, it is clear from both this Committee's recommendations and the ongoing reconfiguration of the child care system at this time that the religious orders who continued to operate the 'special schools' are also indicating a resistance towards accommodating particular categories of young people.

> The Committee is aware of complaints that the authorities of the schools referred to in the previous paragraph (i.e. the special schools) are unwilling to accept certain boys because they are known to be disruptive or serial absconders." (Government of Ireland, 1974b: 10)

A similar discourse is seen in the memo from the Department of the Taoiseach's files:

> Some controversy has surrounded the question of the provision of custodial accommodation in the new special schools. The Kennedy Report recommended that the schools should be open but that each should have a secure wing. The religious who conduct the schools do not feel it appropriate that they should administer closed units. Pending experience of the working of the schools and having regard to practical problems, special arrangements for closed custody have not been made.[203]

In addition to disagreements regarding the manner in which institutions should be operated, an analysis of the archive illustrates the continued reliance on the religious orders to deliver the 'specialist' services proposed in a re-calibrated system. This is further demonstrated by the fact that the two new institutions opened within this period; Finglas Children's Centre (officially designated as an Industrial School) and Scoil Ard Mhuire (a reformatory school) were both operated and managed by religious orders. In fact the Oblates, who operated Glencree, the first reformatory in Ireland, established in 1858 and its successor, Daingean which opened in 1870 and closed in 1973, were the same order that were tasked with the operation of Scoil Ard Mhuire and most of the remaining boys in Daingean were transferred to Scoil Ard Mhuire on 16th November, 2003 (CICA, 2009). [204]

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[203] Appendix H: Working Party on the Kennedy Report': National Archives – Department of the Taoiseach Files, 2005/7/94, Children General.

[204] Glencree a former army barracks ceased operation in 1940 having housed boys in 'appalling conditions' (CICA, 2009, Vol.1: 612/613). The Oblates negotiated with the Department of Education the extension of the existing reformatory at Daingean also a former barracks (which also housed the order's novitiate). The *Report of the Commission to Inquire into Child Abuse (Vol.1: 614)* notes: On Tuesday 6th August 1940, Garda Transport Authorities transported 205 boys from Glencree to Daingean. The Garda escort was in civilian clothes. The mattresses and bedclothes were transported in a large open truck on the same day. Fr Giancarlo had sought tarpaulin covers from the Gardaí to cover the trucks but this could not be provided. We are not told if the sun shone down on this unusual convoy." On the closure of Daingean and the transfer of the remaining boys to Scoil Ard Mhuire the report notes: "Daingean officially closed on 16th November 1973, and the boys were mostly transferred to Scoil Ard Mhuire, Lusk. Daingean Reformatory was handed back to the Board of Works on 30th November 1973. However, an Oblate community continued to live in the convent

A further theme is discernable here. The criteria of the existing schools as to who they will or will not accommodate provides impetus for the rationale that other forms of provision are required. Further still, the subject of the 'deprived child' and their 'special needs' lends support to calls for greater financial remuneration for staff working in this now 'specialised' sphere. Here an extract from a letter to government (and sent to all Dáil deputies) from the *Association of Workers in Child Care* in 1975 is illustrative:

> This Association is the professional body catering for residential child care workers, management and staff, lay and religious, working in residential homes and centres for deprived children throughout the country. The quality of residential care provided for deprived children is being seriously jeopardised by the totally inadequate system whereby the homes are financed, and in particular by the persistent and repeated refusal of the State to provide a salary scale or career structure for the child care workers themselves. Intolerable strains are being placed in religious managers of these homes, who are unable to provide for their staffs the security which is their due, or to ensure the staffing ratios required by modern child care practice.[205]

Calls for better pay were also supported by the development of specialist training for child care workers. In 1971 a one-year residential course in child care financed by the Department of Education was established in the school of Social Education in Kilkenny and further in-service training was developed in other parts of the country. Further impetus was provided to the calls for improved salaries and pay-scales for staff in residential child care when the staff in the newly opened special schools (Scoil Ard Mhuire and Finglas) were placed on higher pay scales than staff working in other facilities owing to the 'specialist nature' of their work.[206]

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building at the gate, which was transferred to the Oblates against the surrender of their lease in the main property. According to figures from the Oblates, the total number of boys in the Reformatory in 1973 was 25." (CICA, Vol. 1, 2009:685)

[205] Letter from the AWCC to the Department of the Taoiseach: N/A: 2007/116/98. O'Sullivan (2009:337) notes that the AWCC "...was founded in the early 1970s and was effectively another name for the Association of Managers of Reformatory and Industrial Schools. The AWCC which included both managers and staff had its beginnings in the early 1970s and at its foundation and throughout its early years it was dominated by religious. That dominance dwindled over time with the decline in vocations and the movement away from residential care by some of the religious orders. In the late 1980s, the staff formed their own association, the Irish Association of Care Workers, later renamed as the Irish Association of Social Care Workers."

[206] N/A: 2007/116/98 Department of the Taoiseach Date: November 1975 – June 1977

A continuous theme evident from the archive is the emergence of the 'deprived child' from the visibility of the institution. The figure of the 'deprived child' variously conceived, provides the subject around which calls for greater government intervention in the lives of children and their families can be made. Further still, it provides the rationale for advancement of specialisms through the power-knowledge nexus of 'professionalism' as legitimated by the psy discourses that give both the 'problems' and their proposed 'remedies' effect.

Task Force on Child Care Services

The Interdepartmental Working Party on the Kennedy Report's proposal to government regarding the establishment of group 'with access to civil service and outside experts' to consider the identification, assessment and services towards 'children at risk' was to lead to the establishment of the *Task Force on Child Care Services* by the Minister for Health in 1974.[207] The terms of reference of the *Task Force* were the following:

1. To make recommendations on the extension and improvement of services for deprived children and children at risk;
2. To prepare a new Children's Bill, updating and modernising the law in relation to children;
3. To make recommendations on the administrative reforms which may be necessary to give effect to proposals at (1) and (2) above.

In the same period that the decision was made to form the Task Force in 1974, the government decided to assign primary responsibility for child care to the Minister for Health (DoH, 1980; Keenan, 1997), but as O'Sullivan (2009) has noted the precise

[207] The members of the Task Force included a representative from the Department of Health the office of the Attorney General and the departments of Education, Finance and Justice. Three independent experts were also appointed to the Task Force: Ian Hart, a Psychologist based in Trinity College Dublin and author of some of the only research conducted on young offenders in Ireland (Hart, 1967; 1970; Hart and McQuaid, 1974); Séamus Ó'Cinnéide, a founder member of CARE and Niav O'Daly a Social Worker. O'Sullivan (2009) notes that the decision to form a Task Force and the precise configuration of such a grouping was the subject of some debate within government. For example, John Bruton, the Parliamentary Secretary for Education wrote to Richard Burke, the Minister for Education advising the following: "As I read the suggested terms of reference of this new working party it seems as if it would in effect be undertaking the production of another (albeit updated) Kennedy Report. This undertaking is demonstrably not necessary." (CICA, Vol IX: 345) Nevertheless, the establishment of the Task Force was announced on 21/10/74 under the following headline in the Irish Times: "*New Deal Promised on Child Care.*"

ramifications of this government decision were not fully set out at the time and this decision appears to have little material or immediate effects. Indeed, O'Sullivan (2009), argues that although the template for the administration of child care services was set out in this period, the out-workings of this decision was to take a further 30 years to be given affect.

The Task Force set itself to work relatively quickly, notwithstanding the difficulties of poor information on children and their needs – 'Irish data is both partial and crude' (1975:6). It identified a number of areas of pressing concern, what it described as 'the glaring gaps', which required immediate attention.[208] Reflecting the productivity of discourse that is also evident in the reports produced by *The Committee of Mentally Ill and Maladjusted Persons (1974a; 1974b)* and the CARE (1972) memorandum, the Task Force recommended that specialist residential care was required for the following categories of young people:[209]

- Very young children who require short-term care for whom foster care is not appropriate (small residential units);
- Boys who require care or control (60 places to replace the existing provision at St Joseph's Special School in Clonmel);
- Homeless boys over 14 (hostel accommodation);
- Severely disturbed boys (aged 15-18) (a special residential centre);
- Acutely emotionally deprived boys and girls (intensive care in a residential school);
- Boys aged 12-16 who cannot be coped with in existing institutions (a special school for 25-30 boys);
- Severely disturbed girls aged 14-18 years (a special residential centre for 12 girls);

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[208] This prompted the decision of the Task Force to produce this interim report. The final report from the Task Force was not completed for a further five years and agreement was not reached on a number of the areas. The Department of the Taoiseach files indicates that there was some debate as to whether the Interim Report presented to government should in fact be published. While the Minister for Health was keen that the government should publish the report stating the following reasons: "Many of the recommendations contained in the Report are related to identified gaps in existing services which require to be filled as a matter of urgency; (b) The Minister is under strong pressure from many sources dealing with the problems of Child Care to have the Report published." The Department of Finance and the Taoiseach expressed reservations because of the potential financial implications of the proposals. Department of the Taoiseach (July 1975 – December 1977) N/A: 2005/151/92

[209] The CARE memorandum had also argued for 'specialist residential centres' for the following categories of young people: 'children who are drug addicts'; 'psychopaths'; the 'markedly anti-social' and 'promiscuous girls' (CARE, 1972:91)

- Girls aged 12-17 who have shown themselves to be too disruptive for existing facilities (25 places and residential assessment for 10);
- Travelling children (two open residential centres);
- Travelling children (an identified group of 12) (a residential centre with means of containment)

Noteworthy, is the fact that of this range of recommendations, only a small number were ultimately implemented and this happened on a partial and 'haphazard' basis, a subject that a Chapter Seven of this thesis explores. A genealogical analysis of the discourse across time illustrates that the clarity of purpose that characterised the *Task Force's Interim Report (1975)*, dissipated partly as a result of changes in membership and disagreements within the group regarding the proposals for the precise configuration of future change. Perhaps more fundamentally the discourse of the final report of the *Task Force* published in 1980, points to disagreements regarding the precise specification of the problematised subjects and henceforth the most suitable forms of government.

Task Force on Child Care Services (Final Report) (1980)

The *Task Force on Child Care Services* situated its work as part of a progressivist narrative of 'a continuing development of our health, education and social services, a growing concern with well-being and development of children and a growth in knowledge concerning children's needs.' (DoH, 1980:25) This story of enlightenment was posited on the knowledge of children's 'special needs' and in particular their 'psychological needs' which had been previously brought to the fore in the *Kennedy Report (1970)*:[210]

> Children are special, firstly, because they are persons in the process of formation and secondly, because they are not independent. Children have needs which are similar to those of adults, but different in degree or in their importance for the child. In addition, children have certain needs which adults do not have. Needs of this second kind have been defined in four classes, namely, the need for love and security, the need for new experience, the need for praise and recognition and the need for responsibility. These

[210] The *Report of the Task Force on Child Care Services (1980)* sets out the following:"The Committee's report (the Kennedy Report) and the subsequent campaign by a number of interested groups for improvements in all areas of child care are acknowledged to have done much to speed the course of change." (DoH, 1980:25).

> "psychological needs" normally get less attention than physical needs, which are more easily defined and understood. But all these needs are subsumed in the general need that every child has for total care. Total care is usually found in a family. (DoH, 1980:36)

The object brought to visibility in the *Task Force Report* is the 'psychological child' who the report proceeds to describe as 'persons in the *process of formation'* and as therefore *'not independent'* (emphasis in original). Read from this, children are viewed as not quite persons. The report does however articulate that children have rights and reference is made to the *United Nations' Declaration on the Rights of the Child (1959).*[211] However, these rights are bound up with 'needs and interests' and are counterbalanced with the 'rights' of parents. Reflective perhaps of the difficulty in situating the objects of which it speaks, the *Task Force* does not arrive at any definitive statement on children's rights, but states that in compiling its recommendations it has been 'influenced by the notion of "rights"':

> We have not seen it as part of our task to develop a comprehensive statement on children's rights in Ireland in 1980 even though legislation which we envisage will, in effect, change the position in regard to children's legal rights. However, we have adverted to existing statements of children's rights and we have been influenced by the notion of "rights". There are certain fundamental normative ideas about what should be done for or in respect of children which we would hold. These ideas have been mentioned in this chapter and they remain implicit throughout the report." (DoH, 1980:46).

The question of the 'special' needs, rights and interests of children and how best to address these is clearly bound within the report to the interests of society and in particular to the type of people that children will become. Here children 'at risk' are presented as a potential threat:

> To put it more starkly, a child's experience of life and the way he is cared for and dealt with, determines to a large extent the kind of adult he becomes. (DoH, 1980:34)

> A child who is not loved can be irrevocably damaged. (DoH, 1980:35)

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[211] This Declaration is in fact included as an appendix to the report.

The rationale for intervention is therefore posited on the potential costs to society of failing to address the 'special needs, rights and interests' of children who are 'at risk'.

> In short, there is a connection between the care of children and the good of society. (DoH, 1980:37)

Where the *Kennedy Report (1970)* had focussed on the child in the institution, here the focus has broadened to children within wider society and more specifically to the role of families in raising these children. While in the main institutional provision has been discredited (with some exceptions which will be discussed), and alternative care is viewed as an exceptional course, the family becomes the focal point of government intervention. Viewed through a governmentality lens the *Task Force's Report* can be seen as part of a discourse legitimating wider intervention in the lives of children and families who are deemed to be 'at risk'.

The concept of what constitutes a family is set out in the report and reflecting a broadening of norms this is not confined to the marital family (Kennedy, 2001).[212] However, the discourse reveals that non-marital families are specified as particular sites of intervention:

> The fact that a particular family is incomplete in some respect does not necessarily mean that the family is not the best place for the child. A single-parent family or a family that is not functioning in an ideal way is likely to need more help and protection than a two-parent family functioning well. (DoH, 1980:37)

Points of Divergence

One of the most notable features of the final report from the *Task Force on Child Care Services (1980),* (apart from the length of time that it took to complete - six years from the point of the establishment of the *Task Force* in 1974), is the fact that its conclusions are divided. A *Supplementary Report* compiled by two of the external experts appointed to the *Task Force* - a social worker and a social policy expert is appended, as are the reservations of individual members on specific issues.

In the methodological approach adopted in this study, discourse is not understood in unitary terms, but rather as a space of 'differentiated positions' (Foucault, 1991b), it is

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[212] This discourse is reflective also of changed material circumstance evident in the introduction of an 'Unmarried Mother's Allowance' in 1974 (Kennedy, 2001).

illustrative therefore to note the points of contention amongst the members, which relate mainly to adoption,[213] juvenile justice, the administration of the 'special schools' and the demarcation of departmental responsibilities. These differentiated positions made manifest through discourse can be viewed as effects of power-knowledge.

The debate among the *Task Force* members concerning the proposals for juvenile justice, including the age of criminal responsibility is illustrative. The *Kennedy Report (1970)* had recommended that consideration should be given to increasing the age of criminal responsibility from seven years of age as set out under the *Children Act, 1908* to 12 years, however, the main recommendation of the *Task Force* was that the age of criminal responsibility should remain at seven years. The authors of the supplementary report recommended however, that the age of criminal responsibility should be raised to 15 years. The rationale for the supplementary proposal was set out with reference to the experiences of other 'juvenile justice systems' and the perceived negative effects of 'criminalisation':

> When all is said and done the criminal law is concerned with crime and punishment, with guilt and innocence. In Ireland a child becomes subject to the criminal law at the age of 7. The many undesirable effects of this can be summed up by saying that through our present system we criminalise children." (DoH, 1980:286)

Basing their recommendation on the experience of other countries, the Scottish Hearing System is specifically mentioned in the report; the authors of the *Supplementary Report* argue that a particular type of intervention, i.e. a justice-based response is potentially damaging and that a welfarist orientated approach is required. For children between the ages of 7 and 15 'restraint proceedings' are recommended which would allow the Court to order a particular intervention in the child's life or prohibit a particular activity but not under the guise of criminal proceedings.

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[213] Here the main point of contention was that the Task Force did not consider adoption in a substantive way in its discussion of the overall child care system. The authors of the supplementary report argued that adoption services should have been viewed as a comprehensive part of the overall child care system. (DoH, 1980:282). However, the majority view was that adoption did not form part of the *Task Force's* remit.

Here the authors of the *Supplementary Report* speak to the perceived negative effects of a particular mode of government and propose an alternative mode where the effects of power are made differently manifest. This rationale for this alternative approach is based on particular knowledges concerning the status of children and the historic effects of criminal responses (both in Ireland and elsewhere). At its simplest level this example of one of the different recommendations set out in the *Task Force Report* and the *Supplementary Report* speak to different effects of power-knowledge manifest through these 'differentiated positions' (Foucault, 1991b).

The particular role and function which the 'special schools' should occupy in a reformed child care system is also a space of differentiated positions. In common with previous reports addressing aspects of institutional provision, the precise calibration of the system is debated. [214] Here the authors of the *Supplementary Report* argue that 'minimum intervention' should be an articulated principle within child care policy. In support of this view they reference a number of studies conducted in the UK on the recidivism rates of young people placed in 'approved schools' and 'secure units' (the UK equivalent of Ireland's 'special schools') (Cornish and Clarke, 1975; Brody, 1976; Millham, Bullock and Hosie, 1978).[215]

> As far as children removed from home in order to "treat" their delinquency are concerned, the evidence of the failure of higher degrees of intervention to achieve this objective is now quite conclusive. Furthermore, the evidence in relation to delinquent children indicates that the higher the level of intervention, the less successful it is in affecting their subsequent delinquency. (DoH, 1980: 296 [*Supplementary Report*])

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[214] See earlier discussion re: *Kennedy Report (1970); Interim Report of the Task Force on Child Care Services (1975)* and the two reports published by the *Henchy Committee (1974a; 1974b)*

[215] Referring specifically to the study on secure units by Millham et al (1978), the authors note: "A recent study of boys placed in three secure units in England (Millham, Bullock and Hosie, 1978) reveals two important facts about the children in these units which are relevant to this discussion. Firstly, the failure rate, in terms of reconvictions, of the secure unit boys is somewhat higher than for Approved School boys (i.e. boys committed to residential care by the courts who were not in secure units). Twenty-six per cent of the secure unit boys were transferred from the units to other institutions which included open residential centres, mental hospitals and borstals." (DoH, 1980:296) Further detail from these studies is referenced in a similar vein in support of the principle of minimum intervention. The report authors refer to the fact that no similar study has been conducted in Ireland but state: "No similar research has been done in a major secure facility in Ireland, the children's prison at Loughan House. The Task Force was, however, provided with summary case histories of a large number of the boys who have been committed there and these case histories create the same impression as that described in the above study." (DoH, 1980: 297 [Supplementary Report])

Further reference is made to an 'authoritative commentary on existing systems of dealing with delinquent children' which concludes that 'residential treatment for delinquent children as it exists at present...is failing badly...'[216] Elsewhere, both Harris and Timms (1993) and Parton (1991) have noted that the range of studies conducted on the care system in the UK from the late 1970s onwards, such as those cited in the *Task Force's Supplementary Report*, gave support to the view that 'treatment' or 'rehabilitation' as an aim was discredited. Authors in other spheres have also documented the 'collapse of the rehabilitative ideal', for example Garland (1990; 2001) and others have written extensively on this topic in relation to the criminal justice system.

While an analysis of the archive illustrates a dominant discourse in which institutionalisation was discredited by the early 1970s, the promise of treatment in 'special units' specifically in relation to the most 'problematic' of young people was still being advocated. Evidence of this is seen in the range of provisions proposed by the *Task Force* in their *Interim Report (1975)* and in the recommendations advanced by the *Interdepartmental Committee on Mentally Ill and Maladjusted Persons (1974a; 1974b)* and in the campaign literature of organisations such as CARE (1972; 1974; 1977; 1978). And here too in the main report of the *Task Force,* the role of the 'special schools' in containing categories of young people is advocated.

An indication of some of the difficulties in reaching definitive conclusions is provided in the following excerpt from the report:

> At an early stage we discovered that the problems which presented themselves for consideration were not at all susceptible to quick and easy solutions because they related to the most basic philosophical and political ideas about human rights and the responsibilities of the State. (DoH, 1980:33)

Notable also is that the *Task Force* did not produce a draft of new legislation, one of its original terms of reference. This notwithstanding, the general (majority) conclusions reached by the *Task Force,* that 'child welfare' and 'juvenile justice' or 'care' and 'control' cases warranted separate approaches was ultimately to find effect in separate legislation: the *Child Care Act, 1991* which put in place the statutory

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[216] The 'authoritative commentary' referred to is Norman Tutt's (1974) publication: *Care or Custody.* London: Darton, Longman and Todd.

framework for child protection and welfare and the *Children Act, 2001* which 'reformed' and 'modernised' the 'youth justice system' (Shannon, 2004a).[217]

From Task Force to Legislation

The *Task Force on Child Care Services* published its final report in 1980. As identified, the report reflected disparate views on the manner in which children 'at risk' and children 'out of order' should be governed. In fact this 'binary', which the members referred to as 'care' and control' was one of the areas of most disagreement. Reflective of this complexity, the group did not produce a draft of new legislation to replace the *Children Act, 1908,* as had been its original remit. Information from the archives and from various commentaries referred to in earlier chapters have outlined the numerous delays in producing new legislation. The original intention to produce comprehensive legislation dealing with the binary constituency of 'care' and 'control' was abandoned in 1985 as a result of inter-departmental disagreement between the Departments of Justice, Education and Health.

Through an analysis of the discourse of the government archives from this period it is difficult to discern if the abandonment of an attempt of achieving a unitary position in legislative terms was reflective of ideological disagreement regarding the appropriate modes in which to govern the objects of concern, or whether it reflected more prosaic effects of power between actors within government departments. One of the manifestations of these divisions was the enactment at the beginning of the nineteen-nineties of the *Child Care Act (1991),* which set out the legislative framework for the 'welfare and protection of children'. Separate legislation for the sphere of youth justice was not introduced for a further 10 years.

Child Protection and Welfare and the child as 'rights-bearer'

It has been observed in a range of literature that the introduction of the *Child Care Act (1991)* marked a change in the government and relationship between children,

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[217] The rationale advanced for the separation of 'care' and 'control' proceedings was that the separate purpose of both should be clear in the public minds. (DoH, 1980:249). This particular view echoes the findings of the two previous inquiries into the Industrial and Reformatory School system in 1936 and 1970, where it was identified that there was confusion amongst the public regarding the differences (if any) between children committed to Industrial and Reformatory Schools. This was to lead the *Kennedy Report (1970)* to recommend that the names of the respective schools be changed to 'children's homes' and 'special schools'.

families and the state (Buckley et al, 1997; Ferguson, et al 1993; Ferguson, 1994; Skehill, 1999).[218] The form of governance as set out in the Act, suggests a level of intervention predicated on surveillance (the Health Board should take steps as it considers requisite to identify children who are not receiving adequate care and protection), tutelage and sanction.[219] An analysis of the discourse of the legislation indicates that the object of intervention 'the child' is conceived as a 'rights-bearer'. Here the Act articulates that the 'welfare of the child' is the 'first and paramount consideration', however, this is tempered by reference to the 'rights and duties' of parents.[220]

The underpinning rationale for the legislation was set out by the Minister for Health in the Dáil in 1988, where he outlines that 'new' and more 'progressive' legislation is needed because of new understanding about the rights and the psychological needs of the child:

> The existing legislation in relation to the care of children is based largely on the Children Act of 1908. That Act was the culmination of a series of legislative measures taken during the 19th and early 20th centuries aimed at protecting children from cruelty and exploitation. It has served us well and many of its provisions are still in use today.
>
> While the legislation may not have changed significantly, there have been sweeping changes in society in the intervening period. The political and administrative structures have changed; new values and attitudes have evolved; there is a more sensitive understanding of the psychology and needs of children. In particular, there is a greater awareness now of the rights of the child himself or herself as an individual member of society.
>
> We live in a more enlightened society which has brought great benefits to most of our children but, regrettably, there is a darker side to the picture. There continue to be

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[218] The Irish *Child Care Act (1991)* is largely modelled on similar legislation introduced in England and Wales in 1989 *(Children Act, 1989).* Here Parton (1991) has argued from a similar perspective that the introduction of this 'child protection' legislation represented a fundamental shift in governmental relations between children, families and the State (Parton, 1991).

[219] Part 2 of the Act specifies: "It shall be the function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection." [*Child Care Act, 1991:* Part 2, Section 3, 1

[220] Part 2, 3(2)

> unhappy and deprived children in our community. At any time about 2,500 children are in the care of health boards. Many are in care because their parents are unable to look after them, whether due to physical or mental illness, alcoholism, marital breakdown or other family crises. Most are reunited with their families after a few weeks or months; unfortunately others remain in care for years.[221]

The narrative of enlightenment forms part of the *raison d'être* for the new programmatic, where intervention is based on a child's psychological needs and rights. However, the genealogical analysis of the archive demonstrates that the question and positioning of children's rights is not a space of unitary positions. The deliberations of the *Task Force on Child Care Services (1980),* illustrate this and the previous attempt to introduce legislation *(Children Care and Protection Bill, 1985)* had led to similar debates over the issue of 'children's rights' and in particular the balance between these and the rights of parents.[222] Parliamentary debate on the *1988 Children's Bill,* provides further indication of this space of differentiated positions:

> The major failing in this legislation is the ducking of the constitutional issues. It has long been recognised that, while the rights of families are, quite rightly, strongly protected in our laws and Constitution, the rights and needs of our children are far less defined. It was anticipated that the Children Bill would seek to address this imbalance. The Bill is almost totally silent in relation to children's fundamental rights. There is no statement of principle. There is by contrast in Part II of the Bill again a clear definition of the rights of families, which nobody argues with but which are already identified and protected in many of our laws and clearly in our Constitution. As a result of the failure to face up to the constitutional challenge we have had a watering down even of proposals in the previous Bill.[223]

The prominence of considerations to issues of 'child protection' was enabled by the discourse surrounding the object of the 'abused child', whose 'emergence' at a policy level can be traced to the development by the Department of Health of guidelines on dealing with *Non-Accidental Injury to Children* in 1976.[224] An increased focus on the

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[221] Minister for Health, Dr. Rory O'Hanlon, Dáil Éireann - Volume 382 - 14 June, 1988 Child Care Bill, 1988: Second Stage.
[222] Minister for Health, Dr. Rory O'Hanlon, Dáil Éireann - Volume 382 - 14 June, 1988 Child Care Bill, 1988: Second Stage.
[223] Flaherty, Fine Gael: Dáil Éireann - Volume 382 - 14 June, 1988 Child Care Bill, 1988: Second Stage.
[224] Department of Health (1976) *Report of the Committee on Non Accidental Injury to Children*. Dublin: Stationery Office

area of child sexual abuse in particular, prompted by the emergent attempts to 'enumerate' the cases of abuse also provided the means through which the issue of child sexual abuse was made visible:

> Last night the Minister instanced the alarming increases in reported cases of child sexual abuse. As a member of the Oireachtas Joint Committee on Women's Rights I have seen reports from our various health boards of alarming increases in the sexual abuse of children. I instanced a report from one community care area in the Eastern Health Board region where reported cases of sexual abuse of children have risen from seven in 1982 to an alarming 79 in 1987. One reason for this dramatic increase is the simple fact that people feel freer to make these reports; there is less secrecy and less terror of making reports to State agencies. Even putting that aside, the sheer volume of reported cases now must underline for us the urgency of the type of legislation we are considering today.[225]

In 1979 the government established a Child Care Division in the Department of Health, a recommendation of the *Kennedy Report,* the aim of which was to conduct research, analyse data and guide government policy in this area. One of the responsibilities of the Child Care Division was the collection of data and information pertaining to child welfare. In the main, this involved the Department receiving annual returns from the Health Boards on information such as the number of children in care in their area and the reasons for entry into care. Notwithstanding the fact that the quality of this data has been heavily criticised over time (e.g. Buckley et al, 2006; O'Higgins and Boyle, 1988), the collation of this 'crude' and partial data (O'Sullivan, 2009), nonetheless enabled a specification of the 'problem' and served to mobilise calls for 'systems' to deal with this phenomena:

> At any time about 2,500 children are in the care of health boards, the majority because their parents are unable to look after them, whether due to physical or mental illness, alcoholism, marital breakdown or other family crises. Other children enter care in much more dramatic circumstances. They are the victims of child abuse, whether it be physical, emotional or sexual. In 1986, the total number of confirmed cases of all sorts of child abuse known to the health boards was 494, of which some 274 were victims of child sexual abuse. Figures are still being collected from health

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[225] Howlin, Labour: Dáil Éireann - Volume 382 - 15 June, 1988 Child Care Bill, 1988: Second Stage (Resumed).

> boards in respect of 1987, but all the indications are that the total number of reported and confirmed cases in 1987 will be substantially higher than 1986.[226]

The sense that the 'problem' of child sexual abuse' was not only emergent but growing was further evidenced by the focus this issue received throughout the 1990s (Keenan, 1997; Ferguson, 2004), and in particular, the decision by the government to establish an investigation into what became known as the *Kilkenny Incest Case*[227]. Here the Minister for Health, Brendan Howlin, sets out the rationale for the inquiry:

> The terrifying sexual abuse suffered as a child by the young woman happened at a time when the existence of child sexual abuse was not even publicly acknowledged. For example, the Task Force on Child Care Services which reported in 1980 made scant reference to the incidence of incest and other forms of sexual abuse against vulnerable children. This task force was composed of a number of experts in child care and its report focused on what were the major issues of the time.
>
> I make this point not in any way to denigrate the excellent work undertaken by that task force but to illustrate the lack of awareness of child sexual abuse at the time. Since then we have all become far more conscious of the nature and scale of this problem.[228]

The *Report of the Kilkenny Incest Investigation* (McGuinness, 1993), published in May 1993, focussed on the issues surrounding the purported failures of services to intervene in the case of sustained abuse occurring over a number of years.[229] Notable

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[226] Minister of State at the Department of Health (Mr. Leyden): Dáil Éireann - Volume 382 - 15 June, 1988 Child Care Bill, 1988: Second Stage (Resumed).

[227] The case concerned the conviction of a father of sexual abuse of his children over a lengthy period in the Central Criminal in March 1993. The investigation was established to: a) carry out an investigation, insofar as the health services are concerned, of the circumstances surrounding the abuse referred to in the Central Criminal Court on the 1st March, 1993, and in particular to establish why action to halt the abuse was not taken earlier, and b) to make recommendations for the future investigation and management by the health services of cases of abuse.

[228] Brendan Howlin, Minister for Health (Labour): Dáil Éireann - Volume 427 - 03 March, 1993
This view was also articulated in the *Report of the Kilkenny Incest Investigation* (McGuinness, 1993: 15), which states: "Discussion of sexual abuse of children has begun relatively recently to shed its taboo status. More specifically the area of abuse has received greater attention in recent literature and in the training of professionals in the health, social and education services."

[229] "In all, there were over 100 contacts between the woman and the health services, many for routine medical ailments but some directly related to the abuse she was suffering. While the health care personnel responded to the presenting symptoms it is most regrettable that the true reality of what was happening in the family was not fully addressed until 1992. On the basis of their investigation, the reasons put forward by the team to explain why this happened include: the fact that each aspect of the health services dealt with the individual manifestations of the abuse and the various illnesses

in the discourse of the report is the shift from the aggregate child (or children) of previous government reports to the case-study of 'Mary' and her family described as a 'story'. Chapter Seven of the report is entitled 'The Family Story'. The story begins with the birth of Mary and charts episodes of her childhood, as a litany of abuse:

> Mary recalls the first incident of sexual abuse by her father as occurring in late January, 1976, within weeks of her arrival in Ireland. *"I was eleven, and when I asked him he told me he was punishing me, I was bold..."* The beatings first happened around the same time. (McGuinness, 1993:47)

While the problematic of child sexual abuse has become visible through the presentation of statistics noting the 'rise in incidences' reported, here we see the individual manifestation in 'Mary'.

In particular the role of Social Workers as key agents of intervention in the sphere of children 'at risk' is articulated:

> Social Workers are employed to provide a community based range of services to a variety of client groups including the elderly, the disabled, children and families. In practice, because of the demands of family and child care, most of the effort is concentrated on this area and indeed is often focussed, almost exclusively, on vulnerable families and children who are at "risk". (McGuinness, 1993:21)

The discourse of this report and the parliamentary debate following its publication, suggests a change in discourse in twenty-year period following the publication of the *Kennedy Report (1970)* and the passage of the *Health Act (1970),* when in 1974 just 60 social workers were employed by the State (i.e. in the Health Boards). As Skehill (1999; 2004) has demonstrated in her study of child protection social work in the Republic of Ireland, the question of social workers occupying this sphere of power-knowledge (i.e. child protection) was by no means foregone. Here, however, by 1993,

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entirely separately and without inter-disciplinary communication and co-operation; each injury was treated separately and the plausible explanations for the injuries which were given by the woman and her family were accepted; the prevalence and the tell tale signs of physical or sexual abuse were not as well understood at the time either by professionals or the public at large; and there were certain weaknesses in the management of the community care services in relation to the investigation of suspected cases of child abuse." Minister for Health, Brendan Howlin at Dáil Debate on the Report's Findings: Dáil Éireann - Volume 431 - 25 May, 1993

the particular 'expertise' and 'specialist knowledge' of social work in this sphere is legitimated in this official discourse.

Fundamentally also, the publication of the *Report of the Kilkenny Incest Investigation* (McGuinness, 1993), led to calls for further investment by both the health boards and central government in 'child protection and welfare' services, to 'facilitate the rolling out' of the full provisions of the *Child Care Act (1991).* Here it seems that the subject of 'child sexual abuse' and the object of the 'sexually abused child' made manifest through discourse, provides the means through which arguments can be made for greater investment in this programmatic of intervention. The following excerpt from the parliamentary debate on the *Report of the Kilkenny Incest Investigation (1993)* illustrates this discourse:

> **Minister for Health (Brendan Howlin):** The full implementation of the Child Care Act is the single biggest contribution which we can make towards promoting the welfare of children and protecting those who are at risk. Nothing less than this would be an adequate response to the terrible suffering experienced in the Kilkenny case and to the report of the investigation team...I am determined that this Act and all the provisions in it will be brought in as expeditiously as is feasible. I will do this on the basis of the full support of the Cabinet. As an indication of its determination in the matter, the Government has decided that in 1993 an additional £5 million will be provided for the child care services, amounting to £10 million in a full year. An investment of the same scale will be made in each of the next three years to resource this Act. I am informed that that is as expeditious as possible, if it is to be undertaken effectively. I sincerely hope that the full implementation of this Act will help to ensure that no other child and no family will ever again have to endure such suffering.[230]

This can be set against, the previous debate on the *Children Bill (1988)* where questions surrounding resourcing of the legislation, were a central concern of (then) opposition politicians.[231] Further still, the *Report of the Kilkenny Incest Investigation*

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[230] Dáil Éireann - Volume 431 - 25 May, 1993

[231] **Mr Howlin:** The crucial question which every section boils down to is whether the Oireachtas and the Department of Health will provide adequate moneys to allow the far-reaching measures contained in this Bill to be implemented. It is all very well to provide powers to monitor regulate and control but all these powers and regulations are useless if we have inadequate resources and staff to carry out the work being devolved to health authorities. The health boards cannot function as now constituted with the inadequate legislative powers they have. They have neither the money nor the

(1993) in its consideration of the possible legal impediments to State intervention in the lives of families to prevent occurrences such as the abuse described, argues that the 'rights of children' should be more specifically guaranteed in the Irish Constitution:

> We feel that the very high emphasis on the rights of the family in the Constitution may consciously or unconsciously be interpreted as giving a higher value to the rights of the parents that to the rights of the children. We believe that the Constitution should contain a specific and overt declaration to the rights of born children. ***We therefore recommend that consideration be given by the Government to the amendment of Articles 41 and 41 of the Constitution so as to include a statement of the constitutional rights of children. We do not ourselves feel competent to put forward a particular wording and we suggest that study might be made of international documents such as the United Nations Convention on the Rights of the Child.*** *Report of the Kilkenny Incest Investigation (1993:96)* [232]

The relevance of (albeit recent) history to the present is demonstrated by the continued productivity of the discourse regarding children's rights. In November 2007, the government established a *Joint Committee on the Constitutional Amendment on Children* to consider the wording of a Constitutional amendment, such as proposed by McGuinness (1993). The *Joint Committee* published its Final Report in 2010, recommending a constitutional amendment that would explicitly set out the rights of children.[233] Nonetheless the question of progressing such a Constitutional Amendment (which would require a Referendum) remains unclear and certainly submissions to the *Joint Committee* suggest that this is a space of differentiated positions, and successful passage of such an amendment is in no way guaranteed. [234]

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personnel to support families, to assist children at risk and to monitor cases brought to their attention. [Howlin, Labour Dáil Éireann - Volume 382 - 15 June, 1988 Child Care Bill, 1988: Second Stage (Resumed).]

[232] Emphasis in original.

[233] Joint Committee on the Constitutional Amendment on Children Third Report *Twenty-eighth Amendment of the Constitution Bill 2007 Proposal for a constitutional amendment to strengthen children's rights Final Report February 2010.* Dublin: Houses of the Oireachtas: "The Committee recommends that the proposed wording provides that the State recognises and acknowledges the natural and imprescriptable rights of all children including their right to have their welfare and best interests regarded as a primary consideration in all matters concerning the child."

[234] "There are obviously some very deep and justified concerns regarding the impact this proposed amendment will have on citizens' personal, civil and human rights. These concerns relate to family and parental rights as well as rights under criminal law." Amen (Men's Support Group) – Submission

The elision of 'delinquency'

Where discourse was focussed overwhelmingly on the figure of abused child as evidenced in parliamentary debate and further disclosures of child abuse particularly within the former Industrial and Reformatory School system throughout the 1990s, the issue of juvenile delinquency attained limited discursive space. One exception to this overall trend was the establishment by government of a *Select Committee on Crime* in 1991. The first report of the *Select Committee* entitled *Juvenile Crime – Its Causes and its Remedies,* published in 1992 provides an account of the conceptualisation of the 'problem of juvenile crime', the objects of concern and the proposed strategies, the 'appropriate practical remedies and policy measures', i.e. the programmatics required to address this 'problem'.

While a range of measures are proposed in the report for dealing with 'juvenile crime' the discourse also reveals a familiar cast of figures who are specific subjects of concern: 'gangs congregating' (1992:4); 'homeless young people' (1992:5); young people with 'personal and family problems' (1992:5); 'truants' (1992:5); children of the unemployed (1992:7); 'drug users' (1992:8) and children as 'abusers' (1992:7).

These figures are formed from an elision of space, place, family and 'social breakdown'. Their emergence is made possible from the 'surrounding conditions of possibility' and the wider discourses upon which they draw, including the discourse of 'child abuse' and the 'rights-bearing child'. They are made visible through discourse but they are also strikingly visible – repeat reference is made to the specificity of place, the 'blackspots' where drug use, unemployment and truancy are particularly visible. Two examples of emergent objects of concern are illustrative, the homeless young person and the child abuse victim and abuser.

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regarding the proposed Constitutional Amendment on Children; "Barnardos supports an explicit statement of children's rights in the Constitution which recognises the child as an individual with rights of their own as well as those rights accorded to the child as a member of a family." Barnardos (submission to the Joint Committee on the Constitutional Amendment on Children: Proposed Amendment to Article 42 (A) of the Constitution); "At the outset it should be said that there is a danger in this debate that a false dichotomy will be established between parent's rights on the one hand, and the rights of children on the other as though these must somehow and necessarily be in conflict. For example, it might be (falsely) asserted that parent's rights are at the expense of children's rights and vice versa." The Iona Institute Submission to the Joint Committee on the Constitutional Amendment on Children: Proposed Amendment.

The 'emergent' phenomenon of young homeless people is described in the report. The problem has a visible form seen on the 'streets of Dublin' and attempts have been made to calibrate it, both by the statutory and voluntary services.[235] These calibrations lend authority to the statement:

> It is clear that the disruption and detachment inherent in homelessness puts a young person at serious risk of criminal involvement. (*Juvenile Crime – Its Causes and its Remedies,* 1992:5)

Here the object of 'homelessness' is viewed through the lens of risk of crime and criminality. The problem of homelessness is both its visibility and its risk.

The problem of 'child abuse' occupies a particular space within this report; reference is made to the exponential and 'dramatic' numbers of 'confirmed child abuse cases' (Gilligan, 1992). The issue presented here, however, is the concern that these abused children will become the abusers and criminals of the future. The question therefore is not so much abuse per se, but also the danger embodied in the abused child and their negative potentiality. This paragraph from the report sets out this potential risk:

> American studies indicate the violent offenders have often been badly abused as children (Lewis, Mallouh and Webb, 1989). Similarly many prostitutes, sex offenders and drug addicts prove to have childhood histories of abuse. (*Juvenile Crime – Its Causes and its Remedies* : 1992:8)

In addition to the discourse of child abuse, a 'rights framework' is explicitly referred to in the Committee's Report.[236] This discourse of 'rights' envisages the child as a bearer of rights and the guidelines specific to juvenile justice explicitly set out the 'role of government, the family, the education system, the community, the mass

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[235] The Dail report elaborates on the source of this information: "A Dublin study sought to gather information about 77 homeless young people who came into contact with either the Eastern Health Board or Focus Point in a 54 period between October and December 1988. Significant proportions of the youngsters were 'known or suspected to be involved in' shoplifting and petty crime (39%); prostitution (25%); drug abuse (18%); solvent abuse (21%) and alcohol abuse (31%) (Focus Point and the Eastern Health Board Social Work Team (1989)." (Dail Select Committee Report, 1992:6).

[236] The report specifically refers to the United Nations Convention on the Rights of the Child (UNCRC), and the international standards relevant to juvenile justice: the Beijing Rules (1986), which set out minimum rules of the administration of justice; the Riyadh Guidelines (1990), (guidelines on the prevention of delinquency) and the United Nations Rules for the Protection of Juveniles Deprived on their Liberty (1990) (also referred to as the Kuwait Guidelines).

media, social policy and the criminal justice system itself' (1992:35) in preventing, intervening and managing 'delinquency'. The subject of government – the 'rights bearing-child' is clearly specified. In fact, taken from this list, there does not seem to be any domain free from this government.

Critical to Foucault's (1976d) account of governmentality is the notion that power is exercised on free subjects, precisely because they are free. The emergence in discourse of the 'rights-bearing' child therefore seems to open up the space for an increased range of government of this subject.

> These recommendations offer a comprehensive and inter-locking set of recommendations in relation to the development of juvenile justice and policy. The recommendations are addressed to the whole of society... (*Juvenile Crime – Its Causes and its Remedies,* 1992:37)

Those responsible for the government of this subject, the delinquent /rights-bearing child, (and as all children are rights-bearers, in fact all children), are no less than the 'whole of society'. Because to fail to do so is to fail to meet international standards and therefore it is nothing less than a failure of 'civilisation', the reputation of the nation is dependent upon it:

> It seems self-evident to this Committee that our claim to a valued place in the community of civilized nations depends heavily on our performance in this particularly sensitive area of civil liberties and public policy. Our provision must match the standards laid down by these documents. (1992:50)

Having formulated the objects of concern in these terms, drawing on the discourses of rights and child abuse a number of strategies of government emerge. Firstly, there is a need for prevention, and drawing on the earlier analyses, these preventative measures should be spatially targeted. The point is explicitly made in fact that spatial rather than individual targeting is the preferred approach:

> More community based prevention services and more deliberate targeting at a strategic level rather than to propose any operational measure which might merely service to alienate youngsters unnecessarily. (1992:10)

Secondly, these prevention strategies are the responsibility of all – the network of governance is wide. Where prevention is not effective, the aim is intervention through diversion via the Garda Juvenile Diversion programme, described as an 'extremely effective' programme. The detail provided in the report illustrates the widening of the range of the diversion programme, both geographically and in relation to its brief. Details of the specific brief of the National Juvenile Office established in 1991 are provided:

i. Formulating and operating a Schools Programme;
ii. Formulating Crime Prevention Programmes aimed at juveniles at risk;
iii. Liaising with Statutory and Voluntary Agencies concerned with the welfare of young people;
iv. Researching and developing Diversion Programmes;
v. Recording and examining cases of juveniles missing from home and identifying patterns in this area;
vi. Developing an Outreach Programme designed to establish Garda contact and monitor the activities of 'detached' young people, particularly in the areas of drug and alcohol abuse;
vii. Developing a liaison with School Attendance Officers; and
viii. Developing a role in relation to child sexual abuse.

(Dáil Select Committee, 1992: 16/17)

The final area of responsibility outlined in this list further underlines the elision of child abuse with juvenile crime. And later in the Dáil Select Committee Report the issue of child sexual abuse receives further attention in the context of the statement that 'it has become clear that a substantial proportion of children suffering the trauma of sexual abuse do so at the hands of other juveniles.' (1992:73).

For young people who are not diverted from prosecution a range of other disposals pertain, from a sentence under the *Probation of Offenders Act, 1907* which allows the court to 'conditionally discharge' a person who undertakes to be of good behaviour, to be directed by a Probation and Welfare Officer to undertake a range of work or training programmes or to reside in a designated residence. Failing compliance in the community, the sanction of detention is applied. The logic of progression is compelling, based on a system of gradation each failure of self-conduct will result in

greater intrusion until the ultimate sanction of detention is applied to the most transgressive. But there are problems in the administration of this sanction.

In an echo of previous discourse, Select Committee outlines some of the perceived difficulties with the existing system of detention. Firstly, the continued use of prison for young people aged 15 and 16 in the absence of places in special schools is identified as a persistent problem.[237] Secondly, the extant special schools (based on information from the Report of the Comptroller and Auditor General) are seen to represent poor value for money because some of them are operating below their official capacity.[238] Advancing this 'poor value for money' argument the 'rates of recidivism by offenders released from some of the most expensive (secure) centres appears, on the information available to the Committee, to be unacceptably high.' (1992:62). Further, there are deemed to be a 'shortage or absence of facilities of certain categories' (1992:62). There are anomalies in the regional distribution of places and there is 'a relative shortfall in places for young females.' (1992:62) Here again arguments are made for further provision. But the rationale remains clear; through attempts at recalibration the system can be improved.

Conclusion

The government's announcement on 13th December 2005 regarding the establishment of two offices within government to coordinate and improve policy and service delivery to children was described in their own words as 'historic'. The announcement described the intention to place 'decision-making for children at the heart of government'. Reference is made to the past but under the proviso that from now on things will become better. The programmatic described is presented in an invariably positive light.

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[237] "In 1987, 103 boys and 16 girls aged 15 and 16 were committed to adult prison. Of these, 29 were sentenced to a period of imprisonment of between one and two years, and a further eleven for a period of two years and over. In 1988, 10 boys and 22 girls were committed, 17 of the 32 for periods of more than one year. Also in 1988, a further 166 males were committed to St Patrick's Institution in Dublin. Designated as a 'place of detention' for 17-21 year olds, 16 year olds may be sent there in the absence of a suitable legal alternative." (Dail Select Committee Report, 1992:20)

[238] The findings of the Comptroller and Auditor General were reported in an Editorial in the *Irish Times* on 16/11/91 under the headline: 'Deficiencies' in special schools', which highlighted: "...the report concludes that the management does not ensure that the facilities are being used to their full potential, or do they ensure that the detainees are being accommodated in the institution appropriate to their needs or that the facilities are being managed cost effectively. It is also clear, the report says, that the Department of Education was not carrying out its overseeing responsibility in a satisfactory manner.'

This chapter has illustrated through the genealogical analysis of the archive that the 'child' in various guises has gained discursive space from the 1970s onwards. Here the subject of the 'deprived child' is seen emergent from the institution. Around this subject various strategies of government and policies are developed, but invariably the question of the subject and how best to govern him/her is not a space of unitary positions. From the beginning of the attempts made to recalibrate and reconfigure the system there are debates about how best to govern. Attendant on this are divergent views on the status of the subject – 'delinquent' or 'deprived'.

Where the sphere of government is extended through discourses of 'prevention' and 'early intervention' the institution although displaced remains the backdrop for those who are out of order underlining the enduring longevity of the carceral framework. Here lists of various problematised subjectivities are formulated. By the mid-1990s the 'rights-bearing' child gains wider discursive space and here too wider government is prescribed. This is legitimated through a range of strategies of government of which 'abuse prevention' forms a core theme. The 'delinquent' too is included in this all – encompassing category and no less than all of society are responsible for the government of this area. Against the backdrop of these new subjectivities (or old innovating using the legacy of the past), the institution although situated on the periphery remains central to government. Evidence of this is seen later when the discourse of 'children's rights' becomes the rationale for new sites of containment.

Chapter Six – Knowable Subjects

Introduction

As the previous chapter has documented, the rationale for 'assessment' had been set out clearly in the recommendations of the *Kennedy Report (1970).* The purpose of assessment was to make the child 'knowable' so that recommendations for his 'rehabilitation' could be grounded in the identification of 'his problems, needs, his talents and his background'.[239] As well as diagnosis, assessment also opens up the possibility for classification. As a practice of our 'will to knowledge' it sets in train processes of inclusion and exclusion (Foucault, 1972; Rabinow, 1991). It is necessary for the specification of which subjects will be assigned to which form of government, for example, rehabilitation, counselling or containment.

The process of assessment or 'examination' also brings the subject into the field of knowledge; it is at once both an instrument of individualisation and totalisation (Foucault, 1977a), for it locates the subject within the parameters in which he will be measured, by comparing him with a wider population. As Derksen (2001: 26) observes:

> The examination disciplines individuality by putting the subject in a field of surveillance, coding and documenting its behaviour, and turning the individual into a case: a subject whose individuality has been described, been judged, and preferably measured and made comparable to others.

The outcome of assessment will define who is redeemable and what are the conditions of redemption. Yet the formulation of these conditions is contingent upon the setting, the available knowledges and frameworks. The institution serves its function by bringing subjects to visibility and bringing visibility to subjects. It becomes the site of manifestation of the 'problem' behaviour', the 'scene of confrontation', the 'place of unveiling' (Foucault, 2000:43).

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[239] "This means that his problems, his needs, his talents and his background should be reasonably well known to those in whose care he is placed. It should, therefore be possible at that stage to initiate a plan for his rehabilitation." (Kennedy Report, 1970: 35)

assessor are deployed to describe and inscript subjectivities (Foucault, 2000:49). And what is possible to propose is pre-written within the field of visibilities of the existing institutions. Nevertheless arguments are mobilized for new accommodations, for different categories based on new rationalizations and very often too, on old rationalizations. This chapter examines these themes of classification, exclusion, continuities and discontinuity.

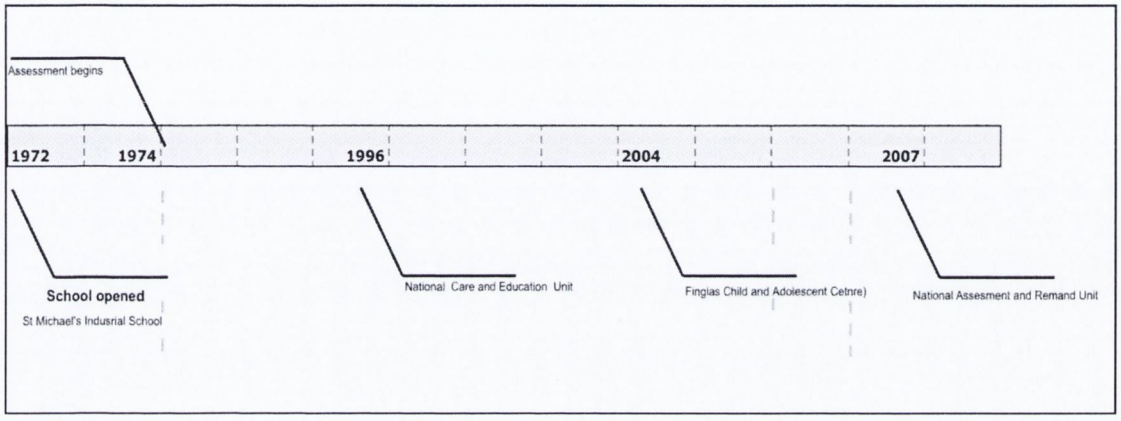
Provision of Assessment within the Detention Schools

As described previously, the discourse within the *Kennedy Report (1970)* outlined the rationale for assessment. The importance of assessment was also underscored by the proposals to recalibrate the system in an attempt to more clearly demarcate the 'deprived' from the 'delinquent' child. The first 'assessment unit' was established in St Michael's Industrial School in 1972. Two adjacent schools, St Michael's and St Laurence's, opened in Finglas, North Dublin in 1972. Data from the National Archives shows that plans for the Schools, originally conceived of as 'places of remand' had been proposed by Archbishop Paul McQuaid in the 1950s, but had been delayed by the government for a variety of reasons including funding and the absence of a suitable site.

Both St Michael's and St Laurence's were operated and managed by the De La Salle Christian Brothers. Alongside Scoil Ard Mhuire, they were the last of the newly established schools to be administered by a religious order, with the subsequent three 'new' schools being administered by the Department of Education (and subsequently the Department of Justice). Scoil Ard Mhuire a reformatory school for boys in Lusk Co. Dublin, established in 1974 and operated by the Oblates of Mary Immaculate Order closed in 1985. Oberstown Boys School and Oberstown Girls School– both reformatories, opened on the site of Scoil Ard Mhuire in 1991. In fact they 'new schools' operated from Scoil Ard Mhuire's former buildings, and one wing of the girls school was the former residence of the Oblate priests. Trinity House School, a newly built reformatory school for boys opened in the same campus in 1983. And the boys who had been detained in Loughan House Prison, which had been temporarily designated as a reformatory (with much controversy), were transferred to Trinity House School.

St Michael's officially designated and licensed as an Industrial School began undertaking assessments for boys referred by the Courts in 1974. While the school remained officially licensed as an Industrial School, it operated under various names over time.

Figure 12 - Names of the assessment unit at Finglas 1972-2010



Under the provisions of the *Children Act, 1908,* the centre took referrals on either criminal justice or welfare grounds.[240] Following the introduction of the *Child Care Act, 1991,* children were also assessed in Finglas under Section 47 of this legislation. This section allows the District Court to give a direction as it sees fit (on its own motion or through the application of another person) regarding a child in the care of the Health Board.[241] This section of the legislation was used to direct the assessment of a child in Finglas.[242] The provisions of the *School Attendance Acts (1926-1967)* were also used to direct that a child be placed in Finglas for the purpose of assessment.

The final basis, through which children were placed in Finglas, was on foot of a High Court Order. This practice is more fully described in the following chapter. In brief,

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[240] Section 58 (4) of the *Children Act, 1908* allows for the placement of a child in an Industrial School who is deemed to be 'out of control'.

[241] "Where a child is in the care of a health board, the District Court may, of its own motion or on the application of any person, give such directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order. " *Section, 47, Child Care Act, 1991.*

[242] It is worth noting that in later legal challenges taken in the High Court, the Health Boards argued that the Child Care Act, 1991 did not provide the legal basis for them to detain children. However, the use and application of this section of the Child Care Act, 1991 suggests that this was not a uniform interpretation. (See following chapter).

since the mid-1990s, the High Court has exercised its "exceptional jurisdiction" as specified under the Irish Constitution, to order the detention of children to vindicate their Constitutional rights (Shannon, 2004a). The practice of ordering an assessment via the High Court was, however, marginal. Of the 710 case files in Finglas analysed in the period between 1974 and 2007, just 15 young people had been initially placed for assessment by an order of the High Court.[243] One further anomalous practice is noted, in two instances, children were detained in Finglas on what is described as a 'voluntary basis', given that the facility was secured via an external perimeter and locked doors, the extent of that 'voluntarism' must be questioned.

The period of time required for assessment varied over time. In the 1970s, young people were sometimes assessed within a week, although two-week assessments were more usual. By the 1980s and 1990s, the typical period of assessment had extended to three-weeks and by the 2000s it was typically four-weeks.[244] According to practitioners, the rationale for the extension of the length of time required for assessment was the need to coordinate the professionals and agencies involved in the case. In particular the practice of arranging a case-conference, held at the detention school, with the range of people involved in the young person's case to discuss the report's recommendations lengthened the period in detention.

Although there were changes in the type of assessments and the different professions involved over time, a typical assessment report includes the following:

- Psychiatric Assessment
- Psychological Assessment
- Educational Assessment
- Home /Family Assessment (Typically derived from a Social Inquiry Report / Probation Report or Social Work Report submitted to the unit)
- Behaviour Report / Presentation /Time spent in unit
- Minutes of a case conference (held in Finglas in relation to the recommendation)

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[243] However, a greater number of young people were placed in detention schools for a period of 'containment' rather than for the purpose of assessment per se. This issue is explored in the following chapter.

[244] It is worth observing that there were also further variations in the period required for assessment. In some instances the School wrote to the Court requesting a longer remand to complete an aspect of the assessment. In other instances, sometimes on the request of the Court, the process was expedited.

- Recommendations

In addition to each professional's individual report, a composite report was also prepared, either by the Manager of the Assessment Unit or latterly by the School's Social Worker. The 'final' report submitted to the court or the health board (i.e. the source of referral), therefore ran to over twenty pages (sometimes longer), and presented a recommendation based on the findings of the assessment.

In most cases, boys were remanded to Finglas for an assessment before entering into one of the other special schools. This assessment report remained on an individual file in Finglas and if a boy was detained in another school, a copy of the assessment was typically requested and placed on their file in the receiving school, i.e. Oberstown Boys School or Trinity House School.

In some instances, most typically when there was no space available in Finglas, a visiting Psychiatrist, Child Psychologist, Probation Officer or another professional such as a Teacher or Key-Worker conducted assessments in either Oberstown Boys School or Trinity House School. In the case of young women all assessments were conducted in Oberstown Girls School. Therefore, with the exception of girls, high proportions of young people within the children detention school system passed through and were assessed at Finglas at some stage (with some young people having multiple admissions).[245]

Once the report was complete it was presented to the Court or the Health Board, with a recommendation as to a suitable disposal. Broadly speaking the recommendations fall into one of three categories – a recommendation that a young person return home, with specific additions attached; that the young person be placed in an alternative residential facility or that he be placed in a detention school. The list below is an example of the type of proposals made to the Courts and/or Health Boards, based on an analysis of the recommendations in the reports:

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[245] The excerpts from the case files, including the assessment reports analysed for this study pertain to the three institutions.

> The general consensus was that X be given a further chance at home, that he be placed on Probation on the condition that he apply with the rules of the home, i.e. curfew times; should this intervention prove unsuccessful, then placement in a hostel would be deemed necessary. We would also believe that X would benefit from independent counselling in regard to his feelings of insecurity, anxiety and felt inadequacies. (Assessment Recommendation, 1997 – basis of remand: District Court remand for offence of 'Larceny')
>
> It is not appropriate for him to return home, he requires 6-12 month placement in a special care unit in order to facilitate therapeutic work…Engage in alcohol misuse programme; engage in offence focused programme to develop a sense of empathy and remorse/ to develop social and moral understanding; setting of short term obtainable goals; leisure pursuits; social skills. (Assessment Recommendation, 2007 – basis of remand: District Court for offence of Theft and query regarding a sexual assault)
>
> Residential placement that can provide him with care and structure and his educational needs. The option of a reformatory school placement may be of the greatest utility or failing this X may well do well in a Probation Hostel and this option would certainly be preferable to X returning to his home area. (Assessment Recommendation, 1998 – detained following previous Failure to Attend Court)

The recommendations made in the reports over time vary in their detail and specificity. The analysis of the case files is presented thematically here with the year of assessment provided with each excerpt. One of the reasons for using a 'history of the present' approach is to explore patterns of continuity and discontinuity over time. Where discerned patterns over time are noted, for example the more recent files are far larger reflective perhaps of a wider scrutiny of the institutions.[246] It is worthy of note also that the period of assessment appears to have become more elongated over time. In the 1970s the assessment process was typically completed within two weeks, whereas currently the process typically requires four weeks. One possible reason for this is that a case conference is now held with various professionals to discuss the recommendations of the report in advance of its submission to court. Over time also

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[246] For example the schools are now inspected under the Health Information and Quality Authority (HIQUA). This authority inspects all children's residential institutions in the Republic of Ireland. Previously the schools were subject to an ad hoc inspection regime by officials from the Department of Education, an issue that has been the subject of some critique (e.g.: Kilkelly, 2003)

the recommendations made in the report become more numerous, particularly where it is proposed that a young person is returned to the community. Over time the requirements that the young person must adhere to on release become longer suggesting an increase in the government of young people beyond the institution.

A reading of the files shows that the rationale for proposals were not necessarily linked to the reasons for referral. For example, for young people remanded on criminal charges there are little discernible links between their presenting offences and the recommendation. Also, some young people referred via a 'welfare route' were deemed to require detention on the grounds of their 'criminal' or anti-social behaviour and vice versa. One of the apparent reasons for this was the elements of arbitrariness in which 'system' the young person presented. In other words, there are clear patterns of fluidity across 'welfare' and 'justice' boundaries. For example, in the instance below, the young person was remanded for assessment under Section 47 of the *Child Care Act (1991) (*i.e. under the 'child protection system), following an application to the Court by the Health Board, however, following assessment he was deemed to require placement in a detention school (i.e. in the justice system):

> He requires immediate placement in a caring and structure setting, hence St Lawrence's thought to be the most suitable venue considering his previous placements. (Assessment Report, 1999)

In some of the recommendations distinctions are made between Reformatory and Industrial Schools. In other instances, the generic term 'special schools' is used to denote both types of schools. One of the recommendations of the *Kennedy Report (1970)* was that Industrial and Reformatory Schools should be renamed, because of the stigma associated with them.[247] This had echoed the findings of the only previous government inquiry into the system, which published its findings in 1936 *(Cussen Report),* which had similarly argued that the nomenclature should be changed.[248]

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[247] "The term Industrial School, which has acquired unfortunate connotations over the years, should now be dropped and replaced by the term Residential Home". (Government of Ireland, 1970:16); "The term reformatory should be abolished." (Government of Ireland, 1970:41)

[248] The Cussen Report (1936) recommended that names of Industrial and Reformatory Schools be changed to 'National Boarding Schools' and 'Approved Schools' respectively. Furthermore the report's authors stated: "We would add that we consider it very desirable that the title "National Boarding Schools" and "Approved Schools" should be used for legislative purposes only, and that each school

Following the publication of the *Kennedy Report* in 1970 the term *'special school'* was used to refer to Reformatory and Industrial Schools. The *Children Act, 2001,* later introduced the term *'children detention school',* however, the relevant section of the legislation was not implemented. Therefore, the legal basis of the schools and their official licences were those granted under the *Children Act, 1908* and here the term Industrial and Reformatory School still pertained. This was also reflected in the orders issued by the court for a child's detention. The terms were finally officially changed to 'children detention school' with the passage of the *Children Act (Amendment) (2007).*

While the legal basis of the schools and their official licences used the term 'Industrial' or 'Reformatory' School until 2007, the descriptors used by the Schools and the Department of Education often varied. A reading of the individual case files illustrates the inter-changeability of terminology even in reports written in the same time-period, demonstrating a certain ontological confusion and fluidity of boundaries.

> A period in ***special school*** to stabilise his behaviour with the intention of progressing to a community placement would be appropriate. (Assessment Recommendation, 1998)

> Residential placement that can provide him with care and structure and his educational needs. The option of a ***reformatory school*** placement may be of the greatest utility. (Assessment Recommendation, 1998)

> It was felt by those in attendance at the case conference today that X's needs would best be met in a residential setting that could address these needs and could work jointly with his family to try and heal some of the rifts. Given the above considerations and X's action priority list we would respectfully submit to the court that an appropriate disposal in this matter would be a period in a ***certified industrial school***. (Assessment Recommendation, 1997)

By mid-2000, the discourse within some of the reports suggests that attempts are being made to make these boundaries more fixed. Arguments are made that a young

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should have its own individual name which should not include the classification title." Government of Ireland (1936:20)

person should not be detained in the 'juvenile justice system' on 'welfare grounds', that their needs are specific and that they require 'therapeutic' provision.

> Requires placement in a setting (not juvenile justice) where he could receive appropriate interventions. Recommend placement in a High Support Unit. (Assessment Recommendation, 2003)

The recommendation that a child is placed in a specific setting - this place, rather than that place – can only be made within the field of what is visible. It other words they occur within the bounds of the existent institutional provision, the institutions serve to make the subject (and the remedy) visible. The next chapter will analyse the 'emergence' of two 'new' types of institutions – Special Care Units and High Support Units – in the mid-1990s.

Yet these arguments are not new and the institutions themselves do not form in a vacuum. There are patterns of continuity in their emergence across time, or at least in the justifications made for their provision. Situated within the wider discourse, the 'conditions of possibility', the assessment of the young person conducted at the level of the institution serves to make the subject visible in a wider domain. It also provides the rationale for the proposed remedy. It is bounded within the possible of the visible and mobilising the power-knowledge discourse of 'psy' expertise it provides authority for the programmatics it suggests (Miller and Rose, 1994).

Making the subject visible

Firstly, the process of assessment involves a reading of the subject and a determination of the 'problem'. This process of determination serves to 'locate' the problem within a specific domain, for example in a young person's family background, his involvement with a 'delinquent peer group' and /or his 'sub-normal intelligence'. The formation of the 'problem' draws on a range of discourses – most notably the 'psy' disciplines (Miller and Rose, 1994). And as Miller and Rose (1994: 143) note:

> Old problems are reconfigured and new ones discovered, when life is rendered intelligible in terms of the languages and judgments of the 'psy' disciplines. The twin activities of problematizing and diagnosing are themselves linked to the project of intervening, that is to say, acting in a calculated way upon these psychological and inter-psychological realms and relations in order to improve them. Whether it is

> through marriage guidance or management consultancy, therapeutic authority is grounded in the associations established between problematizing, diagnosing and intervening.

An archaeological reading of the files involving an analysis of the statement as it occurs in the archive and exploration of networks of what is said, demonstrates across time the manner in which the locus of the 'problem' is overwhelmingly located within the subject or within his family. While reference is made to circumstances of 'deprivation' or 'poverty', these are marginal discourses within the overall framing of the problem and its solution.

Location is accompanied by 'classification'. And classification draws on notions of 'normality', and therefore how far the young person is deemed to be beyond these bounds. The various assessments used in Finglas have been documented in studies by O'Gorman and Barnes (1991)[249] who surveyed the height, weight and head circumference of 100 young people remanded for assessment to establish if there was any discernible difference from 'the average population' (O'Gorman and Barnes' 1991:14).[250] One of the other measures used to establish the relationship of the young people with 'normality' is the IQ test. Derksen (2001) explores how the 'psychological test' is central to the construction of psychology as a discipline, symbolic of its knowledge, power and authority.[251] Such tests typify the discipline of the subject – in this case the 'juvenile delinquent' or 'deprived child' - through the intersections of power and knowledge in the manner that Foucault (1977a) and latterly Rose (1990) describe.

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[249] O'Gorman and Barnes were both medics who worked in St Michael's and conducted components of the assessments that are the subject of this chapter. Previous studies published in the *Journal of the Irish Medical Association* in 1978 reported on the 'Anthropometrical' and 'medical' features of delinquent boys (Barnes and O'Gorman, 1978).

[250] A more recent example of a study that has adopted this type of positivist approach is Hayes and O'Reilly's (2007) research on 30 young people detained in children detention schools, where psychological morbidity, cognitive functioning, 'trait emotional intelligence' and 'ability emotional intelligence' were among the measures recorded. These authors concluded that: "...young people detained in the Irish State experience significantly lower levels of ability emotional intelligence than those young people who do not have offending or mental health difficulties. Detainees possess a reduced ability to perceive emotions accurately, to use emotional information to facilitate thinking and a reduced ability to regulate emotions. "(Hayes and O'Reilly, 2007:8)

[251] Derksen (2001:26) elaborates: "What X-rays are to medicine, the test is to psychology: an emblem of its power to detect the truth behind appearances...Through the test, psychology made itself central to the detection of the feeble-minded, the surveillance of juvenile delinquents and the care of the mentally ill, to vocational guidance and the selection of soldiers and workers."

As well as these comparisons with 'normality', the assessors also compare the young person with other young people within the unit. And in so doing, the young person is measured in relation to his 'more' or 'less' 'delinquent peers'. If he is more delinquent, then he needs to be accommodated somewhere that caters for this type, if he is less delinquent, then he should not be there at all, or perhaps he should be somewhere else? The logic of comparison and gradation is compelling.

> Those at the case conference are of the opinion that placement in St Joseph's Special School would be beneficial to X at this time. Such placement would offer remedial education, nurturing care and limit setting to X whilst also ensuring positive contact with his family. Mother has understandable reservations about placement at St Joseph's owing to the placement of former companions in anti-social activities at St Joseph's. Nonetheless the opportunities offered over an extended time for X at St Joseph's when comparing with St Laurence's with its older and more delinquent population would probably be better. It was the consensus of the case conference that X required immediate placement in a setting such as St Joseph's Clonmel, where his needs would more appropriately be met. (Assessment Report, 1998)

> X would benefit from a placement in a small residential unit, which would offer structure, education and care, appropriate to his hyperactivity and conduct disorder. We are conscious of the risk in X's admiration for those involved in anti-social activities and he is at risk of becoming involved in such activities should he be treated in a delinquent milieu. Consequently we would invite consideration of placement in one of the Eastern Health Board's Special Care Units. (Assessment Report, 1997)

While 'new' problems, or 'different mad men' may emerge an underlying continuity, an inexorable logic exists: suitable for here, not suitable for here, suitable for somewhere else. Even within the circuitry of containment, the process of inclusion and exclusion are manifest.

> Long-term therapeutic setting; one-to-one education support; Health Service Executive should work closely with the family; work with a specialist to address attachment disorder problems. Of note, it was also strongly felt that placement outside the country should only be sought, if the required placement cannot be sourced within this country. (Assessment Recommendation, 2006)

There are no imaginaries here; the 'somewhere else' is always within the field of vision (even if it was in another country, as the above recommendation illustrates was

sometimes the case). And the remedies and logic upon which they draw are bound within this field.

The task of the assessment therefore is to make the subject visible, to bring him and his problems into view so that a remedy could be proposed. Notwithstanding some of the changes in the formats of assessment over time, there are clear consistencies in the areas that are covered, including the child's 'origins' (his family, his spatial location); his 'presentation' (physical and behavioural); his personality his level of intelligence and educational attainment, arriving finally at the 'diagnosis'. The diagnosis then leads to the recommendation, the proposed remedy within the field of vision.

The question of origins

One of the main domains of the report is the question of the child's family and background. The importance of locating the subject is underscored by the detail provided on a young person's 'origins'. In particular the marital status of the parent/s is noted and in earlier files (1970s/1980s), the front sheet of the file records whether the child is 'legitimate' or 'illegitimate'. This classification is then repeated in various forms within the assessment reports supplied to Court.

> X and his siblings are products of their mother's relationships with three different men, none of whom she married. (Assessment Report, 1992)

> Parents were never married, their relationship has been on and off over the years due to father's imprisonment and an affair. (Assessment Report, 1984)

In addition to the specification regarding the marital status of the parent(s), the 'state' of the marriage is also assessed under six possible headings:

- Harmonious
- Toleration
- Aggressive discord
- Separated
- Deserted
- Living apart

Further, the lineage of the child and their family is frequently described. For example children are referred to as coming from a particular 'stock'. However, notably this descriptor only pertains when describing children from a Traveller background.

> X's family are of itinerant stock. Both his parents' families were settled, but since their marriage they have lived in a mobile home while waiting for housing. (Assessment Report, 1984)

> His father is unemployed and comes from travelling stock. (Assessment Report, 1986)

> Parents are from travelling stock, though settled in the above address ten years ago mother presents as caring and loving and tends to minimise X's misbehaviour. (Assessment Report, 1997)

Another domain, where the backgrounds of the parents are particularly detailed is when the parents themselves have been the subject of institutional interventions. Here the backgrounds of the fathers of children assessed in the 1970s and 1980s are documented in the reports:

> Mr X spent a large part of his childhood in Artane Industrial School. Our earliest records describe Mr X as a chronic alcoholic, unsupportive, undependable and regularly unemployed.

> He told me that he father has told him at length about how unhappy he was as a boy being put away in an industrial school, and no doubt this was used as a threat in that the same might happen to himself.

The child is also brought into focus through the use of physical descriptors. In all of the files there is a front sheet containing summary detail on the child. In the 1970s and 1980s this front-sheet notes the physical appearance of the child and any distinguishing physical characteristics under the following categories:

Height	**Complexion (e.g. sallow)**
Mark, Scars, Tattoos	**Unusual Features**
Dress	**Eyes:**
Eyebrows	**Voice (country**

The front-sheet of the material recorded in the files in Finglas in the 1970s and 1980s is replicated here:

FRONT SHEET – FINGLAS FILES:

D.O.B AGE Date of Admission

Religion Due in Court

Charge

Previous court appearances Legitimate or illegitimate

Court

Date of Committal

Date due for Discharge

Probation Officer (if any)

Particulars of Home

Parents

Father's (Name) Address

Mother's (Name) Address

Occupation

Character

Home Family

History

Parental Attitude

Possible Local Friend

Miscellaneous

Education and Employment

Part of the rationale for collecting this information was in the case of the child absconding from the centre, (a not infrequent occurrence), a ready description would be available to aid his detection. But descriptors of the physical appearance of the child were also frequently used in reports in all the schools in the 1970s, 1980s and 1990s as the excerpts below illustrate:

> X is a rather small boy who arrived here, in a poorly dressed and rather filthy bodily condition. He settled quickly and enjoyed a swim immediately after arriving. (Assessment Report 1993)

> X presented as a small, thin, freckled face lad with untidy brown hair. On admission he was in poor dress, required a bath, and had extensive lice infestation to his hair. (Assessment Report – 1995)

> At interview, X presents as a rather urchinish, likeable, open little fellow, or serious and unsmiling demeanour through most of the session. (Assessment Report 1992)

> On admission to St Michael's, X presented as a very tall, pleasant boy. (Assessment Report, 1998)

> On admission X presented as a well - built boy with auburn hair and a freckled complexion. (Assessment Report, 1997)

> Of robust physique and appetite for food, casual in social manners and clumsy in movement. (Assessment Report, 1974)

> Overall his general appearance was poor on admission, his clothes were dirty and his personal hygiene was very poor. (Assessment Report 1991).

> He presented as a small, thin, freckled face lad with untidy brown hair. On admission he was in poor dress, required a bath, and had extensive lice infestation to his hair. (Assessment Report, 1996)

Some of the descriptors provide markers of deprivation and poverty, the 'poorly dressed', 'filthy', 'lice-infested boy', who is cleansed on admission. These physical characterisations serve to locate the subject in a particular domain, but notably in later years there is a shift in emphasis. Perhaps the physical markers of poverty are less apparent, or perhaps because the emphasis shifts to describing the boy's personality, his inner-characteristics and their outward display, manifest in his behaviour.

Further in files from the 1970s and 1980s it notes whether the child is 'legitimate' or 'illegitimate' and if the parents are together, the state of their relationships. In the 1970s the parental relationship was classified under the following categories:

Marital Relationship :

- *Harmonious*
- *Toleration*
- *Aggressive Discord*
- *Separated*
- *Deserted*
- *Living Apart*

The descriptors of the family attempt to locate the reason for the child's behaviour, be it criminal, 'out of control', truanting, self-harming etc. within the family from which he originates. So cause and effect is imputed between the parent's behaviour and the child's. The parent's standards or perceived lack thereof, are the reasons for their children 'being out of control':

> She has been involved in a number of relationships with younger and older men. She is a heavy drinker and has no control over her family. (Assessment Report, 1994)

> However, I did come to the conclusion that X is totally out of control. His mother is unable to cope with him. His father appears to accept the situation philosophically. (Assessment Report, 1979)

Attention is drawn in particular to the mother's role as the arbiter of family dynamics, the mother's responsibility in the main for her child's behaviour. Fathers are also mentioned, but greater attention is paid to the mother, not necessarily just in instances where she is a lone-parent. The morality of the mother is important, so too is her physical presentation and her ability to 'care', to demonstrate the emotion appropriate to the circumstance:

> She presents as a dishevelled, untidy, inarticulate woman who spent most of her time misinterpreting questions or appearing to do so, and talking at cross purposes to the interviewer. …she presented throughout the interview as a woman of low intellectual ability having no insight into X's problem, and not realising the significance of so

> many of her family members having been in trouble. She seems emotionally detached …" (Assessment Report, 1986)
>
> A still young, thin, but worn-out looking woman, her talk was garrulous and her attitudes silly. (Assessment Report, 1986)
>
> She is a nervous and brittle woman who is prone to losing her temper, particularly with the children. (Assessment Report, 1989)
>
> His mother is a well built, fair-haired, good looking woman who is often untidy in appearance. (Assessment Report, 1988)

It is important also to situate the child spatially. Where are they from? Here we have descriptors of homes, in 1970 the various categories and types of homes are set out in a list as follows:

Type of Home

- *Flat*
- *Corporation House*
- *Council House*
- *Caravan*
- *Number of bedrooms*
- *Condition*

The number of rooms in the dwelling is enumerated and the physical condition of the home is described (this information comes second-hand from a report submitted to the institution by either a Probation and Welfare officer or Social Worker). In some cases the Garda Juvenile Liaison Officer conveys this information to the institution. These descriptions are then repeated verbatim in the overall report:

> The family live in a two- bedroom house. Downstairs is one big room that serves as a kitchen come living room. They have a tiny scullery. The house is old and has no bathroom or hot water. (Assessment Report, 1991)
>
> The family lives in a well kept, three bedroomed council house, a couple of miles from the nearest town. (Assessment Report, 2001)

The situation of the boy within a locale is also important, he is rural, urban, inner-city, Traveller (settled or traditional). He is transient or he is fixed, he is part of

community, a sub-culture (delinquent or Traveller). These are the two instances in which the word 'sub-culture' is used, to refer to Travellers or Itinerants or a 'delinquent sub-culture', in some instances the two sub-cultures overlap, either way, the culture is 'sub' - it is not the mainstream.

> The police describe him as being very much an itinerant family and as presenting many of the problems associated with that particular sub-culture. (Assessment Report, 1986)

> The parents appear to have problems of their own which would impact on their parenting abilities, one of which is the family has difficulty in making the transition from the traditional travellers sub-culture to living as settled travellers in a town. They also appear to be impulsive. (Assessment Report, 1997)

> He seems to have little remorse for is past behaviour, but then much of his past behaviour may be quite acceptable in his subculture. Though he is from a broken home, his mother seems warm and caring, and seems to do her best to provide a stable environment for her family. (Assessment Report, 1994)

The use of the term 'sub-culture' may draw on criminological studies which focus on socially orientated conceptions of youth crime. Including those that have applied Durkheimian theories of *anomie* to explore exclusion from 'normative' opportunities and values. Examples include Merton's (1938, 1957) *'strain theory'* and Cloward and Ohlin's (1961) description of criminal *'sub-cultures'* providing an alternative means of valorisation than that available in the 'dominant' culture.

The influence of 'sub-cultural' theories is seen in some Irish studies, Hart's (1974) research for example references Matza (1964, 1969). However, the extent and application of these studies are limited and studies of young people's involvement in crime in their community have been sparse. However, a further notable domain in which the term 'sub-culture' is used in Irish sociological studies is in relation to Travellers. In an ethnographic study of Travellers in Galway, McCarthy (1972) uses the concept of a 'sub-culture of poverty' to describe what she characterised as the inter-generational transmission of poverty within this community. While McCarthy (1994) was later to renounce her thesis, it is clear that the term and the identification of Travellers as a 'sub-culture' had gained wider prominence within discourse, reflected at the institutional level in these descriptors (McCann et al, 1994).

Where Travellers or in earlier reports 'itinerants' live for at least some of the time in a house, they are described as 'settled'. Or some of the family may be 'settled', one parent may be 'settled', the other not. Again this reference to settlement is reflective of a wider discourse surrounding Travellers. The government appointed *Commission on Itinerancy (1963)* had proposed that Travellers (itinerants) should be settled as part of the 'solution' to the 'problem' of their visible and unwanted nomadic presence (Crowley, 2005; Helleiner, 2003). While subsequent commissions shifted the emphasis from settlement or assimilation to a more culturally diverse perspective, the discourse surrounding settlement is manifest in this archive.

> Both parents were first generation settled travellers. (Assessment Report, 1999)

> They are a travelling family who have settled for the last five years. Prior to that they travelled the country both here and in Britain. (Assessment Report, 1996)

> The family are second generation settled travellers who have recently been re-housed in a large bungalow. This move proceeded despite serious objections from local residents and subsequent controversy. (Assessment Report, 1993)

Sometimes the settlement project has failed and it is depicted as such. Here is an excerpt from an assessment report compiled in 1989:

> They were housed on four different occasions by the Council. They failed to settle and eventually left.

The grinding effects of poverty, manifest in the physical appearance of the child and the material circumstances of the home are documented for both Traveller and non-Traveller children.

> The house is very poorly furnished however, and, according to one Juvenile Liaison Officer- "is one of the dirtiest houses that I have ever been in, in my life." (Assessment Report, 1986)

> Mrs X while presenting as a warm affectionate mother, is a poor manager in the home and the house is constantly dirty and unkempt looking, giving the impression of a fairly deprived home environment. (Assessment Report, 1979)

The site of manifestation

The descriptors and characterisations of the child's life outside the institution are accompanied by the descriptors of his presentation and behaviour within. Here his interactions with his peers and with staff are monitored and recorded and the way he behaves is presented as a manifestation of character and further supports the ultimate recommendation. Foucault (2000) argues that one of the purposes of the hospital and subsequently the asylum, was that it provided the 'site of manifestation', in other words the place where the problem/ illness could be made visible, observed and diagnosed.

> His social skills were extremely poor so that at times he had to be isolated from the other boys in the dining room. It appeared that he doesn't seem to have learned a lot of basic social skills and seemed quite surprised when some of his deficiencies were pointed out to him. This made him somewhat unpopular with some of the boys although he was tolerated as time went by. (Finglas Assessment, 1999)

> Overall, X presented as a young boy who lacked confidence in himself. He was conscious of the fact that he is a traveller and this inhibited him from really interacting within the group. He made good progress while in class and with considerable remedial help he would undoubtedly improve further. X rarely made any demands upon the teacher unless he felt he was really incapable of completing a task. If the task appeared too difficult to him his initial reaction was to leave aside. However, with encouragement he soon overcame this. At no time was X a management problem. (Assessment Report, 1989)

> A picture emerged of an impulsive boy with a poorly developed conscience, a poor self-esteem and difficulty in showing emotion and forming relationships. (Assessment Report, 1981)

> He got involved in all the activities of the unit; in class, he worked consistently and responded positively to teacher direction and correction; related well with his peers and the staff and was not a management problem. Generally he was a good-humoured and generous lad. Noted to associate more with the more delinquent members of the group and appeared to be easily led by them; could at times be fairly heedless of correction and often repeated misdemeanours; required routine correction for being boisterous, giddy, loud and immature – however, not serious behavioural problems. (Assessment Report, 1992)

> Initially he found it difficult to settle in the Unit. He appeared very concerned about the nature of the Centre and the role of the staff. He was alienated from his peer group who viewed him as being different to them. He had some difficulty conforming to the Unit rules and structures becoming hostile and aggressive when confronted about inappropriate behaviour. (Assessment Report, 1991)

Programmatics of reform

When the subject and their family have been made visible, the diagnosis can be made and the possible 'solutions' proposed. The solutions - framed as recommendations to the referring agent - i.e. the Court or the Health Board - are supported by the authority of the assessment and the assessor. The recommendations propose alterations to the individual's behaviour through various mechanisms of government including tutelage of the individual and his family, government through welfare provision (for example by placement in a care home) or containment within the 'justice' or 'welfare' system. In other words the rationalities of government involve correction, training or exclusion of the subject (Foucault, 1977a). More complex issues arise when the child is deemed to occupy a liminal space and here sites of emergence occur – but more often than not the recommendations revert to type.[252]

The proposals are made possible by supporting discourses including psychology, sociology, criminology, and medicine and the various theories, pathologies and disorders that help to classify the problem. The programmatics of reform illustrate shifts in the institutional provision over time. Other trends are also discerned, the emergence of 'child protection' as a dominant discourse; the framing of the subject as an object of 'risk' and an increased focus on the specifics of offences or 'offending behaviour'. However, as Miller and Rose (1994, [2008:143]) note:

> This ensemble of thinking, acting and governing in diverse locales and at numerous points of friction is less fragmented that it may appear. In their multiplicity, technologies of intervention form a kind of therapeutic machine – they are given their intelligibility and rationality through their connections within an abstract, irreal machinery that lies at their heart.

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[252] Here the term 'liminal space' is taken to refer to young people who 'fall between' categories, e.g. those who cannot be categorised as either 'welfare' or 'justice'. Elsewhere the term is used to refer to an 'in-betweeness' or something that resists categorisation (Foucault, 1967 [1997])

The recommendations made in the reports to the Courts or the Health Boards, the strategies of reform provide some illustration of the perceived purpose of this 'irreal machinery' - the schools and the wider network of agencies of 'government'. They also enable an exploration of the surrounding discourses the give the recommendations effect, the nature of authority and the relationship of the shifting concept of the child or categories of child - the 'juvenile delinquent' the 'deprived child' – in this period.

> Through tracing the links between a multiplicity of interventions and the abstract machine they presuppose to actualize, we can grasp the significance of all those therapeutic forms of expertise of human conduct: the ethical regime which they compose for the subjects of authority is simultaneously a new ethical regime for authority itself. (Miller and Rose, 1994, [2008:144]).

Proposals for government

As already outlined, the recommendations made within the report broadly fall into three main categories: return of the child to the community under some form of tutelage, government of the child (and family) within the welfare system or confinement of the child within a specified institutional environment. As the earlier section of this chapter has demonstrated, these recommendations are the culmination of the process of assessment. In addition to the conceptualisation of the 'subject' and the 'problem', they also draw on particular rationales – rationales which reveal patterns of continuity and discontinuity over time.

Moral Reform

In some instances a recommendation for a placement in the school is framed in the context of 'moral reform':

> Everybody involved with X would seem to have the same opinion that he would be best placed in a suitable residential school for the next year or two. This will help him to keep away from his delinquent lifestyle, to give a chance to further his education, develop suitable ***moral standards*** and achieve his obvious potential for normality. (Assessment Recommendation 1999)

> The consultant psychologist and psychiatrist agree that X's domestic situation is not a scenario in which he would develop proper ***moral values***, and have asked that residential placement be considered. (Assessment Report, 1987)

Further, the aim of reformation is 'normality'. No precise definition of normality is given, presumably because it is implicit understood by both the report authors and the recipient (in this case a District Court judge). In other instances the subject is viewed beyond redemption, there is no specific recommendation that can be made:

> X has little or no future ahead of him in civilian society. (Assessment Report, 1993).

These comments cannot be inferred necessarily from what the young person has done, for example this young person had not accumulated particularly serious charges, rather it is a case of a reading of their potentiality, whether the assessors deem him to be reformable. And the key measure here does not seem to be the antecedents in terms of offences but rather a view on the young person's character, their presentation and also whether their parents present as sympathetic, whether there's is a case that elicits sympathy.

Salvation from delinquency - Diversion

A further rationale for the recommendations made is evident, that of 'saving' the boy from placement with a delinquent peer group. In these instances, the subject is depicted as not delinquent enough for the setting, and the court or health board is politely advised of such in the recommendation:

> X presents as a pleasant outgoing traveller boy. He tends to spend time with staff and shun the older more delinquent peer group. He has been cooperative and helpful since his arrival. He however finds it difficult to cope with his peers. He should not ideally be mixing with this group. It is our opinion that an alternative non-custodial placement should be found. (Assessment Report, 1997)

> He has great difficulty in comprehending the behavioural management programmes in operation at Oberstown. He is constantly ostracised by his peer group who are older, more delinquent, and have little understanding, hence tolerance, of X's special needs, or his cultural background. (Assessment Report, 2000)

> Staff feel X should not be placed in as highly structured a setting as Oberstown. It is felt his needs would be better addressed in a less structured setting where X was amongst peers from his own cultural background. In such an environment X's individual needs could be more comprehensively addressed. (Assessment Report, 1993)

These recommendations to place the child outside of the detention school system can be broadly framed as 'diversionary'. They are made on the basis that to place the specific subject within a 'delinquent' environment such as one of the schools would do more harm than good. This analysis is made possible through comparisons with the subject's peers. Notable also is the manner in which certain subjects are 'othered', the first two examples above refer to Traveller children, who are depicted as not being accepted by the wider peer group and as failing to understand the institutional norms.

Where recommendations are made for placement in detention, the rationales are varied but there is an overriding emphasis on removing young people from perceived negative influences, providing stability and some level of education. Further the discipline of such a regime is presented as a positive.

> For the sake of his physical and mental well being, this boy is in urgent need of long term residential care. With this in view, copies of the assessment reports have been forwarded to the authorities of Scoil Ard Mhuire, Lusk, who are kindly considering his suitability for placement there. (Assessment Recommendation, 1974)

> Should it so please the court, we would respectfully suggest, that placement within St Laurence's Special school would be beneficial from both behavioural and educational view points. Should the court so agree, a place is available in St Laurence's today. (Assessment Recommendation, 1997)

> It was the consensus that X require placement in a Centre which could provide him with the stability, security, vocational training and care that could enable him to develop into a more trusting and amenable young man. That he required counselling re. his deep rooted anger. It is felt that Oberstown Boys School would be the most appropriate venue. (Assessment Recommendation, 1998)

> Placement in the Children Detention School system (We need to consider a custodial sentence and we as a team feel he cannot return home without him being a risk to others. Intervention has to happen now and give him a chance of rehabilitation; To build on current relationship with members of his family; engage in programme regarding lack of empathy with his victims; offered therapeutic support regarding issues with his life; anger management; continue to engage with Probation Officer re. offence- focussed work; continued involvement with Health Service Executive on his return home; work towards Junior Cert. (Assessment Recommendation, 2007)

A genealogical analysis of the files shows that over time (as the above examples demonstrate), the rationale for detaining a child in a children detention school becomes more specific. An overall improvement in the subject's physical or mental condition or in his educational attainment is no longer sufficient rationale for containment. The specific programme of intervention, in particular a focus on his 'offending behaviour' is set out. The empathy of the subject must also be developed and he must learn to manage his anger. All of these specifications draw on the managerialist language of 'evidenced-based practice' (although this term is not used in any of the reports within the archive), nonetheless, the language of 'offending behaviour' has a specific genealogy that seeks to match the dosage of intervention to the level of risk - one of the main tenets of this 'evidenced based approach' (Feeley and Simon; 1992; Ward and Maruna, 2007).

The specific language of 'risk' emerges as an organising principle in later reports (1990s and 2000s) in two broad domains - in terms of risk to others and the risk to self.

> A residential placement will be necessary. Such placement will have to consider the risk of re-offending, the probation service have joined with us, but in order to progress a placement the authority with statutory responsibility must first be engaged. Placement at this unit has provided the first opportunity to focus on these issues. We would therefore ask that the court request the involvement of the Health Board and thereby facilitate movement towards resolution. To that end a further period of remand at this unit will assist towards partnership between these parties. (Assessment Report, 2004)

> Placement at Oberstown Boy's Centre would provide appropriate education, care and security which X needs. Counselling support in regard to substance abuse is also required. Should the court so agree, those at the case conference felt that X poses a real risk to himself and others and consequently requires an urgent placement. (Assessment Report, 1997)

> Should it so please the court, all in attendance at the case conference were united in their belief that a residential care option is imperative in X's interest and that such intervention should have remedial education resources on site if possible. Equally X's return home given his experiences and risk is not viable. Consequently a coordinated package of care is required. (Assessment Report, 1998)

References of 'risk to self' are reflective of a wider child protection discourse, on which the previous chapter has referred. Various authors that have addressed the subject of child protection in the Republic of Ireland have noted that the early 1990s was a formative period in terms of the 'emergence' of child abuse and the programmatic response of 'child protection' within public discourse (Buckley et al, 1997; Ferguson, 1994; 2004; Gilligan, 2009; Skehill, 2004). Viewed from a social constructionist perspective (Hacking, 2003), it is clear that the issue of children being abused or maltreated is a perennial one, as analysis of the earlier files demonstrates, however, the language used to describe this, or the terms in which it is couched changes over time. This is demonstrated further within the Irish context in studies that have explored the issue of sexual exploitation of children over time (Kennedy, 2001; Smith, 2004).[253]

> Unless the Probation Officer is satisfied concerning the integrity of the home, I would not recommend that X be returned to it. Despite the boy's threat to run home if placed in residential care, I think that he would be salvaged from a wayward life, if he were now placed in a Youth Hostel. He definitely requires the support of a mature male adult counsellor. (Assessment Report, 1974)

While the above example from a report recommendation in 1974 clearly illustrates a concern regarding the young person returning to their home, this is framed in the terms of the 'integrity of the home'. However, the example from a recommendation

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[253] In 1930 a Committee was appointed by Taoiseach W.T. Cosgrave to consider amendments to the *Criminal Law Amendment Acts (1880) and (1885)* and to consider if new legislation was required to deal with juvenile prostitution (Kennedy, 2000; Smith, 2004). William Carrigan, a barrister was appointed chair of the Committee and the membership included one Catholic and one Church of Ireland clergyman and four lay members (Kennedy, 2000). Having heard a range of evidence the Committee concluded that there was 'an alarming amount of sexual crime', particularly against young girls and that for a range of reasons police only prosecuted a small proportion of cases. The Carrigan Committee recommended a range of changes to the criminal law, including an increase in the age of sexual consent from 16 to 18 years. Kennedy's (2000) analysis of archival material reveals that some members of government disputed the findings of the Committee. Following a change of government in 1932 (in the first democratic change of political power in the Free State), new legislation was eventually introduced under the *Criminal Law Amendment Act (1935),* where some (but by no means all) of the Carrigan Committee's recommendations were implemented. However, the *Report of the Committee on the Criminal Law Amendment Acts and Juvenile Prostitution (Carrigan Report) (1931)* was never published on the basis that 'it might not be wise to give currency to the damaging allegations made...regarding the standard of morality in the country.' (Cabinet Memo, cited in Kennedy, 2000:356). Kennedy (2000) speculates that publication of the report may have led to public debate on the issue of sexual abuse at a much earlier stage in Ireland.

made in respect of a young person in late 2000s illustrates a much more 'risk averse' approach, made possible of course by the institutional provision:

> Placement in a High Support Unit or secure; should not be returned home; placement in a unit that can provide a therapeutic caring environment; multi-agency progress meetings to take place after a two week period of placement.

The above example also provides an illustration of the increased range and level of government in the sphere of child protection. Emphasis is placed on ongoing monitoring of the situation through the conduct of 'progress meetings' within the proposed placement.

Yet a further tension evident within the system exists – most clearly demonstrated when the assessment from the detention school is arguing that the child requires a welfare or child protection intervention but there is manifest reluctance for social work agencies to intervene. Here arguments ensue as to whether the child is a 'welfare' or a 'justice' case. In part such 'battles' are reflective of the historic demarcations of the system and the inter-departmental schisms set out in multiple government reports from *Kennedy (1970)* onwards. An analysis of the files demonstrates, however, that the site and authority of the institution is used to affect a response within the system and the arguments put forward for such provision are predicated on the 'special' nature of a particular child's needs. Here the circular logic ensues – not suitable for here, suitable for there, more suitable for there than here and so on.

'Specialist Needs'– the liminal children

Those deemed to have 'specialist' needs (and there are many), occupy a liminal space. The discourse within the files illustrates that they present particular problems. The 'problems' are reflective of the nature of the institutional provision and here an inexorable logic is arrived at – there must be more 'specialist institutions' to deal with these 'specialist needs'.

The identified 'special needs' of Travellers and homeless young people are two examples, but they are by no means the only ones.[254] Differing rationales are presented and framed across a range of cases. Children require containment - but not in a justice setting. They require 'treatment' for drug addiction, psychiatric illness, psychopathic behaviour, peculiar sexual behaviour etc. Here we see reiterations in different guises of the figures of concern discussed in the previous chapter that manifest in discourse. In many cases the schools are critical of the failure of the welfare system to accommodate these children or meet their needs. They consider themselves to be the sanction of last resort in a failed welfare system. The solution to this perceived failure is that the child should be moved elsewhere, that there are 'more specialist' facilities that could deal with him that he should not be mixing with 'delinquent peers'. In some instances, in the absence of places within Ireland children are placed in facilities overseas.

However, the schools themselves via the technology of the assessment merely make recommendations. The question of what happens to the child is ultimately adjudicated elsewhere. In most instances this is in the District Court and the arbiter is the District Court Judge. However, here a problem arises. The details of 'outcome', i.e. what happened to the boy after his period of assessment in Finglas is not available in most cases, the exception being when the child was returned by the Court to the School. In some instances, the boy was returned for a committal based on the recommendation of the assessment, in other cases he was returned because the Court had nowhere else to send him. In other cases the boy re-appeared in Finglas or another one of the special schools at a later date – sometimes on the same charges, at other times he would have accumulated more charges. In these instances where the boy did not reappear within the special school system there is no record within the schools of what ultimately happened to him. There are instances in some of the files, where it is noted that the School had followed up with the Court to see if the boy would be returning to be

[254] "He would seem to be very much at risk of further and more serious delinquent behaviour, and on the surface of it he would seem to be a candidate for an appropriate residential setting. However, I almost have some reservations in this regard to travelling children unless they are with their own people."(Assessment, 1997)

informed that he had been released or his case had been disposed of.[255] These 'follow ups' are in themselves revealing. Here one Probation and Welfare Officer when asked to comment on the utility of the assessment and recommendation remarks:

> Because of his age and the long waiting list for St Laurence's he could not avail of the recommended option. The gap in time between the assessment and the possibility of a place in St Laurence's is so long it is difficult to maintain. (Feedback form 1998)

Other fora for commentary on the system's perceived inadequacies emerge in media reportage of criticisms of these deficiencies. There are diligently clipped from the newspapers and placed on the young person's file, in some cases long after they have gone from the facility.

> "Runaway boy: mother weeps at EHB delays" – Irish Independent 24/07/86
>
> "No facilities to hold wayward boy" – Irish Independent 10/07/86
>
> "The kid nobody wanted to know" – Irish Independent – 10/07/86
>
> "Judge is critical of lack of facilities." (Newspaper headline, 1999)
>
> "Boy of 13 on criminal charge 'to aid him'." (Irish Independent, 1997)
>
> "Judge gives one week to find secure placement for eleven-year-old boy."
>
> (Newspaper headline, 2003)
>
> "Judge raps HSE over vulnerable boy –outraged and appalled over the attitude displayed." (Newspaper headline, 2007)

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[255] Thus while the assessment made the boy visible to the courts and associated professionals, once outside the realm of the schools there was often no further contact. This was also partly related to the fact that in criminal cases, the child was transported to and from the school by the local Gardaí – i.e. if a child had committed an offence in Cork and the case was to be heard in that district, Gardaí from Cork would travel to Finglas to transport the child by car to the Court in Cork. Often, staff from the special school did not accompany a child to court, or did not appear in the court unless specifically requested to do so. In the case of Finglas, as an exception to this overall lack of information on the outcomes following assessment, in 1998 the school sent out questionnaires to the source of referral to query what had happened to the young person following assessment. Only a proportion responded but their replies are instructive. In later years other schools also tried to capture data on the 'outcomes' for young people following their discharge from the schools.

Conclusion

The institution itself through the process of assessment brings the visibility to the subject by drawing on a range of discourses that serve to both inscript the problem and propose its solutions. An archaeological and genealogical analysis of the archives of the institution – the case files, reveals that there are patterns of continuity in the location of the problems over time. The origins of the young person, their family, and their cultural background serve as codifiers of their behaviour. And through placement in the institution the young person's behaviour is read in this site of manifestation.

Recommendations are presented under a rationale of 'doing less harm'. So diversion from the institution and the criminal justice system is proposed for those who are 'less delinquent' and placement within the system is proposed to 'save' other young people from involvement in 'delinquency'. The recommendations therefore take place along a gradation of 'harm'. Latterly the language and discourse of risk and child protection emerge as organising principles. Risk is framed in two main contexts – the risk to the community in terms of re-offending, and risk to the subject himself in terms of the harm caused to him by the self or others. Nevertheless, the rationale of the system is constantly in question as the population changes and young people who occupy liminal spaces along this continuum present difficulties. There is therefore a ceaseless logic that new facilities are required for new problems and categories of children. This is the subject that the following chapter will explore.

Chapter Seven – Sites of Containment

Introduction

The historical overview of child care and juvenile justice in the Republic of Ireland has highlighted a number of points of disjuncture between policy recommendations and implementation. Read from the archive it is clear that the 1970s represented a point of particular productivity, in terms of recommendations for 'new sites' of containment. This is most clearly illustrated in the recommendations of the *Kennedy Report (1970),* the *Interim Report of the Task Force on Child Care Services (1975)* and the two reports of the *Henchy Committee (1974a; 1974b),* all of which proposed the establishment of new 'specialist' residential facilities for specific categories of young people including 'aggressive sociopaths'; 'teenage girls involved in prostitution' and 'young Travellers'. An analysis of the discourse in these reports indicates a certain clarity of purpose – to the authors of the reports at least, the prescriptions are clear, underpinned by a confidence in the knowledge that brings the objects and the remedies into focus. However, the vast majority of their recommendations were not implemented. The sites that they propose while clear in purpose and function do not materialise.

Yet, by the same token, certain sites do materialise, some of which are related to policy recommendations such as those described, others of which are established at 'points of emergence' (Kendall and Wickham, 1999; Skehill, 2007) that is on foot of a particular confluence of object-identification, problematisation and proposed remedy. These processes are by no means linear and a genealogical analysis of the multiple processes that constitute such events, including the 'surrounding conditions of possibility (Foucault, 1980; Skehill, 2007), provides a vantage point from which to look at the intersections of power, knowledge and subjectivity (Foucault, 1980; 1981b). The aim of this chapter is to explore the emergence of specific institutions through the genealogical approach and the process of *eventalisation,* to explore points of continuity and discontinuity in how specific subjects emerge for whom the carceral order of the institution is deemed the necessary mode of government (Foucault, 1980 in Faubion, 2002:226).

Through the analysis of the archive from the perspective of the previous two chapters, i.e. at the level of the public discourse of policy and from the archives of the institution, where the subjects are made visible, three specific institutional building phases are chosen as illustrative of some of these thematics of the intersection of: power, knowledge and subjectivity (Faubion, 2002; Miller and Rose, 2008). The three institutional phases or types that are analysed here are: the establishment of Trudder House, a unit opened for young Travellers in 1975, and which operated as such until 1995; Loughan Prison, established as a 'reformatory' for boys aged 12-16 in 1978, and was in operation until 1985, and the special care and high support units established from 1995 and operating in the present.

These three institutional phases are chosen as sites of analysis because they were all viewed at various times as replacements or supplementary to the remaining industrial and reformatory schools. Loughan House was designated as a reformatory because of a perceived incapacity within the existing schools to contain certain young people, Trudder House was established following what was considered to be an inappropriate placement of young travelers in St Laurence's School in Finglas and the impetus for the establishment of the special care and high support units came in part from what was considered to be the inappropriate placement of children with 'welfare' needs in 'justice' facilities. Although, as this and the previous chapter has demonstrated, these categorisations were in no way immutable, nonetheless, the rationale that children are not 'suitable' for one part of the carceral network lends itself to the logic that new sites must be established to contain them.

The establishment of Trudder House

Despite having proposed the establishment of a total of thirteen 'new' facilities (DoH, 1975), by 1977, only two of the facilities recommended by the Task Force had in fact been progressed. The first of which involved the expansion of an existing provision (the nursery at Madonna House). The only 'new' facility to open was *Trudder House,* a residential unit for Traveller children in Co. Wicklow.

> The interim report said that a capital expenditure of £2 million would be involved to implement its interim recommendations, which it deemed urgent. However, so far only two of the recommendations have been carried out; and this despite constant

> lobbying and demands from various voluntary groups, the last being Hope, which champions homeless children in Dublin. *Irish Times,* 18/11/1976[256]

Some of the questions posed here is why Traveller children were identified as a particular group requiring intervention and secondly why it was that this was the only unit to be established on foot of the *Task Force's* interim recommendations?

Trudder House was opened in 1974 as a residential unit for Traveller children. The Eastern Health Board provided funding for the opening of the unit, in a manor house situated on an old country estate, which was sourced by the *Dublin Committee of the Travelling Committee,* among whose founder members included Victor Bewley, Fr Thomas Fehily and Lady Wicklow. 'The History' of the organisation that took over the operation of Trudder House in 1993, is presented in their own account as follows:[257]

> In the early 1960's Victor Bewley, Fr. Tom Fehily and some other committed people were concerned about some major issues affecting Travellers in Ireland. Among these issues were:
>
> - A lack of accommodation – living conditions were atrocious with many families living under canvas.
> - Exclusion from the Social Welfare system – people without a permanent address were not allowed to draw the dole.
> - Health problems – for example 12% of Traveller children died before the age of two!
> - Discrimination both at official level and from the majority population
> - Poor access to education.
> - Travellers had no voice or forum to raise these concerns.

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[256] *Irish Times,* 18/11/1976 – 'Mid-1977 date likely for child care report.'
O'Sullivan (2009: 364) notes the following in relation to HOPE: "HOPE was founded in October 1975 by a German social worker who, when visiting Dublin, was struck by the number of children sleeping rough. A public meeting was held on 29th September 1976 to outline their objectives of obtaining both funding and a premises to allow them to develop 'an open house project – a place where young people could come to get food, shelter and friendship'. However, they experienced considerable difficulty and it was only on 21st March 1977 that HOPE was in a position to open a hostel at 42 Harcourt Street, Dublin 2."

[257] *Traveller Families' Care* is a limited company, the section of the Dublin Traveller Settlement committee, which operated Trudder House, another residential unit, and a 'shared rearing' service was re-coined as Traveller Families Care in 1991. The 'shared rearing' service involves the placement of Traveller children on a foster basis with other Traveller families. (Traveller Families Care – Community and Residential Resources for Traveller Families – service brochure (1994).

> Victor and Fr Tom travelled throughout the country gathering support for rights for Travellers. They often encountered great difficulties...Despite all of this quiet progress continued and many support groups were formed. One of these groups was the Dublin Committee for the Travelling People...
>
> In 1975 the Dublin Committee was approached by Justice Eileen Kennedy. She requested that a house be opened for a group of Travelling children and teenagers who were regularly before the courts. Eileen Kennedy was particularly responding to a serious incident involving some of these young people which resulted in a major fire in a Dublin bookstore which caused damage equivalent to £7 million in present day terms. A sub-committee was formed and this resulted in the opening of Trudder House. [258]

The fire referred to in the organisation's account above was the blaze that destroyed the A.P.C.K[259] bookshop on Dawson Street in Dublin on January 21st, 1975, for which eight young people were charged.

> *Eight charged after Dublin Bookshop Fire - Irish Times (22/01/1975)*
>
> Six sections of the fire brigade fought the fire for several hours, to prevent it spreading to other buildings on the street. Valuable stocks of books were lost in the blaze, which left nothing but the shell of the building. Gardaí believe it may have been started with a candle.

Following the children's arrest for this offence they were detained in the Bridewell Police Station in Dublin City Centre for two days because there was nowhere else available to place them. The existing detention schools, i.e. Finglas and Scoil Ard Mhuire had refused to accept the children. Two of the children were subsequently placed in St Laurence's (Finglas), 'where space was found for them',[260] and the parents of some of the children provided bail after the High Court ordered their release. However, seven days following their arrest, two of the children remained in police cells. When legal representatives questioned the lawfulness of their continued detention, Justice Kennedy responded:

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[258] Undated document but prepared circa. 2005 – entitled: "Traveller Families' Care – The History'.
[259] The bookshop known as APCK, was shorthand for the *Association for the Promotion of Christian Knowledge.*
[260] *Irish Times* – 'In the Eyes of the Law' – Nell McCafferty, 29/01/1975

> There's nobody to go bail for them...and there's nowhere to put them. Their parents are not here, there's nobody to care for them, and they're out on the street, and they sleep out at night. I have to release them on their own bail of £5 each. [261]

The children in question coined the 'Bridewell Children' in newspaper reports had become the centre of a debate regarding the availability of 'suitable facilities'.[262] The case even attracted the attention of the London-based *Howard League for Penal Reform,*[263] and adding their voice to the calls for the development of suitable facilities, Sheila Killanin, President, *Irish Society for the Prevention of Cruelty to Children*, stated the following:

> We would like again to draw the public's attention to the fact that in last week's well-publicised case, itinerant children were improperly remanded in custody to the Bridewell, due to the fact that there were no vacancies in St Laurence's.
>
> We are in no way critical of St Laurence's, who in our opinion are doing very excellent work, but rather of the fact that the State is still not facing up to its responsibility in providing comprehensive residential facilities for those in need of care.[264]

Where the *Interim Report of the Task Force* had recommended the establishment of 'separate facilities', it appears that the impetus for the 'development' of Trudder House came from this particularly visible crime, and the intervention of Justice Eileen Kennedy, the former Chair of the *Commission to Inquire into Reformatory and Industrial School System,* who had returned to her role as a judge in the Dublin Children's Court following the publication of the *Kennedy Report.*

It was further facilitated by the *Dublin Committee of the Travelling Committee, which* had been established in 1965 by Victor Bewley,[265] Lady Wicklow (Eleanor Butler),[266]

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[261] *ibid*

[262] *Irish Times* - High Court releases Bridewell children, 25/01/1975

[263] *Irish Times* – 'Bridewell Children' – letter to the editor, Martin Wright, Director, *Howard League for Penal Reform,* 07/02/1975

[264] 'Bridewell Children' – Letter to the *Irish Times,* 28/01/1975, Sheila Killanin, President, Irish Society for the Prevention of Cruelty to Children

[265] Victor Bewley, whose family owned 'Bewley's Coffee' a prominent business in Dublin was a Quaker and prominent member of the Dublin Society of Friends (Butler, 1991)

[266] Lady Wicklow (Eleanor Butler) stood for parliamentary election as a Labour party candidate but was unsuccessful. She was later nominated to the Seanad in 1948. (Ryan, J. 'The Countess of Wicklow' *Irish Times,* 28/10/1978)

and Fr. Tom Fehily (Butler, 1991). The Committee founded following the publication of the government's *Report of the Commission on Itinerancy (1963),* set itself the target of facilitating the 'settlement' of 'itinerants', or 'travelling people'. This had been one of the core recommendations of the 1963 Commission (Crowley, 2005; Breathnach, 2008; Helleiner, 2000).

Itinerant or Traveller Settlement Committees 'voluntary bodies' typically comprising of local clergy and 'volunteers' were established in each local authority area by 1969 (Crowley, 2005). One of the aims of the committees was to 'foster relationships' between itinerants and the settled community in order to encourage and facilitate the process of assimilation:

> The main purpose of such committees would be to bridge the gap between the itinerant family and the settled community. It is felt that this can best be done by establishing friendly contact and by regular visitation to obtain their confidence and then to encourage them and their children to learn and adopt the ways of the settled life. (COI, 1963: 107)

Crowley (2005) argues that the committees formed part of the disciplinary network, and indeed were effective precisely because of their putative friendship-based role. Here she states:

> Settlement Committee members were first and foremost concerned with the moral regulation and reformation of Travellers. Their work was part of the elaboration of technologies of surveillance that sought to create responsible, self-disciplining and self- regulating citizens… (Crowley, 2005:142).

The first efforts of the Dublin Committee was to establish a 'settlement site' in the grounds of Bewley's own home in Co. Wicklow and to organise alongside the religious order, the *Sisters of Charity*, the opening of a special school for Traveller children in Milltown, Co. Dublin.[267] Following the approach to the Committee by Justice Eileen Kennedy to assist in resolving the situation concerning the 'Bridewell Children', a house in Co. Wicklow was sourced:

> After considerable effort Trudder House, in Newtownmountkennedy, Co. Wicklow, had been rented and there were now 13 boys and three girls there.

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[267] *Irish Times,* 04/08/77 – 'Victor Bewley: Dauntless optimist.'

> The last, who were older, did cooking and washing and boys went to schools. Each child had a pet and the atmosphere, said Mr Bewley, was so much better than their previous existence of violence and harshness.[268] (April, 1976)

Trudder House operated as a residential institution for Traveller young people from 1976 until its closure in 1995. In 1993, the committee managing and staffing the facility re-named itself as *Traveller Families' Care,*[269] and it developed further services including a 'shared rearing' Traveller foster service. In 1995, reports of historic sexual abuse by care workers in Trudder House came to public attention and prosecutions were brought, however, ultimately no one was convicted.

Loughan House

The decision to designate 'Loughan House Prison' as a reformatory for boys was made by the Department of Justice in 1977. The government records show that the decision was made in the context of the existing schools refusing to admit certain young people because of disruptive behaviour and absconsions. In 1977 initial plans were made by the Department of Justice to enable young people aged 12-16 to be placed in St Patrick's Institution, located on the same complex as Mountjoy Prison in Dublin, but these plans were altered in favour of re-designating Loughan House Prison as a reformatory (Burke et al, 1981; CARE, 1978).[270]

Objections to the opening of the 'children's prison' were voiced in a number of quarters. The organisation, CARE were opposed on the basis that they argued it is a 'retrograde' step and not in keeping with the recommendations made by the Task Force on Child Care Services in their Interim Report (CARE, 1978). Criticism was also voiced in parliament. In the Seanad, Senator Mary Robinson describes the move as 'a great leap back':

> The decision, is in my view, not just a step backwards – it is a giant leap back to an attitude that prevailed over 100 years ago when it was acceptable that children could

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[268] *Irish Times,* 08/04/76 – '560 itinerant families want to be settled.

[269] The Dublin Itinerant Settlement Committee, which had established Trudder House in 1975 with funding from the Eastern Health Board, re-styled itself as *Traveller Families Care* in 1993. This is a limited company, whose management committee comprises of a number of members of the original committee that set up Trudder House, including Fr Tom Fehily (now a Monsignor). *Traveller Families Care,* continue to operate two residential facilities, a unit in Derralossary, Co. Wicklow, nearby to Trudder and a residential unit for 'Traveller Families' in Ballyowen Meadows, Lucan, Co. Dublin.

[270] Dáil Éireann - Volume 306 - 02 May, 1978 – Minister for Justice, Gerry Collins

> be kept in prison and could be held under the general care and custody of prison officers. (15 February, 1978- Adjournment Debate. - County Cavan Detention Centre) [271]

According, to the Minister, his decision was prompted by an increase in vandalism and juvenile delinquency:

> For a considerable time the activities of young boys and young girls in certain parts of the country, including Dublin, have been attracting the headlines. Accounts of muggings and assaults, and acts of serious vandalism carried out by boys and girls in the age group up to 16, have become commonplace and it is a known fact that Garda are powerless to deal with the problem, since the courts have nowhere to send boys at that age, who either will not be accepted in the special schools for delinquents maintained on behalf of the Department of Education, or indeed, if accepted, can and do easily abscond and commit further offences. The Government, on assuming office, decided that the problem was an extremely serious one and one that should be tackled without delay.

Part of the rationale for the 'need' for Loughan House, according to the government, was the increase in juvenile crime. However, countering this assertion, CARE (1978:14) stated:

> Statistics on crime and juvenile delinquency in Ireland are pitifully inadequate and are in fact less comprehensive than they were over twenty years ago. The Minister for Justice in Ireland has never commissioned any research on delinquency and its causes. The Minister is in no position to say whether there has been in fact a rise in the incidence of crime and vandalism or, if there has been a rise, what has contributed to it. The hunches and speculation and lore on which the Minister is basing his policy would not be tolerated in other areas of policy in which the implications would be far less serious than locking up young people.

The government archives demonstrate that one of the sources of 'lore' which the government received in support of opening up a detention facility for young boys was from the priests of Sean McDermott Street in the North Inner City, who documented in a letter to Taoiseach William Cosgrave, the litany of crimes in their parish.

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[271] Seanad Éireann - Volume 88 - 15 February, 1978 – Senator Mary Robinson, Adjournment Debate. - County Cavan Detention Centre.

> We, the priests of Sean McDermott Street, consider that it is our duty to bring to your notice the breakdown of law and order in the area in relation to young offenders under sixteen years of age.
>
> The inner city has many problems, such as inadequate housing, high level of unemployment and the need for special and remedial classes in our schools and extra youth facilities...The immediate danger, however, is the uncontrollable lawlessness of youths under sixteen years of age, who rob, terrorise and destroy property with complete disregard for human life. These gangs are small in number, for most of the parents of this parish rear responsible, law-abiding families, often against extraordinary difficulties.

Their letter concludes:

> Immediate emergency legislation introducing enlightened custodial care for young offenders under sixteen years of age is urgently required to allay the fears of our parishioners, to cater for the needs of the youths concerned and to restore law and order. (17/05/1977)[272]

Also included in this departmental file, is a clipping from the *Sunday Independent* newspaper dated 22nd May 1977, under the headline: '*Taoiseach urged to act on juvenile crime wave'*.

At the end of January 1978, Gerry Collins, Minister for Justice, issued a statement addressing the various criticisms levelled at his decision.

> For the next two or three years and purely as a temporary arrangement until the Department of Education has provided adequate accommodation for boys who need residential placement, the Department of Justice will make Loughan House, Blacklion, Co. Cavan available to accommodate boys between the ages of 12 and 16 years, who because of their behavioural problems or their tendency to abscond are not currently acceptable in the existing special schools. (Minister's statement cited in CARE, 1978:15).

The statement of the Minister, parliamentary debate on the issue and government archives indicate that the decision of the Department of Justice to take the lead in this area was prompted by the perceived tardiness of the Department of Education in

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[272] Department of the Taoiseach, Children General: N/A: 2007/116/617 - Letter from Frs. Morgan Costelloe, Gerard McGuire, Paul Lavelle and Peter McVerry, 17.05.1977

dealing with the reform of the Industrial and Reformatory Schools. Paul Murray, Social Affairs correspondent with the *Irish Times*, similarly makes this point in a contemporary commentary:

> Fianna Fáil has not yet learned that child care personnel can hardly be encouraged if Justice Minister Collins and Education Parliamentary Secretary Tunney run off, or allow their departments to run off, in different directions. Which is what they were doing in their planning for the new special schools, or juniors prisons, depending on your view.
>
> And all of this confusion despite the fact that there is a project team planning the schools, that we have or had a Task Force on Child Care Services, and that everyone had seemed to realise the importance of co-ordination, communication and dialogue in child care. There is an awful lot of people not talking to an awful lot of people. (29/11/1977)[273]

Despite vociferous opposition such as that described (e.g. Burke et al, 1981; CARE, 1978) Loughan House opened as Reformatory in October 1978. It continued to operate as such until 1983, when Trinity House School opened and the remaining boys detained in Loughan House were transferred there. [274]

Special Care and High Support Units

In the early 1990s, advocates including the National Streetwise Coalition[275] and lawyers from the *Children's Legal Centre* took legal challenges to the High Court on behalf of young people who were not receiving services from the Health Board.[276]

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[273] *Irish Times,* 'Close up with Paul Murray' – 29/11/1977

[274] Trinity House School was officially licensed as a Reformatory School under the *Children Act, 1908.* It was directly funded by the Department of Education, and managed by a Board of Management, whose membership consisted of ministerial appointees.

[275]" In March 1987, to mark the International Year of Shelter for the Homeless, a conference entitled 'Streetwise' was organised by Focus Point (Focus Point was established in 1985 in order to provide a range of innovative services to homeless households and operates today under the rubric of Focus Ireland) and UNICEF to highlight the situation of young homeless people both in Ireland and internationally Following the conference, an umbrella body called the *Streetwise National Coalition* was established. Streetwise aimed to identify and draw attention to the needs of out-of home young people for the purpose of improving policies and practice leading to the alleviation and elimination of youth homelessness in Ireland. Streetwise aimed to achieve these objectives by co-ordinating the efforts of individuals and agencies working with out-of-home young people, instigating relevant research projects, and collating relevant information. Streetwise operated until the mid-1990s." (O'Sullivan, 2009:422)

[276] [E.g. F.N. v Minister for Education [1995] 1 I.R. 409; D.B. v Minister for Justice [1999] 1 I.R. 29 and T.D (& Others) v Minister for Education [2000] F.L. 2402.

The *Child Care Act, 1991* had set out the statutory obligations of health boards to safeguard the welfare of children in their area and had introduced separate provision for 'homeless young people'. *Section 5* of the *Child Care Act, 1991* states:

> Where it appears to the Health Board that a child in its area is homeless, the Board shall enquire into the child's circumstances, and if the Board is satisfied that there is no accommodation available to him which he can reasonably occupy, then, unless the child is received into the care of the Board under the provisions of this Act, the Board shall take such steps as are reasonable to make accommodation suitable for him.

The differentiation in legislation between children requiring 'care and protection', the main substance of the *Child Care Act, 1991* and homeless young people has been the subject of some critique (Kelleher et al, 2000; McCarthy, 1996; O'Sullivan and Mayock, 2008). *Section 5* of the legislation came into operation in November 1992, and within a short period its precise interpretation was the subject of debate (O'Sullivan and Mayock, 2008).

The cases brought to the High Court in the early 1990s, challenged the Health Board to provide for such children under the terms set out in the *Child Care Act, 1991.* In one of the first of such cases *P.S. v Eastern Health Board*,[277] the court heard that P.S, a 14-year-old boy had been sleeping rough, and using drugs. Counsel for the Health Board argued that it could not provide a service to young people who would not remain where placed. Whilst acknowledging that the Health Board under sections 3 and 5 of the 1991 Act, had an obligation to provide for this young person, the High Court Judge ruled that the Health Board could not detain a young person for their own care and protection under the terms of the *Child Care Act 1991.*

The absence of such authority was perceived to be a gap in the legislation and further cases were subsequently brought before the High Court highlighting similar issues (Shannon, 2005a). Eventually the High Court, under its exceptional jurisdiction (i.e. with reference to the provisions of the Irish Constitution) ordered that a child could be detained to safeguard its Constitutional rights. The rights specifically referred to are

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[277] [P.S. v Eastern Health Board, unreported, High Court, Geoghegan J., July 27, 1994]

set out under Articles 40.3 and 42.5 of *Bunreacht na hEireann.*[278] These provisions outline that the State should defend the rights of the citizen and guarantee a child's right to education. They set out that the family has 'natural and imprescriptable' rights but that the State can intervene in 'exceptional circumstances' to ensure that the child's right to education is being met.[279]

The first case in which the court granted an order allowing for a child's detention so that these 'rights' could be met was in 1995: *F.N. v Minister for Education.*[280] *FN* was a thirteen-year-old boy with a 'hyperkinetic conduct disorder' who had been living rough (Durcan, 1997). Here the court issued an order allowing for this young person to be detained in a detention school for his own 'care and protection'. Notable in this and other cases was the fact that the young person's parent/s was in support of the application, and indeed was listed as a co-appellant (i.e. taking the case on behalf of the young person).

It has been noted, that the High Court's decision to grant such orders was the result of the increasing seriousness and frequency of the cases been brought before it, including instances where young people had experienced extreme deprivation and were suicidal or 'at risk' of 'serious harm' (Durcan, 1997; Ring, 1997; Shannon, 2004a). Following the ruling in the ***'FN'*** judgment, the State laid plans before the Courts stating that it intended to build specialist facilities for such young people (Durcan, 1997; Kenny, 2000; Laxton, 1998). This included the provision of three 'special care units', i.e. units where young people would be securely detained under a civil court order, and a number of 'high support units'.[281]

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[278] Specifically, Article 40.3 (1) outlines: "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen." Article 42.5 states: "In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptable rights of the child. "

[279] As documented in Chapter 5, the fact that a child's rights are not separately or explicitly otherwise provided for has been the subject of extensive debate and critique, first prompted by the findings of the *Report of the Kilkenny Incest Investigation* (McGuinness, 1993; Shannon, 2005a).

[280] [FN (A minor suing by his next friend MH) – V- Minister for Education, Minister for Health, Ireland and the Attorney General, Geoghegan J. [1995] 1 I.R. 409.]

[281] The precise purpose and function of the 'high support units' were not specified, and this remained a subject of continued policy debate (Laxton, 1998; SSI, 2006). The most salient distinguishing feature between 'high support units' and 'special care units' were that the latter were secure units. Although this distinguishing characteristic was not set out in the original plans. Further debate continued over

Pending the actualisation of the government's plan a decision was made to open a 'high support unit' in Newtown House, Co. Wicklow:

> Since 1996, orders have been made by the High Court for the detention of eighteen young people in Newtown House. In each instance the Board was required to restrict the liberty of the young person concerned, in their own interests, and to report regularly to the court. In the absence of a purpose built special care centre, Newtown House was adapted to provide a secure residential care service. In effect it was required to provide a service comparable to what would now be expected of a special care unit. The service was, therefore, provided in premises which were not particularly suitable for this purpose. (SSI, 2001:4)

Newtown House was in fact the former Trudder House. Newtown House operated as an 'interim facility' from 1996 to 2000.[282] In 1995 the government had outlined that it planned to draft legislation allowing for the civil detention of young people. It also set out its plans to build specialist units as described. However, by 2000 the promised units had not materialised. In the absence of legislation, the High Court continued to exercise its 'exceptional jurisdiction' in cases brought before it and the practice of detaining young people in Children Detention Schools under such orders continued. In 1998 (three years after the original plans were presented) the State appraised the Court of its progress to date. Judge Peter Kelly's subsequent evaluation of the State's progress was critical of the lengthy delays in opening the units:

> At that hearing evidence also emerged of unseemly and wasteful wrangles going on for months between various departments as to who would have responsibility for the care of the children in question...
>
> Proposals to address the needs of the category of children who are out of control but who are not offenders were prepared by the Department of Health and furnished in 1996. The proposals in question were incorporated into the Children Bill in autumn 1996. The revised Children Bill incorporating the measures dealing with out-of-control children was approved by the Government in December 1996. The Children

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what distinguished 'high support units' from 'mainstream' children's residential centres – here it appears that 'high support unit' were distinguished by their higher staff to child ratio (Laxton, 1998; SSI, 2006).

[282] Negative attention was drawn to Newtown House after the death of one of its residents, Kim O'Donovan, who died of a drug overdose having absconded from the unit. The unit was subsequently the subject of a highly critical inspection report (Social Services Inspectorate, 2001).

> Bill passed its second stage before Dáil Éireann on the 25th February 1997. It is still awaiting the Committee stage in the Dáil. However, since the second stage consultations have been ongoing between representatives of the Department of Justice, Equality and Law Reform, the Department of Education, the Department of Health and the Health Boards with professionals in the area of young offenders and child care. These consultations have resulted in a large number of further proposed amendments to the Children Bill".[283]

Four years later, at another hearing involving similar cases, when limited progress had been made by the State in building the promised new units, Judge Kelly notes:

> It is no exaggeration to characterise what has gone on as a scandal. I have had evidence of inter-departmental wrangles over demarcation lines going on for months, seemingly endless delays in drafting and redrafting legislation, policy that appears to be made only to be reversed and a waste of public resources on, for example, going through an entire planning process for the Portrane development only for the Minister to change his mind, thereby necessitating the whole process being gone through again.[284]
>
> The addressing of the rights of the young people that I have to deal with appears to be bogged down in a bureaucratic and administrative quagmire.
>
> I have come to the conclusion that the response of the Minister to date falls far short of what this Court was reasonably entitled to expect concerning the provision of appropriate facilities for young people with difficulties of the type with which I am dealing.[285]

Following a number of further legal challenges, including an appeal by the State to the Supreme Court[286] and an appeal by a young person to the European Court of Human Rights challenging the basis of his detention in a penal facility,[287] the promised units open in 2000. However, a legislative amendment allowing for 'special

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[283] B. (D.) v. Minister for Justice [1998] IEHC 123; [1999] 1 IR 29; [1999] 1 ILRM 93 (29th July, 1998)
[284] Reference to the development in Portrane concerned initial plans for building a secure facility, these were subsequently altered and the unit was to open as a 'high support facility'. The main difference between the two types of unit is that the former is designated as a 'secure facility'.
[285] D. (T.) v. Minister for Education [2000] IEHC 21; [2000] 3 IR 62; [2000] 2 ILRM 321 (25th February, 2000)
[286] DG (A Minor suing by His Guardian Ad Litem MR) v Eastern Health Board, Ireland and the Attorney-General [1997] 3 I.R. 511
[287] D.G v Ireland, no. 39474/98

care orders' or 'secure orders' under the *Child Care Act, 1991,* has to date not yet been introduced. Therefore the High Court continues to issue orders in cases brought before it on an individual basis.

Continuities, Discontinuities and sites of emergence

The circumstances surrounding the establishment of the sites described above based on an analysis of the archives including the reports of individual agencies; parliamentary debate, campaign literature from organisations such as CARE and contemporary media reports provides an illustration of some of the contingencies that are brought to bear in the 'emergence' of specific institutions in time. Patterns of continuity and discontinuity can be discerned in an analysis of this discourse. This next section of this chapter explores the thematics of: subjectivity, visibility and networks of government through this lens.

It is argued that the carceral order of the institution is the 'underside' or the 'unacknowledged truth' of liberal societies characterised by individual rights (Foucault, 1977a; Faubion, 2002; Miller and Rose, 2008). Foucault's (1977a) central argument articulated in *Discipline and Punish* is that the template of government established by the nexus of power/knowledge at the site of the institution becomes dispersed in more 'liberal societies'. This theme is taken forward by Cohen (1985) who speaks of widening nets of control where the techniques of government become diffused, permeating beyond the institutional walls. However, it does not necessarily follow that such dispersal is inevitable or linear (Bottoms, 1983; Nelken, 1989; Parton, 1991).

Given that an essential component of the 'dispersal of control' thesis involves the demise and discrediting of the institutional template, the question of the subjects who are deemed to require continued containment is apposite. It is important to observe that the 'dispersal of control' thesis has been subject to some criticism in criminological literature. For example, rather than a 'dispersal of control' Garland (2001) argues that certain societies have been characterised by a 'culture of control', defined by high rates of penal incarceration, fear of crime, punitive attitudes and so forth. Here, it is argued that rather than control being 'dispersed' it is concentrated and directed towards certain populations. Taking the North American example, this is

demonstrated with reference to the high incarceration rates of minority ethnic communities (Beckett and Western, 2001; Simon, 2001).

However, the applicability of Garland's (2001) thesis beyond the Anglo-American axis has been the subject of critical debate. This has been explored by Muncie (2005), in relation to 'youth justice' and Kilcommins et al (2004) for example, contest its applicability to the Irish context. Through an analysis of Garland's (2001) 'indices of control' these authors conclude that the Republic of Ireland is not characterised by a 'culture of control' or to use Adler's (1983) adage, it is a 'nation not obsessed with crime'.[288] O'Sullivan and O'Donnell (2007:27) argue that in fact the Republic of Ireland can be characterised by the 'waning of a culture of control', if account is taken of the overall demise of the total institutions of 'coercive confinement' from the 1950s onwards, including the Industrial and Reformatory schools. [289]

In the Republic of Ireland therefore the retraction of the institutional template can be demonstrated with reference to the closure of institutions such as Industrial and Reformatory schools and the marked reduction in the overall population of young people in such facilities. All of this notwithstanding, it is clear that over time calls are made for the establishment of new forms of institution to contain 'new' forms of subjects. Indeed the continued productivity of these categories is a question with which this thesis is centrally concerned. Dean (1999) argues that within 'liberal forms of government', there is a long history of people who for one reason or another are deemed to be beyond 'juridical responsibility'. In other words, they are seen to lack the essential pre-requisites of autonomy and responsibility to be self-governing subjects. By such a rationale, they therefore must be subject to more stringent, illiberal forms of intervention, of which the carceral order of the institution is the exemplar.

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[288] Adler's (1983) publication based on a comparative analysis of criminal justice practices, penal policy and crime rates details ten nations that are deemed 'not obsessed with crime'. Ireland is one of the countries included in the study which also includes: Switzerland Bulgaria and the German Democratic Republic, Costa Rica and Peru, Algeria and Saudi Arabia, and Japan and Nepal.

[289] The authors note for example that in 1951, more than 1% of the total population in the Republic of Ireland was detained in some form of institution e.g. psychiatric hospital, Magdalene home, Industrial School etc.

Intersections of Power and Knowledge and Networks of Governance

Notable in the three institutional formations described is the role of both state and non-state actors at various stages of emergence. The *Dublin Traveller Settlement Committee,* a voluntary organisation is instrumental in the establishment of a residential institution for young Travellers and a group of non-state actors including homeless organisations and legal representatives engage in legal challenges the net effect of which results in the formation of new institutions in the form of Special Care and High Support Units. Further still, in a number of the applications to the High Court, the parents or guardians of the child in their capacity as 'next friend' are party to and instrumental in the proceedings to have their children contained. And although this thesis is silent on the subject, the question of young people as actors themselves in this 'dense field of relations between people, people and things, people and events' must also be considered. In fact it is critically argued elsewhere that the subject's 'experiential self-identity structures the carceral space' (Fludernick, 1999:47).[290]

Even at the level of the State there are disputes about how best to govern. In the case of Loughan House, there are different perspectives among government departments as regards to the 'appropriate' response to the 'problem' of juvenile crime. With regard to the establishment of Special Care and High Support units, there are continued arguments within government regarding the allocation of responsibility, but perhaps more fundamentally, regarding the appropriate way to 'govern' this 'problematic'. Questions are posed as to whether children should be locked up at all; whether the purpose is one of rehabilitation, therapy, containment and so on?

Indeed exploring patterns of continuity, a consistent theme within discourse is the manner in which the 'remedy' is contested based on a range of interests informed by different intersections of power and knowledge. This is illustrated in the torturous passage of the *Task Force on Child Care Services (1980),* where in fact, no remedy can be specified because:

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[290] The question of young people as actors within this field of relations is a potentially rich research area. The fact that the 'official' archives analysed does not deal with the perspectives young people beyond their status as subjects or objects of intervention, does of course provide an indication of their perceived status within this field of relations.

> Much of the response to children's needs, which had been traditional and largely unquestioned for many years, was now considered unsatisfactory and undergoing a radical reappraisal. Our study did not therefore take place in circumstances where our recommendations could be based on relatively clear-cut and established solutions to the problems affecting children. (DoH, 1980:27)

A similar discourse is discerned in the parliamentary statements made by the Minister for Justice regarding the decision to open Loughan House:

> For some time after the second World War it was fashionable among criminologists and penologists to explore the possibilities of rehabilitating offenders by means of regimes in custodial institutions which were treatment-orientated. Unfortunately that approach has not yielded any worth-while result and has been almost universally abandoned as, indeed, appears to be recognised now even by some organisations who a few years ago were very critical of what they alleged was the failure of our custodial institutions to rehabilitate offenders.[291]

Over time the solutions are less available than they originally appeared. The knowledge (and power) are contested, 'solutions' come into view only to dissipate. Looking at the archive from a governmentality-lens can illuminate the web of intersecting discourse:

> ..instead of seeing any single body – such as the state - as responsible for managing the conduct of citizens, this perspective recognizes that a whole variety of authorities govern in different sites, in relation to different objectives. (Rose et al, 2006:85)

Added to the web of different sites and different objectives are different subjects, or at least subjects with different names, for as Rose (1999:185) reminds us we may or may not be talking about the same 'mad-men'.

Subjects beyond juridical responsibility

Analysing the archive from the archaeological and genealogical perspective, illustrates that the concept of 'child' and 'children' is contested over time, both at the level of the institution where the assessment serves to bring the subject to visibility and within the official discourse of policy documents. The question of the autonomy

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[291] Dáil Éireann - Volume 306 - 02 May, 1978 – Minister for Justice, Gerry Collins

of children is contested particularly along the continuum that is characterised as welfare-justice (Goldson, 1997; 2000; Muncie, 2006b; 2006c), where intervention from a welfarist perspective is legitimated by the perceived lack of autonomy (McGillivray, 1997) and from a justice perspective from precisely the opposite orientation, that is, the child or young person is seen as a rational acting, autonomous individual and therefore 'justice' must be administered as such (Goldson, 2002; Haydon and Scraton, 2000). These positions, formed from the confluence of power-knowledge, are mediated by further variables, the age of the child concerned for example or the 'cultural context' in which the system operates – whether for example a society is 'obsessed with crime' (Adler, 1983) or 'control' (Garland, 2001) (Haydon and Scraton, 2000; van Krieken, 1991; Satka, 2003). All of which points to the constructive and productive domains of discourse.

In the instance of children deemed to require containment, it is evident that the subject's status as 'child' is brought to bear, but that this status is contested across the continuum referred to above. These contestations can be seen in the discourses, which seek to legitimise carceral interventions along rationales of 'need'; 'interests' or 'rights' (Harris and Timms, 1993). In other words, containment is required because the child's welfare should be safeguarded. The 'criteria' for placement in Special Care states the following:

> The young person will present with a history of impaired socialization and impaired impulse control, and may also have an established history of absconding which places them at serious risk.[292]

Or because 'justice' demands such a sanction:

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[292] The *Criteria for the Appropriate Use of Special Care Units* was developed by the Health Service Executive and the Children Acts Advisory Board, an organisation established under the Children Act (2001) and Child Care (Amendment) (2007) to advise the Minister for Children on policy in relation to 'specialist residential services'. There are eight criteria and a number of exclusionary criteria. The criteria are intended to be used by applicants, usually social workers, in determining whether the young person meets the threshold for placement in secure care. They are also intended to be used by the units (now operating under a national body – the National Admission and Discharge Committee – to determine whether a child should be admitted to a unit (pending a court direction). The application of the criteria have been evaluated in two separate studies (SIS, 2005; SIS, 2010), both reports found that the criteria were variously applied with geographical location of the child and gender being important variables in terms of rate of applications and ultimate placement.

> Because nothing happened for the last three years in this regard I now find myself in the situation of having to deal with a serious problem on our streets. I want to put a simple question to all Members: do we do something now to try to control those who are running wild or do we not? We do not have a custodial centre at present to keep them in a school. They cannot be kept in Lusk, Clonmel or Finglas. I would have avoided a lot of flak—I am as sensitive to flak as anybody else—if I had done nothing until a unit in Lusk was built. I am convinced that the existence of Loughan House will act as a good deterrent to young people. (Minister for Justice, 02/05/78)[293]

Beyond the question of age and the status of 'childhood' the analysis of the archive illustrates that other factors are brought to bear in establishing the 'juridical' credentials of the child subject. One of which is the gender of the subject concerned. In particular, we see that the intersection of gender, ethnicity and sexuality lends weight to arguments for particular forms of intervention. For example, a continuous theme across time is the manner in which arguments for the containment of young women are intermeshed with their sexuality and reproductivity (potential and otherwise).

Another is the 'juridical' capacity of the young person's parent(s). The question of whether the parent is perceived to be able to govern their own child is central to the legitimation of various forms of intervention in families, child protection social work being the obvious example (Donzelot, 1980; Parton, 1991; Skehill, 2004). But beyond this, there are other instances where the particular characteristics of a parent lead their children to be characterised as *de facto* 'at risk'. One particular category of children and parents for whom this *de facto* risk category applies are Travellers.

Crowley (2005) and others have noted that the establishment of the first state-appointed inquiry to investigate and propose solutions for the 'problem' of 'itinerancy' in 1960 was central to the emergence of a dominant discourse in which Travellers were 'problematised'. Similar in formula to other government commissions, the *Report of the Commission on Itinerancy (1963)* begins with an attempt to enumerate the extent of the problem, through a census and description of

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[293] Dáil Éireann - Volume 306 - 02 May, 1978 – Minister for Justice, Gerry Collins

the 'itinerant' population.[294] This mode of specification - the identification of the problems of a 'population' is central to the mode of government that the Commission proposed, which was the 'assimilation' through 'settlement' of itinerants into the 'majority population' (Crowley, 2005). [295]

The issue of 'itinerant children' and their future welfare in 'appalling living conditions' forms the basis of the rationale for the intervention proposed. Consideration was in fact given by the *Commission* to the forcible removal of Traveller children from their families (a strategy used with other indigenous populations (e.g. Read, 1981; van Krieken, 1999), but this form of action is decided against. However, the discourse and rationale of 'child-saving' underlies the strategy of assimilation (Breathnach, 2006; Crowley, 2005; Helleiner, 2000) - it is to be done 'for the sake of the children'. Highlighting the links between discourses of nationalism and childhood (McGillivray, 1997), the commission further links this project with the necessary modernisation of the Republic of Ireland (Helleiner, 2000; Norris and Winston, 2005).

Therefore, by the time that the *Interim Report of the Task Force on Child Care Services (1975),* recommends the establishment of a separate residential facility for 'itinerants', it is evident that 'itinerant' children as a *de facto* 'at risk' category has become a dominant discourse. This view can be supported with reference to the government archive of the period, and in particular, the discussions held at cabinet level regarding the 'problem' of what are described in newspaper reports as 'Fagin's Children' (reference to the child-corrupting character in Dickens' *Oliver Twist).*[296] Here the reports suggest that the Fagin-character, orchestrating the activity of child-begging are 'adult itinerants', for whom the children are pawns to be used for gain.

Further *de facto* 'at risk' categories are seen in the discourse of the CARE campaign reports and the various government documents from 1970s to 2000s, for example the

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[294] A further noteworthy fact is that the local Gardaí conducted the census of itinerants on behalf of the Commission.

[295] Indeed the political 'problem' of the population is a central theme in Foucault's (1997) conception of the characteristic of liberal government (Rose et al, 2006).

[296] Department of the Taoiseach Files, Children General: N/A: 2005/151/92: This file contains Clipping from Irish Independent 18th November 1975 – entitled:*"The Fagin file – a dossier of shame on our abandoned waifs."*

'*CARE Memorandum'* published in 1972, refers to the following categories of 'deprived' or 'at risk' children:

> Children in families under stress; children who never had a family (this includes children of unmarried mothers); children whose families breakdown and children in trouble with the law and other deprived children (battered babies, juvenile drug addicts, schoolgirl mothers are problem groups – and there are many more- which attract attention from time to time. (CARE, 1972:14).

Here notably, given the history of containment in the Republic of Ireland, where 'illegitimacy' formed the grounds for committal to institutions (CICA, 2009; Kennedy, 2001), we see that children of 'single mothers' are considered to be subjects requiring specific intervention. By the time of the publication of the *Report of the Task Force on Child Care Services (1980),* the concept of the 'family' has become broader than the martial family, but nonetheless; single-parent families are specified as particular targets of government:[297]

> The fact that a particular family is incomplete in some respect does not necessarily mean that the family is not the best place for the child. A single-parent family or a family that is not functioning in an ideal way is likely to need more help and protection that a two-parent family functioning well. (DoH, 1980:37)

The question therefore of the juridical capacity of the 'subject' extends beyond the child concerned to the question of their parentage (and in particular their legitimacy), their family and more broadly their community (or ethnicity in the case of Irish Travellers). Here the dominant themes discerned through a genealogical analysis of discourse in these 'official' archives are also reflected in the discourse at the sites of containment (as described in the previous chapter).

Visible subjects

Exploring patterns of continuity and discontinuity illustrates that intervention is also predicated on *visibility.* Notable in the accounts of the subjects deemed to require intervention in these instances is their visibility in space and time. The children or subjects for whom the sites of containment are actualised are those who are most

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[297] This discourse is reflective also of changed material circumstance evident in the introduction of an 'Unmarried Mother's Allowance' in 1974 (Kennedy, 2001).

visible – the itinerant children begging on the streets of Dublin; the homeless children also seen on Dublin streets and young people who 'wreak havoc' in Dublin's North Inner City. Looking specifically at Irish Travellers, the central theses of several scholars who have explored the increased state intervention in the lives of Irish Travellers, is that this was predicated on increased visibility, caused by urbanisation - the movement of Traveller families from rural areas to suburbs and cities (e.g. Breathnach, 2006; Crowley, 2005; Helleiner, 2000; 2003). The following quote from a 'social geographical' study in the late 1970s is illustrative:

> Irish Tinkers are an itinerant or "gypsy" population. They form a distinctive subculture within Irish society. Over the past three decades their traditional economic and social niche in rural Ireland has been eroded by modernization and industrialization. In response, they have migrated cityward. Economic adaptation to the urban milieu has demanded development of new trades and intensification of former supplemental pursuits. It has also initiated a transition from nomadism to sedentarization. Nearly half of the Tinker population have been removed from the road to settle in *tigins* or standard housing. Acculturation is progressing, but social assimilation has been impeded by prejudicial attitudes exhibited by the sedentary community. (Kearns, 1977: 538).

> Heightened visibility has evoked indignation and hostility among sedentary Irish, many of whom regard the Tinkers as economic scavengers and social pariahs. (Kearns, 1977:538)

Notable also in the accounts of 'youth homelessness' is the manner in which their visibility as individuals and as a group necessitates a response (O'Sullivan and Mayock, 2008).[298]

> HOPE was founded in October 1975 by a German social worker who, when visiting Dublin, was struck by the number of children sleeping rough. (O'Sullivan and Mayock, 2008)[299]

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[298] It is important to observe that Travellers are viewed as forming a constituent group of the 'young homeless' population over time. O'Sullivan and Mayock (2008:19) note that while there is sometimes conflation of these two categories '...by the mid-1970s, a distinction was made between settled children and Traveller children sleeping rough.' This view is informed by an analysis of policy documents from the period, where the 'reasons' for homelessness are perceived to be different. For example, in the case of Traveller children, it is related to the 'alcoholism' of their parents (Clare and Byrne, 1976 cited in O'Sullivan and Mayock, 2008).

Describing one of the first cases *(Paul S [A minor suing by his next friend and mother PS] –v- Eastern Health Board),* brought to the High Court on behalf of a teenage applicant, Gerry Durcan, S.C. (counsel for the applicant) outlined the following:

> This was an application by a teenage applicant who had a very disturbed background and he had lived away from home for many years in different institutions. He ended up living rough on the streets and spent a considerable number of nights sleeping in various Garda stations. (Durcan, 1997:3)

Here the spatial location of the particular young people on the streets of the capital city cannot be ignored. The young people described are visible because of their location in space, their visibility is related to their subjectivity and vice versa.

The visibility of institutions

A further dimension of the visibility described is the manner in which the existent institutions are productive in this process. In the excerpt from the case described above, ***Paul S's*** situation is in part attributed to his previous institutionalisation. Similar arguments are made in relation to the 'emergence' of youth homelessness as a 'social problem' (O'Sullivan and Mayock, 2008). Here it is noted that contemporary literature links the emergence of homeless young people with the closure of institutions or the departure of young people from remaining institutions.[300] Here intervention is legitimated precisely because of the subject being brought to visibility through the displacement of a previous form of government. The quote below from conference proceedings on the subject of youth homelessness is illustrative:

> In 1970 there were very few designated residential units providing care for children and young people who are homeless. This is understandable in the context of the time when the large residential reformatories and industrial schools received children into their care who were homeless, neglected, abandoned, out of control and kept them in care until they were 18 or 19 years of age. There were also the Magdalene Homes

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[299] In 1977, HOPE, received funding from the Eastern Health Board to open up a city-centre hostel for homeless young people. The hostel operated for two years before funding was withdrawn. The organisation also provided an 'outreach' service to young homeless people. (O'Sullivan and Mayock, 2008).

[300] Indeed a contemporary comparison can be drawn with the discourse surrounding young people leaving the care system, where links are made between experiences in care and subsequent, homelessness, criminality etc. (see Stein 2006, for example).

> which provided care for young girls who were out of home and possibly involved in prostitution... Inevitably, as the large institutions closed down or reduced their scale of operation, new needs emerged which had previously been contained in the old large units. (O'Brien, 1996: 40)

Further still, when the institutional template contracts, an attempt is made to recalibrate the existing institutions through the dividing practices of classification and diversification. This movement from a mass of uncategorised young people (indeed as the discourse of the *Kennedy Report* demonstrates the failure to categorise is the subject of critique), to an individualised approach is a site of increased productivity. Here the analogy between residential child care and hospital services drawn by the Chairperson of the *Resident Manager's Association* in 1995 is illustrative:

> When I consider the dilemma with regard to the provision of child care services I use the example of the hospital system for the purposes of clarification. Included in the hospital services are mainstream beds for very ill patients. However, there is also a need for paediatric services, a coronary care unit, a surgical ward, a medical ward, an orthopaedic ward etc. If a patient comes into the hospital with a heart attack he/she is placed in the coronary care unit, not an orthopaedic ward. Similarly a variety of services is needed to respond effectively to the complex needs to young people needing care and protection. (Moynihan, 1996:30)

And where institutions are established for a specific 'type', where a young person is not of this 'type', the rationale is put forward for the creation of further spaces of containment. This is precisely the form of discourse deployed to legitimate the construction of further institutions:

> ...Mr Ruairi O'Cillin, divisional inspector in the Department of Education and Science, accepted under cross-examination that over the past number of years problem children have had to be detained in Oberstown Detention Centre, primarily a criminal facility, because there was nowhere else to put them. Mr O'Cillin further accepted that in some but probably not in all cases, the applicants had suffered damage as a result of the fact that an appropriate facility had not been available. As a general proposition it is correct to say that in the case of children who require special care facilities, their chances of progress are better if appropriate facilities are made

> available to them. (High Court Judgement in case of *TD,* delivered 25 February, 2000)[301]

In relation to the plans to re-designate Loughan House Prison as a reformatory for boys, a similar discourse is highlighted:

> All of these religious establishments are run by religious orders. They have been grossly neglected by successive Irish governments until the end of the 60s. They used to deal with all comers, but not any more. There are protests because the residential establishments will not accept all convicted offenders, especially the most difficult ones. Vandalism and juvenile delinquency are attributed to the fact that "there is no place to lock them up" and the responsible authorities do nothing to disabuse the public of this facile and misguided notion. (CARE, 1978:6)

In fact, as the previous chapter has demonstrated the 'misplacement' of children provides further legitimation to this discourse, as the institution brings visibility to the manner in which an individual child's putative needs cannot be met. One of the terms used to describe young people and to justify their containment in a different type of institution is to term them as being 'out of control'. The utility of such a term is that the child is portrayed as being without the bounds of the existing provision. They are 'out' of its 'control'. The logic therefore is that they should be placed somewhere where they are within control. This term was used frequently to describe children who were deemed to require placement in secure institutions in the 1990s. Referring to the placement of 'absolutely destructive and uncontrollable boys' outside of the Republic of Ireland, this Health Board Executive states:

> This is a nationwide problem...They need to be in high-security centres. But you couldn't put them into Mountjoy or Wheatfield because then they would be with adult criminals.[302]

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[301] TD (a minor suing by his mother and next friend MD) (applicant) v The Minister for Education, Ireland and the Attorney General; the Eastern Health Board; and the Minister for Health and Children (respondents). *Irish Times,* 03/04/00 'State obliged by Constitution to provide care facilities for children in difficulty.'

[302] In 1995 the chairman of the Mid-Western Health Board said that his Board had sent children to a unit in Northern Ireland in the absence of suitable facilities in the Republic. He described the children sent as 'absolutely destructive and uncontrollable boys' Irish Times, 10/08/95: *"Board forced to send juveniles to North."*

The inescapable logic at the heart of this 'irreal machinery' is that 'new' and different types of sites of containment are required (Miller and Rose, 1994, [2008:144]).[303]

Reconstitutions of power-knowledge schema

However, these discourses are not linear. At the same time that institutions are being promulgated they are being discredited. As earlier chapters have demonstrated, the 'emergence' of child abuse as a central trope of public discourse manifest through disclosures of abuse and inquiries of various forms gain increasing currency throughout the 1990s (CICA, 2009; Ferguson, 1994; McGuinness, 1993). In particular historical accounts of institutional abuse draw attention to practices of child detention and standards of care in the Reformatory and Industrial School system (CICA, 2009; Keating, 2002; Gilligan, 2009; Maguire and Ó'Cinnéide, 2005). The discourse of children's rights as the *Report of the Kilkenny Incest Case (1993)* demonstrates is articulated as a corrective to abuse. The recommendation for a 'children's rights' amendment to the Irish Constitution is based on the premise that the child as rights-bearer will be more susceptible to State intervention, if their 'protection' requires such intervention.

And later the discourse of children's rights used to challenge the State's provision of services under the terms it has set out in the *Child Care Act, 1991* subsequently becomes the rationale for containment, suggesting the malleability and reconstitution of discourse at the intersections of knowledge and power. Here the High Court orders that children should be detained in facilities for their own care and protection in order to *'vindicate their constitutional rights'*.

> ...the courts have now found that the constitutional rights of certain children can only be vindicated by the provision of facilities in which they can be detained or contained for the purposes of treatment. Given that the courts have come to this conclusion, it is clear that the State has no option but to provide such facilities. (Durcan, 1997:9)

> The concept of recognising the child's rights also has implications for the manner in which we approach secure accommodation. Secure accommodation should not be seen as a punishment for difficult or deviant behaviour. Children seek, and need, security as they grow. (Ring, 1997:13)

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[303] The term 'irreal machinery' is used by Miller and Rose, (1994, [2008:144]) to describe the mechanisms put in place to effect the logic of government.

At various points different rationales are employed via the nexus of power and knowledge to prescribe programmatics, but these are clearly not places of unitary positions.

Adopting a governmentality perspective allows us to see that the practices that operate in relation to young people who are deemed to require 'containment' are the product of 'regimes of truth', which are constructed through the nexus of power and knowledge (Foucault, 1980). A genealogical analysis enables us to explore the confluences of the power/knowledge dialectic that 'produces' the subjects and the sites in which they will be governed. The 'institutional template', conceived both as physical structure and a schematic, make the subjects and the solutions visible and vice versa – in other words each gives meaning to the other. They do not exist without their 'conditions of possibility' but they interact with these conditions in their own circuitry.

Evident in the discourse at these sites of formation are the arguments that intervention is necessitated because of some distinct characteristic of the subjects concerned. While remedies come in and out of view and new and different forms of intervention are suggested Foucault's (1977) conjoiner that we should not to be misled by the 'promise of one disciplinary regime to relieve us from the rigours of another' seems apposite. Where a range of alternative programmatics of government are proposed post-1970 following the displacement of the institutional model, the carceral order forms the backdrop, the point of return when those outside the order of other forms of government must be brought back 'under control'.

Chapter Eight - Conclusion

In this thesis, analytical attention is directed towards the children for whom institutionalisation (or the carceral order) continues to be the specified form of government. The question or problem that has been posed in the present is why such a practice, albeit now marginal in numeric terms, remains a productive sphere. In other words, in the context of wide-scale de-institutionalisation, described by Cohen (1985) as one of the 'master shifts' in the history of social control, why do sites of containment continue to emerge, and *who* are the subjects for *whom* this form of government is specified?

A Productive Sphere

The existing literature on the Irish youth justice and child welfare system documents aspects of the historical context. Various accounts note the extent of institutional confinement of 'deviant' populations from the mid-nineteenth century onwards. One of the marked features of the Irish context is the longevity of the institutional template. From a high point in the 1950s, thereafter the populations confined retracted and the number of institutions declined. This was also the case for institutions containing children and young people.

Included in these historic accounts are critiques of what is characterised as the State's dilatory response to this area (Kilkelly, 2006a; 2006c; 2007; McCullagh, 2006; Seymour, 2006). In particular the lack of attention paid to the system in the period between the foundation of the State and the 1970s is highlighted and the delay of almost a century in introducing legislation to reform the *Children Act (1908)* is routinely noted. However, this thesis highlights that in the context of a 'legislative lacunae' (Shannon, 2004a), 'policy stagnation' (McCullagh, 2006) and systemic retraction (O'Sullivan, 2009), there has nonetheless been marked ***productivity***. This is evident at the 'site of manifestation' and within a wider sphere of discursivities.

This thesis has sought to demonstrate that this productivity is evident in discourse which brings subjects to visibility and new forms to subjects. Here it is seen that the template of the institution provides a continued impetus for the production of new subjectivities through the intersections of power and knowledge. This is evident at the

microphysical level in the practice within the institutions of 'producing' subjects through assessment where the assessment reports serve to construct a profile of the young person through a process of categorisation, gradation and comparison. For example, young people are categorised on the basis of their provenance including whether they are born of a marital union or not or on the basis of their parents' characteristics, whether that be visible appearance or criminal antecedents. The intellect of young people is graded through the administration of IQ tests, which draw on the power and knowledge of the 'psy' disciplines and their behaviour is compared with their counterparts in the unit at the time of their assessment. Here it is observed that a young person is classified as 'more' or 'less' criminal or 'more' or 'less' needy on the basis of comparison with other young people. Interactions with peers, interactions with staff and physical descriptors are routinely recorded and form the basis of information that will lead to a recommendation to the court or health services.

This productivity is also seen through the emergence of new sites of containment. Three institutional building phases are examined using the genealogical method. In each case it is demonstrated that the impetus for their development came in part from the arguments put forward that existing institutions were inadequate – i.e. they were not 'specialist' enough or they simply could not contain the young people placed there. The rationale for the production of new institutional sites is made manifest within the existing institutional provisions. It also clearly draws on wider discourses, 'the conditions of possibility' that open up spaces in their form effect.

From an analysis of the archive it is argued that this productivity draws on old themes, but it is also continues to innovate. Critically, it is argued that while rationalities may oscillate, there are patterns of continuity and discontinuity evident over time. And in fact the repertoire of rationales for containment retain a consistency over time that serves to reconfigure problematised subjects and give the sites of containment their continued productive effects. Here in line with the 'history of the present' approach adopted it is argued that the present is continually '…played out, and innovates, utilizing the legacy of the past.' (Castel, 1994:238).

Methodological approach

Methodologically this thesis has been informed by a 'history of the present' approach. Such an approach is predicated on the understanding that the 'problems' of the

present can be illuminated through an analysis of how such 'problems' were viewed in the past. Theoretically, it has been argued that an analysis of discourse, understood as the historically variable ways of specifying knowledge and truth, can direct attention towards the complex interplay of power and knowledge that 'produce' such understandings (Castel, 1994; Dean, 1994; Foucault, 1977a).

Complimentary to this the *governmentality* perspective applied directs attention towards the strategies, techniques and rationales used to 'govern' subjects in 'liberal societies'. Here too the intersections of power and knowledge and the productions of 'subjects' are also key themes. Both *power* and *knowledge* are viewed as 'productive' and are seen as being constituted and made manifest through discourse. According to this understanding, power is not essentially 'repressive', it also operates through resistance; it is not 'possessed' - rather it is produced and it produces.

It is argued that the *governmentality* perspective adopted in this thesis also allows for an analysis of power beyond the state (Burchell et al, 1991; Foucault, 1997; Rose et al, 2006). Therefore in this thesis analytic attention is directed towards various sites in which power is made manifest. This perspective is applied both at the sites of the institutions themselves and through an exploration of the manifestations of power evident in the various networks that mobilise calls for reform and in some cases facilitate the establishment of institutions – Trudder House and the role of the Itinerant Settlement Commitees is presented as a case in point.

Following Foucault's (1997a) approach, which directs attention towards the operation of power at the margins or the peripheries, the intersections of power and knowledge are explored at the level of the institution. This is achieved through the archival analysis of almost 2,000 individual case files of young people who had been detained in Industrial and Reformatory Schools over a period of almost 40 years (from 1970 to the present). In this thesis it is through the use of the tools of archaeology and genealogy that the manner in which subjects are brought to light and made visible at the level of the institution through the discourse of assessment reports are described. Here it is identified that the descriptors of identity, and the forms of 'classification' and 'categorisation' are central to the techniques of individualisation and totalisation. These techniques are key elements of the discourse that serves to legitimise calls for 'this or that form' of intervention in young people's lives.

In recognition that the archive can be viewed from a number of perspectives, analysis has been undertaken from a number of vantage points.[304] In addition to the individual case files held at the sites of containment, the archive of government policy, official records and various reports has been analysed via a genealogical approach in an attempt to explore the wider discursivities that serve to give particular rationales of power effect. Here attention has been directed towards 'sites of emergence', the rationales put forward for new forms of containment and the discourses that serve to give both the sites and their subjects effect.

A central methodological underpinning is the recognition that discourse is not a space of 'unitary positions'.[305] Rather different discourses are advanced and some gain more discursive space than others. One of the key questions to be posed is why this is so? For example, when the discourse of 'children's rights' has been identified as dominant from the 1990s onwards, this is situated within the context of an 'emergent' awareness of the context of 'child abuse'. It has been argued that the subject of the 'abused child' gives a rights discourse affect (and indeed vice versa).

A further point of illumination is offered from the perspective that views discourse as an effect of power/knowledge. From the original analytical perspective of this thesis it is argued that this productivity can be viewed across a range of domains - at the level of discourse which through the intersection of power and knowledge brings new subjects to light and new forms to subjectivity and in the programmatics of government both proposed and actualised to govern these problematised subjectivities. This productivity is demonstrated in the subjects emergent from the backdrop of the institution seen first in the figure of the 'deprived child', whose subjectivity is inscribed by the 'psy' disciplines and its particular dialectic of power-knowledge. It is also seen in the emergence of new sites of containment over time.

As with all studies there are of course limitations. A central theoretical focus of this study has been an exploration of the intersections of power and knowledge to 'produce' subjectivity. The main sources of data analysed has been the 'official'

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[304] The terms 'snapshot' or 'web' have been used to describe the differences between the archaeological and genealogical perspectives for example, (Kendall and Wickham, 1999; Skehill, 2007),

[305] "Discourse is not a place into which subjectivity irrupts; it is a space of differential subject-positions and subject-functions." (Foucault, 1991b:58)

records of institutions, organisations and government. Clearly such records are just one source of data and it here it is notable that the voices of the ostensible subjects are 'silent'. This in itself is illustrative, however, as a result the silence of the subjects is also evident in this thesis. This must be viewed as a limitation but also points towards possibilities for future research in this area.

A key question in the use of the 'history of the present' method and set out in the methodological section of the thesis is the question of how far back does one go when applying an archaeological and genealogical perspective to data? It is clear that any study needs to be bounded both temporally and in scope and Skehill (2007:455) has argued that in choosing a starting point one should go back to the 'moment which helps to address the problem in the present.' This notwithstanding one can also reasonably assert that the process of mining the archive could be potentially endless, with new avenues and inter-linkages emerging through the process of analysis. Foucault (1981a) acknowledges this also when he identifies that the study of 'carceralization' can be linked to educational practices, the military and so on.[306] In terms of this study the analysis, findings and arguments set out are framed by the temporal boundaries set out – i.e. from 1970 to the present.

Relatedly, the angle at which one enters the data frames the discussion (Garland, 1992). Here the practice of child detention has been explored and this has been linked to wider discourses on children and families throughout the period. However, it is true to say that the analysis of the archive from a different viewpoint may yield different perspectives raising the question of the generalisability of this study's findings. However links have been made throughout with other research in related areas, for example Skehill's (2000a; 2003) study of the history of child protection social work in the Ireland and O'Sullivan's (1999) study of the history of the industrial school system. Nevertheless it is important to acknowledge the specificity of this study and certainly comparative analysis will be an important avenue of future work.

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[306] In concrete terms: the more one analyses the process or "carceralization" of penal practice down to its smallest details, the more one is led to relate them to such practices as schooling, military discipline, and so on. The internal analysis of processes goes hand in hand with a multiplication of analytical "salients". (Foucault, 1981a:227)

The rationale for choosing the 'starting point' of 1970 is set out in the thesis. While the Reformatory and Industrial School system clearly predates 1970, numerous accounts have argued that the publication of the *Kennedy Report* in this year marked a new juncture in the formation of child welfare and the juvenile justice system. In particular the report is credited with advancing a move away from institutional forms of care. An analysis of the population of children in various forms of care in 1969 illustrates that this assertion is clearly overstated, nonetheless the genealogical analysis of the archive demonstrates that the subject of concern – the 'deprived child' – is brought more clearly into focus in this period.

Here the discourse of the *Kennedy Report (1970)* as a site of formation is highlighted. The particular form of government proposed in this report legitimised the rationale of prevention and early intervention and therefore an extension in the sphere of government. In moving from the discredited site of the institution, it was for example, argued that 'preventative' work should take place in certain forms of 'family'. Here again the 'illegitimate' child becomes a target of government. Elsewhere, it has been observed that discourses of 'prevention' and 'early intervention' (in order to assuage institutionalisation) were influential in the creation of the discursive space for the social work profession in relation to child protection and welfare (Skehill, 2000a; 2004). The archival analysis conducted for this thesis supports this view.

The positioning of the 'deprived child' as subject had been prefigured by the publication of the *Tuaraim Report - Some of Our Children: A Report on the Residential Care of Deprived Children in Ireland* in 1966. However, the genealogical analysis of the government archives and media reports within this period illustrates that the 'deprived child' as subject was still a marginal figure within discourse. Even following the publication of the *Kennedy Report* in 1970, the subject of the 'deprived child' remained marginal within official discursive space. For example, it was not until 1974 that a *Task Force on Child Care Services* was established to specifically action the main recommendations of the report.

Part of the reason for this was that other policy concerns were more pressing, including the passage of the *Health Act (1970),* which led to the establishment of community-based social work services. Indeed in Skehill's (2000a, 2004) work on the

history of the role of social work in the sphere of child protection in the Republic of Ireland, this is also identified as a 'key moment' (Castel, 1994). In line with the governmentality perspective advanced in this thesis, the role of non-state actors in promoting the discourse of the 'deprived child' has been explored. The role of CARE, the Campaign for the Deprived Child (again pre-figured by *Tuaraim*) has been described and the significance of this campaign mobilised around the figure of the 'deprived child' has been set out.

Of importance also was the programmatic of *professionalism,* again fore-grounded in the *Kennedy Report (1970),* where it was argued that 'specialist' knowledge and training was necessary in order to meet the 'special needs' of the 'deprived' child who was also a 'psychological subject'. Indeed on foot of the report's recommendations specialist training was instigated for staff working in residential care and partly in consequence arguments were made for greater financial remuneration for staff working in this now 'specialised' sphere.

In support of the view that discourse should be viewed as a space of 'differentiated positions' the archive was also read with attentiveness towards divergent views and 'marginal' discourses. For example, while the *Kennedy Report (1970)* attempted to delineate between the 'deprived' and 'delinquent' child, these subject positions were the topic of debate and the figures around which other formulations and programmatics were advanced (Miller and Rose, 2008). This is most clearly evident in the divided recommendations of the *Task Force on Child Care Services (1980),* seen for example in the differences voiced in relation to a proposed change in the age of criminal responsibility from 7 years and in the debates voiced therein in relation to the appropriate responses for young people who offend.

In a sense these difficulties were pre-figured in the *Kennedy Report's* own prescriptions. Even within the deinstitutionalisation discourse of this report, recommendations were put forward for a network of recalibrated sites of containment based on specific categorisations of problematised subjects – a closed home for teenage girls involved in prostitution – is one example. Here it seems that when a more benign form of government is prescribed as a marker of a more 'civilised' approach to child care, there remain problem subjects for whom the institution continues to be the *de facto* response.

However, this thesis highlights that one of the difficulties arising at this place of emergence is that the discredited large-scale institutional model can no longer be the site of containment for these multiple categories of problematised subjectivities. Nonetheless, being brought to visibility through discourse necessitates a response and the remedy specified in the *Kennedy Report (1970),* the *Interim Report of the Task Force on Child Care Services (1975)* and in the two reports from the *Henchy Committee (1974a; 1974b)* is that more specialised sites of containment for particular categories are required (e.g. long term secure care for the *character-disordered neurotic delinquent* and the *aggressive sociopath*).[307]

Here the technique of assessment, attendant on increased professionalisation, is specified as the particular mode through which the subjects can be made visible and the remedy proposed. In this thesis the intersections of power-knowledge in the formation of problematised subjectivities at the sites of containment is explored. Through the technique of assessment via the 'psy' disciplines, it is demonstrated that new problems and subjectivities emerge. However, here Miller and Rose's (1994:143) depiction of the reconfiguration of old problems in tandem with the 'discovery' of the new is more apposite.[308]

In support of this view some common discursive themes are noted. At the 'site of manifestation', the subject is at once individualised and totalised. He is compared to his co-accused peers and the wider constituents of the normal curve and he is invariably found wanting. Yet despite this comparison with the wider population, the locus of the 'problem' is overwhelmingly located within the subject or within his family – this after all is a central characteristic of the technique of individualisation. While reference is made to deprivation or poverty, these are markers of subjectivity and in any event are marginal discourses within the overall framing of the problem and its 'solution'.

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[307] *Assessment Services for the Courts in Respect of Juveniles. First Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons.* (1974a); *The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders. Second Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons.* (1974b)

[308] "Old problems are reconfigured and new ones discovered, when life is rendered intelligible in terms of the languages and judgements of the 'psy' disciplines.' (Miller and Rose, 1994:143)

> Everybody involved with X would seem to have the same opinion that he would be best placed in a suitable residential school for the next year or two. This will help him to keep away from his delinquent lifestyle, to give a chance to further his education, develop suitable ***moral standards*** and achieve his obvious potential for normality. (Finglas Assessment Report - Recommendation 1999)

The diagnosis opens up the possibility for classification and sets in train processes of inclusion and exclusion. For some young people re-integration into the community under some form of supervision is proposed, for others institutionalisation is specified as the remedy. Here again classification occurs and the logic of comparison and gradation is compelling. While 'new' problems or 'different mad men' may emerge an underlying continuity, an inexorable logic exists: suitable for here, not suitable for here, suitable for somewhere else. Even within the circuitry of containment, the process of inclusion and exclusion are manifest.

Illustrated here is that the techniques of government transmitted to the wider sphere continue to have productive effects at the site of manifestation. In other words, the institutions themselves, albeit marginal within the wider extended sphere of government continue to be productive of problematised subjectivities through the techniques of assessment, classification, inclusion and exclusion. Allayed to these techniques are ranges of discourses through which new possibilities emerge. Where a therapeutic rationale can no longer be advanced the focus becomes 'offending behaviour'. When children's rights become a dominant discourse, arguments for the detention of children is put forward on the basis of protecting *their* rights. Productivity is therefore evidenced in discourse, subjectivity and also in the emergence of 'new institutions'.

Some common themes in the specification of the problem subjectivities and the sites that emerge to contain them are seen both at the level of the institution and at the sites of formation. Characteristic of those deemed to require containment is that they are considered to be beyond 'juridical responsibility', i.e. lacking the characteristics of self-governing subjects. They are also visible, both at the site of manifestation and within public space. It is the most visible subjects for whom the sites of containment become actualised.

For one not all of the multiple policy recommendations made in government reports are put into effect. Where the remedies may have seemed clear in the original formulations of the *Kennedy Report (1970)* and the other government-sponsored reports published in the early 1970s, analysis of the later archive highlights that the recalibration and reconfiguration of the system transpires to be more difficult than originally envisaged.

Despite the closure of large-scale facilities such as *Marlborough House* and *Daingean Reformatory*, in 1972 and 1973 respectively, and the opening of new facilities – *Finglas Children's Centre* and *Scoil Ard Mhuire* in the same period - problems persist in achieving the precise calibrations to match the productive site that is the increasing range of complexity. The genealogical analysis demonstrates that the difficulties are manifold. There is resistance among the religious orders towards the new configuration of the system. The new 'specialist' facilities refuse to accept certain categories of young people, whom they argue are outside its remit. It appears therefore, and an analysis of the individual case files also supports this view, the increased specification of problem subjectivities provides legitimation for the argument that a child may not be suitable for one unit, but suitable for another. Here the productive effects of resistance as a strategy of power are highlighted. The logic is compelling; other sites of containment must be created to accommodate the particular needs and complexities of particular subjects.

Further still, the role of a range of actors in these networks of government is highlighted. Notable in the accounts of the establishment of the sites of containment is the role of various non-state actors in their formation. In the three institutional building phases analysed non-State actors play central roles, including facilitating the opening of a facility (Trudder House), campaigning for new facilities (High Support Units and Special Care Units) and campaigning against particular types of facilities (Loughan House). A range of arguments are mobilised around a 'complex amalgam' of rationales including *welfare, justice, needs, rights* or *interests* (Muncie, 2006c: 771). And these rationales are predicated on the visibility of their subjects.

By the time of the publication of the *Task Force on Child Care Service's* final report in 1980, it is evident that the task set and the remedies specified 'are more complex' than they originally appeared. This complexity is made manifest in a report in which

various discourses are deployed to specify the subjects and to debate whether such subjects require a 'care' or 'control' response. Such debates broadly align with discussions in wider literature over whether interventions with 'troubled and troublesome' young people should be based on the rationales previously described. Within this thesis it is argued that when viewed from a governmentality perspective, such rationales can be seen as techniques of government. In other words they legitimise forms of government based on a particular dialectic of power and knowledge. The utility of viewing the formation of subjects and the techniques proposed to govern them from this perspective is precisely because it serves to illuminate the power-knowledge effects of these discourses.

Although rationales may oscillate and form a complex 'amalgam' (Muncie, 2006c: 771), there are particular patterns of continuity and discontinuity evident over time. In this thesis it is argued that the field of government of children and young people comprises of a complex range of rationalities. The analysis of the archive demonstrates that the sphere of government has become more expansive post-1970. From an initial rationale of prevention and early intervention predicated on the need to assuage 'deprivation' and therefore to prevent institutionalisation, the sphere of government has been extended in the context of 'child protection'. This rationale has been advanced in the context of the 'emergence' of the problem of 'child abuse' evident in the discursive space occupied by this topic throughout the 1990s and 2000s.

Conclusion

At the outset of the thesis it was highlighted that there are a number of perspectives from which the practice of the detention of children can be considered. In literature in other countries, most recent analytic attention in this area has been directed towards an increased use of imprisonment of young people. And while such trends are by no means uniform, explanatory accounts such as *repenalisation* or *adulteration* are advanced as explanations for these rises (Muncie and Goldson, 2006). In the Irish case there is no evidence of a similar trend, in fact looking at the numbers of young people detained over time illustrates a marked decrease in the pattern of 'coercive confinement' (O'Sullivan and O'Donnell, 2007).

However, further to this, it is also argued that an analysis of the Irish context of containment and in particular the retraction of the institutional template and the

consequent attempts made to reconfigure and recalibrate the system can provide a useful insight into the central domains with which this thesis is concerned, namely the continued productivity of discourses regarding 'problematised' subjects and the measures required to contain them. A central argument put forward in the thesis is that carceral order continues to be a productive sphere and as such the institution or the carceral order remains a core technique of government. Given that a 'history of the present' directs attention towards the 'ongoing character of the 'discursive nexus' (Foucault, 1981b: 70-71), it is argued here that this productivity will continue

The thesis has critically explored the intersection of power and knowledge and the production of subjectivity. Such an approach has therefore aimed to engage critically with 'taken for granted' assumptions regarding the practice of child detention and those who are made subjects of this form of government. Here the manner in which subjectivity is 'produced' has been demonstrated serving to illuminate the power-knowledge effect of discourse. This has relevance for both policy and practice.

Attention has been focused on the *productivity* of practices such as assessment where the categorisations and proposals for remedying young people who are viewed as problematic produces new problems (and sometimes old manifesting as new) and leads to calls for new sites of containment. Also highlighted has been the manner in which the 'problems' and proposed 'remedies' both at a practice and policy level are overwhelmingly located at the level of the individual. It is argued that such techniques of individualisation serve to elide the wider sphere within which 'problems' are located. It is hoped that the illumination of these power-knowledge effects serve to encourage a more critical engagement with practice and policy in this sphere and point to further areas of research, for example the manner in which the subjects of these forms of government construct and understand their experiences.

Post-script – Relevance of history to the present

The history of the *Finglas Child and Adolescent Centre* (under its various titles), which first opened in 1972 has been documented in the thesis using the genealogical method. As a postscript to this thesis the decision to close the Finglas centre in March 2010 and to establish a 'National Children Detention Facility' is set out. Here attention is directed towards themes of continuity in discourse and the relevance of 'history to the present'.

Following a review conducted by an *Expert Group on Children Detention Schools (2007)* under the auspices of the *Irish Youth Justice Services* it was recommended that a new *National Children's Detention Centre* be established and built on the site of the existing schools in Lusk Co. Dublin. According to the authors of the report, such a move represented 'the most effective and efficient development arrangement of the future detention school service' (IYJS, 2007:3). As has been outlined in this thesis, the 'history of the present' method directs analytic attention towards patterns of continuity and discontinuity. In the *Expert Group's* report, they recommend the establishment of a new facility[309] on the site of the existing schools in Lusk (Oberstown Boys, Oberstown Girls and Trinity House Schools), however, they state:

Issues related to any possible impact of mixing remanded and committed children on one site, would be addressed through appropriate design features. (IYJS, 2007:14)

Further still, the 'new facility' will:

> ...provide accommodation and facilities that allow for the effective segregation and delineation of children into small self-contained groups, distinguishable on grounds of age, gender, sentence, risk level, stage of custody or other criteria. (IYJS, 2007:15)

Inherent therefore in the 'new' approach are the old techniques of identification, classification and selection.

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[309] "The project aims to develop an integrated detention school campus with a total of 167 places, for young people up to age 18, ordered to be detained by the Courts. The first phase of the development is scheduled for completion in 2012. **The development will provide the full range of remand, assessment and detention services, including step-down and aftercare, for all young offenders remanded or detained by the courts."** *Report of the Working Group on the future of the Finglas Child and Adolescent Centre (2009:6).* [emphasis in original]

In 2008, this plan was agreed by government. The 'future' of *Finglas Child and Adolescent Centre* within this proposed new programmatic was considered by a further *Working Group* established in 2008. In the subsequent report, published by the group, attention was drawn to what was described as the centre's 'hybrid function' in relation to detention of children on 'justice' and 'welfare' grounds. [310] However, the suggestion that such a function could continue into the future was cautioned against:

It has been suggested that a type of hybrid facility could cater for such young people to provide them with a period of stabilisation and to determine their longer term needs. However, the courts have stressed that there should be a clear division between criminal proceedings and child care proceedings, and that it is impermissible that there should be a hybrid form of civil/criminal proceedings of any form. (IJYS, 2009:7)

> The development of FCAC as a hybrid facility for both care and offending young people would not be permissible under law and would not address any gap in services. (IYJS, 2009:8)

Here under the rationale of classification and segregation the conclusion reached is that Finglas should be closed and all facilities located to the proposed 'new' detention centre. As such, Finglas closed on 31st March 2010 and the remaining young people were transferred to the existing Children Detention Schools. The 'new facility' which it is anticipated will accommodate 167 young people is currently in planning phase and the *Irish Youth Justice Service* state that construction on a new facility will begin in 2011. (One of the proposed design plans for the new facility is illustrated overleaf).

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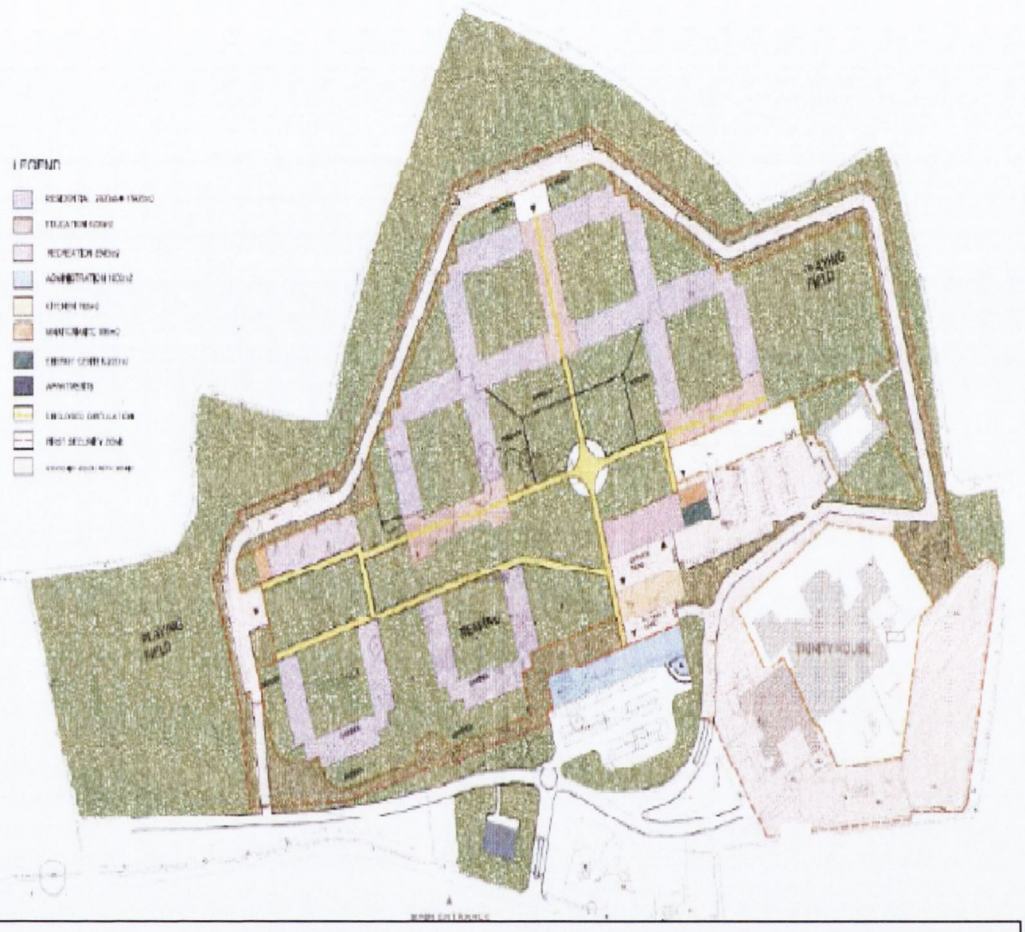
[310] *Report of the Working Group on the future of the Finglas Child and Adolescent Centre (IYJS:2009)*

Source*: Report of the Expert Group on Children Detention Schools (200:41)*



Oberstown Campus Option 4b

Appendices

Appendix one – Catalogue of archival material

Date	Material	Type	Source
1951	Commission on Youth Unemployment	Government Commission Report	Government Publications
1958	Report of Joint Committee on Vandalism and Juvenile Delinquency	Government Commission Report	Government Publications
1962	Inter-departmental Committee on the Treatment of Crime and Prevention of Delinquency (1962)	Government Commission Report	Government Publications
1963	Report of the Commission on Itinerancy (1963)	Government Commission Report	Government Publications
1970	Reformatory and Industrial Schools Systems Report (Kennedy Report)	Government Commission Report	Government Publications
1972	*Children Deprived. The CARE Memorandum on Deprived Children and Children's Services in Ireland.* Dublin: CARE	Campaign Report	National Archive Files (Department of the Taoiseach)
1974	First Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons – Assessment Services for the Courts in Respect of Juvenile Offenders	Government Commission Report	Government Publications
1974	Second Interim Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons – The Provision of Treatment for Juvenile Offenders and Potential Juvenile Offenders	Government Commission Report	Government Publications
1974	*Justice for Children: The Scottish System and its Application to Ireland.* Dublin: CARE	Campaign Report	National Archive Files (Department of the Taoiseach)
1975	Task Force on Child Care Services Interim Report	Government Commission Report	Government Publications

1977	*Justice for* CARE (1977) *Planning for Our Children – The Report of a CARE Conference.* Dublin: CARE	Conference Report	Trinity College Library
1978	CARE (1978) *Who wants a Children's Prison in Ireland?* Care. Dublin	Campaign Report	Trinity College Library
1985	Report of the Committee of Inquiry into the Penal System	Government Commission Report	Government Publications
1992	*Juvenile Crime – Its Causes and its Remedies*	Government Commission Report	Government Publications
1993	*Report of the Kilkenny Incest Investigation*	Government Commission Report	Government Publications
2000	National Children's Strategy – Our Children, Their Lives (2000-2010)	Government Strategy	Office of the Minister for Children and Youth Affairs
2000	Responding to the Needs of Troubled Children: A Critiques of High Support and Secure Special Care Provision in Ireland. (Brian Kenny, Barnardos)	Policy document from NGO (Barnardos)	Special Residential Services Board Library / Archive
2001	Youth Homeless Strategy	Government Strategy	Office of the Minister for Children and Youth Affairs
December 2002	Residential Provision for Children under the Auspices of Education and Science. (Mike Laxton, Phase Three Consultancy)	Consultancy Report commissioned by the Department of Education and Science	Special Residential Services Board Library / Archive
September 2004	Troubled Young People in the Eastern Region. (Madeleine Clarke, Organisation and Management Consultant)	Consultancy Report commissioned by the Eastern Regional Health Authority	Special Residential Services Board Library / Archive
13/12/05	Address by Mr Brian Lenihan, T.D., Minister for Children. Launch of the Office of the Minister for Children and announcement of Youth Justice Reforms agreed by government	Minister's Speech	Office of the Minister for Children
13/12/05	Press release - 'Youth Justice Reform. Lenihan announces new measures to respond to	Press release	Office of the Minister for Children

	youth offending and anti-social behaviour.'		
13/12/05	Minister Brian Lenihan announces new office of the Minister for Children – Historic Development which places children at the heart of government'	Press release	Department of Health and Children.
2006	Report of the Youth Justice Review	Government conducted review	Special Residential Services Board Library / Archive
2009	Inspection Report: Ballydowd Special Care Unit In the Health Service Executive Dublin Mid-Leinster Region ID NUMBER: 366 / 341	Inspection Report	Health Information and Quality Authority Website
2009	*Commission to Inquire into Child Abuse (2009*	Government Commission Report	Government Publications

Appendix two – Catalogue of legislation

Legislation
Reformatory Schools (Ireland) Act (1858)
Industrial Schools Act (Ireland) (1868)
Pauper Children (Ireland) Act (1898)
Boarding Out of Children in Unions Order (1899)
Children Act (1908)
Children Act (1941)
Adoption Act (1952)
Health Act (1953)
Children's Amendment Act (1957)
Health Act (1970)
Child (Care and Protection) Bill (1985)
Child Care Bill (1988)
Children's Bill (1996)
Children's Bill (1999)
Child Care Act (1991)
Commission to Inquire into Child Abuse Act (2000)
Children Act (2001)
Residential Institutions Redress Act (2002)
Criminal Justice Act (2006)
Child Care (Amendment) Act (2007)

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